

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

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190325/0002497**

**Date: 10<sup>th</sup> October 2019**

Complainant : SANDEEP PANDEY  
Residing at No.A303,  
Salarpuria Sanctity,  
Sarjapur Road,  
Bangalore Urban-560035

AND

Opponent : NITESH HOUSING DEVELOPERS  
PRIVATE LIMITED  
Residing at Level-7, Nitesh Times  
Square, No.8, M.G.Road,  
Bengaluru-560001

1. SANDEEP PANDEY complainant under Complaint No.CMP/190325/0002497 has filed this complaint under Section 31 of RERA Act against the project "NITESH COLUMBUS SQUARE PHASE II" developed by NITESH HOUSING DEVELOPERS PRIVATE LIMITED, as the complainant is the consumer in the said project. The complaint is as follows:

I purchased the unit in 2012 and delivery of the unit was promised in 2014. Its already more than 6 years and I am still awaiting the possession of my flat. Several emails and phone calls were made to Nitesh sales and customer service office and there has been no satisfactory response. The construction work is completely stalled since more than 2 years now and there has been no communication from the promoter in this regard. There was regular communication from Nitesh office until 2 years back. I have already paid around 95% of total amount and now there is no communication and no progress updates.

Relief Sought from RERA : Refund all money with compensation against delay

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10/10/19

2. I purchased the unit in 2012 and delivery of the unit was promised in 2014. It's already more than 6 years and I am still awaiting the possession of my flat. Several E-mails and phone calls were made to Nitesh sales and customer service office and there has been to satisfactory response. The construction work is completely stalled since more than 2 years now and there has been no communication from the promoter in this regard. There was regular communication from Nitesh office until 2 years back. I have already paid around 95% of total amount and now there is no communication and no progress updates.
3. The complainant was present when the case was called. The developer is represented by his representative Sri Prasad. The developer has filed objections.
4. I have heard the arguments on both sides.
5. The Point that arises for my consideration
6. Whether the Complainant is entitled for the relief as sought in the complaint?
7. My answer is affirmatively for the following:-

### REASONS

6. It is the case of the Complainant that he has paid an amount of Rs.59,19,581/- to the developer towards purchase of flat bearing No.A606. On 24.07.2012 the agreement was executed wherein he has agreed to complete the project in the year 2014 but till today the project is not completed. Hence, this complaint is filed for return of amount.

For which he has filed his objection

- a. The respondent has not denied the case of the Complainant in full but it is the contention that the Complainant is not entitled for the relief because the Complainant and his father Ashok Kumar — But Full amount

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Pandey had booked an apartment bearing No.A0606 in Block-A, 6<sup>th</sup> Floor of Nitesh Columbus Square Project of the Respondent. The Parties have executed agreement to sell dated 24.07.2012 and construction agreement dated 24.07.2012 respectively. The parties are governed by the terms and conditions agreed therein. In case of any dispute between the parties, the dispute resolution should happen by Arbitration as agreed by the parties in the said documents. The Complainant should have opted for Arbitration. On this ground the Complainant is not maintainable.

- b. It is further submitted that in case of cancellation of agreement by the Complainant as per agreement the Respondent is entitled to forfeit/with hold 18% of the amount received towards administrative charges and the balance shall be refunded within 180 days or upon resale of the apartment, whichever is later. Since the Complainant has sought for cancellation and refund of the amount the same will be considered as per the agreement and upon resale of the apartment the balance amount will be refunded to the Complainant.
- c. It is submitted that the construction work in the project site is completely stopped from 2018 on account of Temporary Injunction granted against us on 20.02.2018 by the Hon'ble City Civil Judge, Bangalore in A.A.No.53/2018. The said order of Injunction obtained by land owner Mr.H.R.Suresh has caused irreparable loss and injury and it has resulted in delay in compensation of the project.
- d. It is submitted that the said A.A.No.53/2018 was disposed by the Hon'ble Court in favour of the land owner against the said order. We have preferred MFA 1118/2019 before the Hon'ble High Court of Karnataka. Since no stay order is passed against the order of A.A.No.53/2018, the order of

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*injunction is in force hence further construction could not be taken up the Respondent Company. The copy of the order passed in A.A.No.53/2018 is produced herewith and the same is marked as Annexure-3.*

*f. It is further submitted that due to the above referred order passed against the Respondent Company, the construction could not be completed on time and the apartment could not be delivered to the Complainant.*

*f. Hence there is no delay on the part of the Respondent Company in delivering the apartment to the Complainant. It is solely due to order passed against the Respondent Company, the construction is halted.*

*(g) For any reasons, if the Developer could not develop the project as expected, due to any unforeseen reasons beyond the control, this agreement shall be voidable at the instance of the Developers; and in such an event, the parties shall be put to their original positions and the amount received by the Developers shall be repaid to the Purchaser/s along with interest @ 10% P.A." Even after knowing the above terms, the Complainant put lot of pressure on the Respondent and forced him to refund the amount with interest as he decided.*

9. For the above reasons the Developer says that as there is no any wilful delay in completing the project. Of course the Developer has produced the necessary documents for the same.

10. Per contra the Complainant has produced some photo which reveals that his unit is still under construction. On 10.09.2019 the Complainant has sent a representation through post wherein he said that

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*The language of objection from builder is so threatening that it sounded as if builder is now penalizing me for filing a RERA case. The builder has mentioned various absurd reasons which resulted in non-delivery of flat. But there is no indication or promise of delivery of flat any time in future.*

11. I would say that as per Section 18 the Developer is liable to pay the delay compensation whenever it is found that the project has not been completed within the date mentioned in the agreement. By looking into the objection filed by the Developer, the land lord has raised the dispute against the Developer. As per the definition clause promoter includes the land owner. It means it is also the responsibility of the Developer as well as the land owner to compensate the consumer in case of delay. Therefore the so called dispute and arbitration dispute is nothing to do with the Complainant and therefore it is not all good defence to deny the claim of the Complainant.
12. The defence taken by the developer that in case of cancellation of agreement 18% of amount will be forfeited and the refund will be made after the unit is sold. This kind of defence has no force since the delay caused by him debars him taking any such kind of defence. Another defence is that the amount will be refunded only after the sale of unit is not at all correct since the complainant has paid the amount with a hope of taking the flat with a timeline. When the developer is default in non-completing the project he has lost the right of forfeiture. Hence, the case made out by the developer has no meaning. Hence the complaint has to be allowed.

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13. As per S.71 (2) RERA, the Complaint will have to be closed within 60 days from the date of filing. In this case the Complaint was filed on 25/03/2019. But the same was received by the Adjudicating Officer only on 30/06/2019. In the present case thereafter wards notice has been issued and thereby the parties have appeared on 26/07/2019. Hence, the Complaint is being disposed off with little delay. With this observation I proceed to pass following order.

### **ORDER**

The Complaint No. CMP/120325/0002497, is allowed.

- a. The Developer is hereby directed to return Rs. 59,19,581/- to the complainant.
- b. The Developer is hereby directed to pay the interest @ the rate of 9% P.A. on the respective payment made on respective date till 30.04.2017.
- c. The Developer is also directed to pay the interest @ the 2% above the SBI Marginal lending interest above the MCLR i.e., 2% above the MCLR commencing from 01.05.2017 till the date of realization.
- d. The Developer is also liable to pay cost of Rs.5,000/- to the Complainant.
- e. The Complainant is hereby directed to execute the cancellation of agreement of sale after the entire amount is realised.
- f. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 10/10/2019)

*Adjudicating officer*  
K.PALAKSHAPPA