

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Presided by:- Sri K.PALAKSHAPPA

Adjudicating Officer.

Complaint No.CMP/190823/0003982

DATE 23rd DECEMBER 2019

Complainants : Savitha H.S
G102, Mantri Paradise
Next to HSBC Bank, Arekere
Bannerghatta Road
Bengaluru-560 076
Rep. by Sri G.Vikram, Advocate

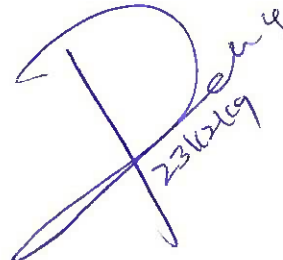
AND

Opponent : Nitesh Housing Developers Private
Limited, No.8, 7th Floor, Nitesh
Timesquare, Mahatma Gandhi Road
Bengaluru-560 001
NHDPL Properties Pvt.Ltd.,
Having its registered office at No.110,
level-I, Andrews building, M.G.Road,
Bengaluru-560001

(This address is mentioned as per the address given by the respondent in his objection statement)

JUDGEMENT

1. Savitha H.S has filed this complaint under Section 31 of RERA Act against the project " NITESH HEDE PARK PHASE 11" developed by Nitesh Housing Developers Private Limited,, (NHDPL Properties



Pvt.Ltd.), bearing Complaint no. CMP/190823/0003982. The facts of the complaint is as follows:

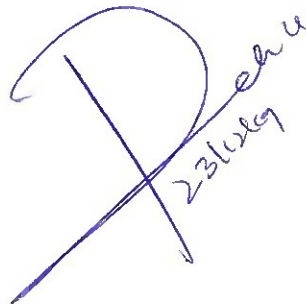
The complainants submit that the complaint has to be filed online in the prescribed format. The fields provided for, in the online application, does not permit the complaint to be filed jointly although the agreement of sale and construction agreement have been executed jointly in favor of the complainants. In the said circumstances, the spouse name, age, Telephone No., email id and the identification card uploaded, in the fields provided for in the online application is that of the first complainant. The second complainant is the husband of the first complainant and is aged about 51 years. The Tel No. of the second complainant is 9686115218 and his email id is vpkumar04@gmail.com. 2. The complainants submit that M/s NSL SEZ (Hyderabad) Private Limited along with the respondent entered into an agreement of sale dated 13th March 2013 with the complainants with respect to 0.34% undivided share, right, title, interest (653.85 sq. ft) in the converted non-agricultural residential land formerly bearing Sy No. 49, and presently bearing Bruhat Bengaluru Mahanagara Palike Khatha No. 1225/49 situated at Hulimavu Village, Begur Hobli, Bangalore South Taluk measuring 05 Acres 17 guntas. Copy of the agreement of sale is produced herewith as Document No.1 3. The respondent has also executed a construction agreement dated 13th March 2013 in favor of the complainants pursuant to the aforesaid agreement of sale for constructing a residential apartment bearing No.O-0501 in Fifth floor, O Block (previously known as Block F), in Wing II, within the project Nitesh Hyde Park measuring 1910 sq. feet of super built up area together with right to use One covered car parking space. A copy of the construction agreement is produced herewith as Document No. 2 4. The complainants have paid a sum of on Rs. 1,22,43,073/- (Rupees One Crore twenty two lakhs forty three thousand and seventy three only) under the agreement of sale and construction agreement: The respondent has acknowledged the receipts for having made the aforesaid payments. The receipts evidencing the aforesaid payments are produced herewith as Document No. 3 5. The complainants submit that Clause 6 of the Construction agreement provides that the possession of the apartment will be delivered by the respondent to the complainants after completion of construction as far as possible on or before 31st of December 2014 with six months grace period additionally. Therefore, in any event the possession of the apartment ought to have been delivered to the respondent on or before 30th June 2015.


