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**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190801/0003766**

**Dated: 11<sup>th</sup> December 2019**

Complainant : Sulochana  
Sun Land 5-81 M NGO Colony, Puttur,  
Udupi -576105

**AND**

Opponent : Nissi Avenue  
a) Macquin Monteiro  
Nissi Infinity Developers ,  
AV Arcade, 3<sup>rd</sup> Floor, Above Karnataka  
Bank, Kunjibettu, Udupi -576102  
b) John Joyan Lewis &  
JJ Villa, Thomas Road, Kakkunje,  
Santhekatte, Udupi-576105

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**J U D G E M E N T**

1. I. Sulochana, has filed this complaint under Section 31 of RERA Act against the project "Nissi Avenue" developed by Macquin Monterio bearing Complaint no. CMP/190801/0003766. The facts of the complaint is as follows:

*Uncalled Delays in completion of project & Constant lies on the delivery date*

*Relief Sought from RERA: Interest on Flat Value & Damages  
(Bank Loan/ Rent)*

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2. In pursuance of the summons issued by this authority the complainant has not appeared personally but her husband was present by holding power of attorney. Further she also sent her complaint gist through post. The developer has failed to appear throughout the trial.
  3. I have heard the arguments.
  4. The point that arise for my consideration is as to
    - a. Whether the complainant proves that he is entitled for the relief as prayed in the complainant?
  5. My answer is affirmative for the following

### **REASONS**

6. The complainant has filed this complaint seeking for delay compensation in respect of flat bearing No.204. The complainant has produced a letter given by the developer date 26/03/2018 admitting the receipt of Rs. 29,59,000/- from the complainant. In the same letter it is said that they have paid GST on the said amount. The complainant has addressed a letter to the developer seeking for return of amount but it was not materialised. The complainant has produced the receipts for having paid to the developer. The evidence given by the complainant has not been answered by the developer. Keeping away from the proceedings is not proper answer to the claim. In the absence of defence.
7. The developer has failed to appear and contest the case. The evidence produced by the complainant is sufficient to believe their case. As per Section 18 of the Act the developer who fails to complete the project within time as given in the agreement of sale shall return the amount. Accordingly this complaint has to be allowed.

8. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 10/08/2019. The complainant was present on 25/10/2019 but the developer was not at all present. 60 days has to be computed from the date of appearance of the parties and as such the question of delay does not arise. With this observation I proceed to pass the order.

### ORDER

The complaint No. CMP/190801/0003766 is allowed in part.

- Amended as per order dt. 10/9/2019*
- Deputy*
- NOT A*
- The developer is hereby directed to execute the sale deed after obtaining the occupancy certificate by providing promised amenities within 2 months from today.
  - In case of failure to do so the developer is hereby directed to return Rs. 8,59,000/- <sup>21,00,000/-</sup> together with interest @ 9% p.a. on the respective amount paid on respective date till 30/04/2017 and further the developer is also directed to pay interest on the amount paid @ 2%p.a. above the MCLR of SBI on from 1/05/2017 till the entire amount is realised.
  - The developer is also hereby directed to discharge the loan with its interest, EMI and any other incidental charges on the flat.
  - The complainant is hereby directed to execute cancellation of agreement of sale after the entire amount is realized.
  - The developer is also directed to return an amount of Rs. 25,000/- & 13,500/- paid towards Tiles & cements.
  - Further the developer has to pay Rs. 5,000/- towards cost of petition.
  - Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/12/2019).

(K.Palakshappa)  
Adjudicating Officer

*11/12/19*

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