

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180227/0000518

Date: 27th February 2019

Complainant : ABHISHEK LOONKER
Ascent Capital, 16th floor,
Concord block, UB city
Bengaluru- 560001.

AND

Opponent : Nitesh Napa Valley,
Nitesh Housing Developers Pvt. Ltd.,
Level 7, Nitesh Timesquare,
No. 8, MG Road,
Bengaluru -560001.

J U D G E M E N T

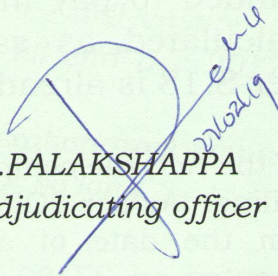
1. Abhishek Loonker under complaint no. CMP/180227/0000518 has filed this complaint under Section 31 of RERA Act against the project "Nitesh Napa Valley" developed by Nitesh Housing Developers Pvt, Ltd., as the complainant is the consumer in the said project. The facts of the case is as follows:

I have booked a C type Villa No. 41 in the Nitesh Napa Valley Project of Nitesh Housing

ORDER

1. The complaint no. CMP/180227/0000518 is allowed by directing the developer to pay Rs. 40,680/-each month towards delay compensation in respect of villa no. 41 from July 2016 till the possession is delivered.
2. The developer is also directed to pay Rs. 79,86,557/- towards Pre-EMI paid by the complainant.
3. The developer is also directed to pay the interest at the rate of 9% p.a. on each EMI paid on respective date prior to 1/5/2017 and at the rate of 12.75% P.A commencing from 1/5/2017 till 31/01/2019.
4. The developer is also directed to pay Rs. 10,00,000/- including the cost of this petition to the complainant for the loss of opportunity of getting the property even though he has paid 100% of the amount and waiting for long period since 2013 delay caused in completion of the project.

Intimate the parties regarding this order.
(This Order is Typed, Verified, Corrected and
pronounced on 27/02/2019)


K.PALAKSHAPPA
Adjudicating officer

the residual amount that was originally required to be paid at the time of handover. I would like to know your concurrence to proceed on this basis for your villas booked by Mr.Abhishek Loonker, Ms.Asha Arunkumar, Mr.Konduru I Rajkumar, and Mrs.K Vijaya Raju.

23.11.2017.

We are yet to find a solution by arranging funds to take care of the PEMI dues for your 5 group purchase villas.

As we are on the verge of some new closures and thereby some monies coming into our system. It would be nice if we could catch up next week.

I am sure the intent of the meeting is to achieve some progressive and practical discussion, rather than just another meeting.

Request you to bear with us till then.

10. From the above discussion it is to be said undoubtedly that the developer is bound to give the delay compensation along with Pre EMI reimbursement. The complainant submits that he has paid the same without any break to the bank in order to avoid any problems in future. Hence, he has demanded to pay interest on it also at the rate of 18% and calculated as said above. But the interest payable as per S.18 is already prescribed in Rule 16.
11. As per S.71 of the Act, the complaint shall be disposed of within 60 days from its filing. As per SOP of this office the 60 days has to be computed from the date of appearance of the parties. This complaint presented on 27/02/2018. As per S.32(g) conciliation was called for but the same was failed. After wards the case was taken up for trial on 23/11/2018 after his project was approved. Even after appearance the developer the arguments was heard and posted for orders. Hence, there is some delay in disposing of this complaint. Hence, I proceed to pass the following:

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27/02/19

9. However the complainant has drawn my attention towards the mail exchanges. I have already said that the complainant has sent more than 60 emails to the developer. At this stage I would say that the mail exchanges gives a picture that the mails have been sent with respect to 5 cases filed by the same complainant and complainant in Complaint No. 520 and 518. In fact 5 complaints had been filed and among them 2 complaints have been disposed of on a memo. Hence, the developer has addressed them in the mail which reads as under:

Mail dated:09/01/2016.

This is to reiterate that we are working on it internally to expedite the reimbursement process and we assure you it will be done by April 2016.

Mail dated:03/08/2016.

Mr. Raja kumar,

Sorry for a late revert from us on the refund and it was primarily we had to look at our cash position and inflows.

We would like to confirm that, we will meet up the July commitment of 17.50 lacs by the 12th of this month.

Please bear with us till then and we will ensure we will clear these monthly commitments till end Dec 2017 on a monthly basis.