22/11/14

6. The complainants submit that although the respondent have received and acknowledged the aforesaid payments both under the agreement of sale and construction agreements, the respondent has not delivered possession in spite of repeated requests. 7. The complainant submits that the respondent vide its email dated 12th June 2019 has informed the complainant and other allottees of F Block, that M/s NCCCL has given its final consent and quote to take up tower F and complete the internal block work, internal and external plastering, completion of all floors, common areas, lobbies, lift landings etc. The respondent further informed that 90 to 120 days is the completion time. A copy of the email dated 12th June 2019 is produced herewith as Document No. 4. 8. The respondent has vide its email dated 3rd July 2019 has informed the complainants and others that the respondent has signed the contract with NCCCL to carry out the works. By this it is clear that the respondent has acknowledged the fact that the construction is incomplete and the possession of the apartment is not yet delivered as on the date of filing the complaint. A copy of the aforesaid email is produced herewith as Document No. 5.

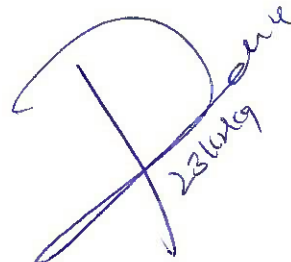
Relief Sought from RERA : Interest & Pre-EMI for each month delay & delivery

2. In pursuance of the summons issued by this authority the complainant was present through her advocate Sri G.Vikram, who filed the vakalath on her behalf. The developer has appeared through his representative.
3. Heard the arguments after filing objections to the averments made in the complaint.
4. The point that arisen for my consideration was:
 - a. is the complainant entitled for the relief as sought in her complaint ?
 - b. If so what is the order?
5. My answer is affirmative for the following


23/12/19

REASONS

6. The complainant has filed this complaint U/s 31 of the RERA Act claiming for delay compensation. The respondent Developer has appeared through his representative and filed objections.
7. The complainant has booked the flat bearing No.O-0501. In this regard, the parties have entered into agreement on 13.03.2013. As per the agreement the Developer was expected to complete the project on or before 30.06.2015 including the grace period.
8. The learned counsel for the complainant submitted that the complainant has paid a total sum of Rs.1,22,43,073/- towards purchase of the flat. It is the case of the complainant that Developer has failed to complete the project within due time as agreed in the agreement. It is the submission that as per Sec.18 of the RERA Act, the Developer has to compensate the complainant for the delay caused in completing the project.
9. The respondent has filed its objection statement denying the case of the complainant. Of course, the respondent Developer has taken so many contentions in his objection statement. It is his submission that delay was caused because he had terminated the services of the Contractor who filed suit and obtained the order of injunction. He has also stated that there was a transporters strike, there is delay in giving electricity connection. Further he also stated that he found rocks at the time of excavation work. For these reasons it is the case of the Developer that the delay was not intentional and all of them are founded on reasonable and excusable reasons.
10. I would say that till today, the Developer has not received Occupancy Certificate. The due date was in the month of June 2015. More than four years is already elapsed, even then the Developer is not able to get the Occupancy certificate means his project is not


23/6/19

completed as on the date of the filing of this complaint and also even today. Therefore, as per the observation made by the Hon'ble Supreme Court in Pioneer Case, the delay in more than two years from the due date, then automatically the complainant is entitled for delay compensation.

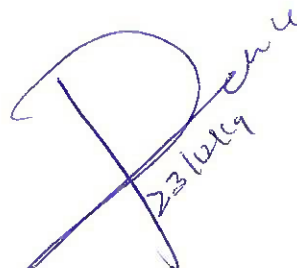
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan

which reads as under:

Para 6.1: In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In *LDA v. M.K.Gupta*, this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In *Fortune Infrastructure v. Trevor D'Lima*, this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.

11. The above decision is very much helpful to the complainant to seek the relief as sought in the complaint and hence, question of dismissing the complaint for the reasons stated by the Developer holds no water.



12. Before passing the final order I would say that 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 23/08/2019. 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 01/10/2019. After taking the objection statement the argument was heard and posted for judgment. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

- a. The complaint no. CMP/190823/0003982 is allowed.
- b. The developer is hereby directed to pay delay compensation in the form of interest towards purchase of flat @ 9% on the total amount paid up to July 2015 till 30.04.2017 and also @ 2% above the MCLR of SBI on the total amount paid by the complainant commencing from May 2017 till the possession is delivered after obtaining the occupancy certificate.
- c. The Developer is directed to pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding this order.

(Typed as per dictated, corrected, verified and pronounced on 23/12/2019).

(K.Palakshappa)
Adjudicating Officer