Thanks for all the support & co-operation from you and all others who have patiently waited for so long.

Mail dated:08.09.2015.

It was a pleasure meeting you and Mr. Loonker in our office today and we thank you for coming over.

Regarding the Pre-EMI we would like to propose that we pay the forthcoming pre EMI on a monthly basis. The pre EMI that have been paid by you shall be adjusted against

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27/02/19

6. It is the main grievance of the complainant that he has paid full amount and has sent several emails claiming the relief as per the agreement. But the attempts made by the complainant were futile and the developer has failed either to complete the project or to pay Pre- EMI as agreed.
7. By looking into the evidence, I hold that the developer has taken the case of the complainant very lightly. The complainant has addressed a letter on 23/02/2018 calling upon the developer to pay the EMI dues for which the developer has given the reply on 01/03/2018 denying the same. To the same the complainant has given the reply by making reference to the agreement dated 10/07/2013. I would like to say that the developer has filed his objection statement on 12/04/2018 when he was called for conciliation proceedings before approval his project wherein he has not specifically denied about the agreement dated 10/07/2013. Of course the agreement dated 10/07/2013 was not a registered one. But the complainant has made more than 60 times mail correspondence with the developer wherein he has claimed the payment of EMI even after 2015 but no concrete evidence has been placed by the developer stating that the agreement dated 10/07/2013 is not all executed on behalf of the Company.
8. On verification of the agreement dated 10/07/2013 it is seen that it is executed after the agreement of sale and Tripartite Agreement. Therefore I hold that the submission made by the complainant that the developer has agreed to pay the EMI till the delivery of possession through this document may not be accepted because of its non registration. I mean to say that the unregistered agreement cannot prevail over the registered agreement.

signed between myself, HDFC and NHDPL date July 9, 2013.

- f. I have written 69 emails over last 3.5 years and have met several times the senior management of NHDPL in order to get re- imbursement of the contractually obligated pre- emi amounts (interest).
- g. The Builder has acknowledged its liability many times through written communication and has also reimbursed one month of pre- emi dues. This pertains to the month of September, 2015.

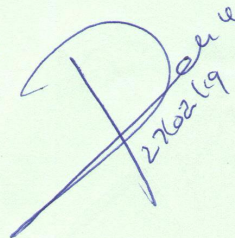
4. From the above evidence, it is clear that there is transaction between complainant and the developer which is proved. The complainant who has started to make payments since 2013 has failed to receive the goods. Therefore, the complainant has sought for re-imbursement. According to complainant he has paid Rs. 79,86,557/- towards Pre- EMI as on 31/01/2019 and it should be returned. It is the main grievance of the complainant that he has paid full amount and has sent several emails claiming the relief as per the agreement. But the attempts made by the complainant were futile and the developer has failed either to complete the project or to pay Pre- EMI as agreed.

5. Hence, it is clear that there is transaction between the complainant and the developer is proved. The complainant who has started to make payments since 2013 to whom the developer has failed to deliver the goods. According to complainant he has paid Rs. 79,86,557/- towards Pre- EMI which was ought to be paid by the developer as per agreement and assurances.

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amount to be paid to developer (NHDPL) towards buying this property. This excludes registration charges, electricity and water charges, sinking fund and maintenance charges which are due to be paid on possession.(Proofs of payment are annexed in Annexure A)

- b. On June 22, 2013, I had entered into agreement to sell and construction agreement with NHDPL. As per Clause 4.1 of construction agreement (page No. 4), the builder had agreed to deliver the possession of the villa on or before 31st December 2015 with a grace time of an additional 6 months.
- c. The builder has not been able to give possession and it's been 6 years since I made booking of this villa in December 2012. Present delay in handover from the due date is 3 years.
- d. As per Clause 4.8 of the construction agreement, if the builder is not handing over the possession of the completed villa, then it shall be liable to pay Rs. 15 per sq ft. per month on the super built up area of the villa till the date of actual handing over. This compensation for delay is Rs. 40,680 per month which was to be paid every month starting July 2016(after considering grace period).The builder has failed in fulfilling its contractual obligation of handover and also paying compensation for delay.
- e. The Builder has also entered into undertaking agreement dated July 10, 2013 whereby it is obligated to reimburse the interest I pay every month against my housing loan account till the handover of the possession. This is a core issue basing on which I have decided to purchase the said villa. This payment made by me and producing proof of the same. I have been sending proof every month since May 2015. The reimbursement from July 2013 to April 2015 was directly made to HDFC as per tripartite agreement

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communication, under which they are frivolously claiming that the liability to bear interest beyond even 30.04.2015 would be that of NHDPL. It is submitted that such claim of the complaints is unfounded, without any basis and does not stand the scrutiny of law.

Para 5: further it is submitted that there is no delay in the handing over of the villa since the proposed date of handover as mentioned in the construction agreement dated 22.06.2013 was only a targeted date of completion. This is clearly evident from the language of the provisions of the construction agreement dated 22.06.2013 and any interpretation to the contrary is denied as false. In any case, the same was also subject to various unanticipated force majeure events. In the instant case, the project Nitesh Napa Valley met with certain unforeseen obstacles in the form of unanticipated litigation having immense bearing on the project as a whole. Despite the same NHDPL has strived hard to achieve various milestones in the construction of your villa by employing renowned experts in various fields and also by expending huge amounts of constructions costs, which escalated beyond the control of NHDPL.

3. The parties entered into agreement on 22/06/2013. At the time of argument, complainant has brought to my notice that:-

- a. " I. Abhishek Loonker, have booked villa no. C-41 in Nitesh Napa Valley project of Nitesh Housing Developers Private Limited (NHDPL). The booking amount of Rs. 15,00,000/- was paid on December 11, 2012. An amount of Rs. 63,36,951/- was paid on March 21, 2013, and an amount of Rs. 2,35,10,852/- was paid by HDFC LIMITED to NHDPL directly in July 2013. A total amount of Rs. 3,13,47,803/- was paid to NHDPL towards villa no. C-41 which is 100% of the

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possession. The compensation should be paid along with interest of 18% p.a. Compensation for delay (till jan 31, 2018) : Rs. 813,600 Interest on compensatation: Rs. 127,071 The builder should handover the villa in next 1 month. Alternatively, In case, the builder is not able to handover the villa, he should take over the loans, return my equity amount (along with return of 18% p.a.) and give me exit from the project.

Relief Sought from RERA : Immediate

Reimbursement of dues & Possession of villa

2. On 23/11/2018 complainant was present and the developer was represented through his advocate. Later the developer took time to file objection. Finally on 7/01/2019, the case was taken up for judgment after hearing the parties. The developer who was called on 12/04/2018 has filed his objection which is as follows:

Para 3: It is submitted that as per the terms of the Tripartite Agreement, MHDP agreed and undertook to assume the liability of interest payment under a loan agreement between HDFC on the one hand and Mr. Abhishek Loonker on the other hand for the time period between the date of first disbursement and 30.04.2015. The said period of time was expressly qualified under the tripartite agreement as "liability period". It was clearly, categorically and most unambiguously agreed in the said tripartite agreement that after the completion of the liability period, the liability to pay interest on the loan amount shall solely be that of Mr. Abhishek Loonker, notwithstanding any other terms of the Tripartite Agreement or any other agreement.

Para 4: such being the case, it is unfortunate that the complainant have been indulging in repeated

Developers Private Limited (Builder). The agreements for this unit were signed on June 22, 2013. We had also signed a one page agreement dated July 10, 2013 under which the builder is contractually obligated to re-imburse the Pre-EMI amount every month till possession of the villa is given. The builder has failed to fulfill this obligation since May 1, 2015 till date except for the month of September 2015 wherein the reimbursement was made for one month. I, along with four other buyers, have been following up with top management of the builder for the last 32 months and also wrote 63 emails in this regard along with proof of payment of Pre-EMI made to the bank. We have also met the top management of the builder several times requesting them to honour the contractually agreed Pre-EMI reimbursements. Also, as per agreement, the builder was supposed to give the handover of the villa by December 2015. There was also a grace period of additional 6 months which got over in June 2016. In case of any delay beyond the grace period, the builder is contractually obligated to pay a compensation of Rs. 15 per sq.ft., per month of the super built up area for delay till the actual hand over of villa. The builder has again failed in fulfilling its obligation of handover on time and failed to compensate me in this regard. I request RERA to direct the builder to reimburse the pre-emi dues till date along with interest of 18% p.a. (as per signed agreements, this is the same interest they charge to buyers in case they default) Pre-EMI Dues (till Jan 31, 2018): Rs. 59,41,683 Interest on Pre-EMI: Rs. 16,97,672 The builder should also compensate me for delay in

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