

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

K.PALAKSHAPPA Adjudicating Officer
Complaint No. CMP/190731/0003636

Date: 23rd December 2019

Complainants : Shanker Iyer A.S & Prabha
Balakrishnan Rukmani
Mahindra Windchimes
Apartments,37/2A,A1703,Arekere
Bannerghatta Main Road,
Bengaluru-560 076
Rep. by Sri Vikram Advocate

AND

Opponent : Nitesh Housing Developers
Private Limited,
No.8, 7th Floor, Nitesh Timesquare,
Mahatma Gandhi Road,
Bengaluru-560 001

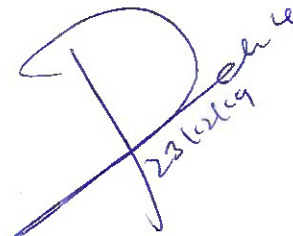
JUDGEMENT

1. Shanker Iyer A.S & Prabha Balakrishnan Rukmani have jointly filed this complaint under Section 31 of RERA Act against the project "NITESH HEDE PARK PHASE 11" developed by Nitesh Housing Developers Private Limited,, bearing Complaint no. CMP/190731/0003636. The facts of the complaint is as follows:

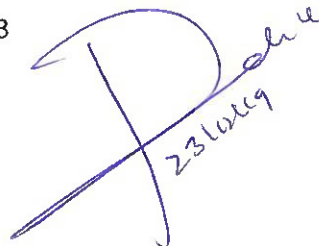
The complainants submit that the complaint has to be filed online in the prescribed format. The fields provided for, in the online application, does not permit the complaint to be filed jointly although the agreement of sale and construction agreement have been executed jointly in favor of the complainants. In the said circumstances, the fathers 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 wife of the first complainant and is aged about

P. Dewu
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40 years. The Tel No. of the second complainant is 9845610551 and her email id is Prabha_br@yahoo.co.in. 2. The complainants submit that M/s NSL SEZ (Hyderabad) Private Limited along with the respondent entered into an agreement of sale dated 3rd May, 2013 with the complainants with respect to 0.33% undivided share, right, title, interest (643.24 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 1. 3. The respondent has also executed a construction agreement dated 3rd May 2013 in favor of the complainants pursuant to the aforesaid agreement of sale for constructing a residential apartment bearing No.O-0402 in Fourth floor, O Block (previously known as Block F), in Wing ?II?, within the project ?Nitesh Hyde Park? measuring 1879 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 2. 4. The complainants have paid a sum of on Rs. 1,09,23,099/- (Rupees One Crore Nine Lakhs Twenty Three Thousand Ninety Nine only) under the agreement of sale and construction agreement. The payments made and acknowledged by the respondent are as under: a. Cheque Number 389375 drawn on HSBC Bank dated 29/3/2013 for a sum of Rs. 3,00,000 (Rupees Three Lakhs only) b. Cheque Number 651094 drawn on ICICI Bank dated 26/4/2013 for a sum of Rs. 17,29,626 (Rupees Seventeen Lakhs Twenty Nine Thousand Six Hundred Twenty Six only) c. Cheque Number 883425 drawn on Citibank Bank dated 26/4/2013 for a sum of Rs. 3,00,000 (Rupees Three Lakhs only) d. DD number 078611 drawn on HDFC Bank dated 18/5/2013 for Rs. 85,93,473 (Rupees Eighty Five Lakhs Ninety Three Thousand Four Hundred Seventy Three only) The receipts evidencing the aforesaid payments are produced herewith as Document 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. 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

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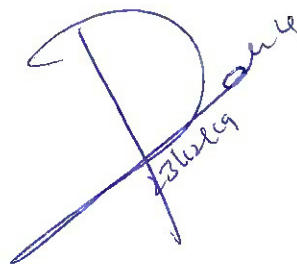
repeated requests. 7. The complainant submits that the respondent vide its email dated 12th June 2019 has informed the complainant and other allottees of F Block, that M/s NCCCL has given its final consent and quote to take up tower F and complete the internal block work, internal and external plastering, 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 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 5. 9. The complainants submit that clause 5 of the agreement of sale provides that separate agreement would be entered into with the builder for the construction of an apartment and use of common areas. However default in any one agreement shall be construed as default of all other agreements and the rights and obligations of the parties shall be determined as per what is mentioned in both agreements. It further provides that the sale agreement cannot be independently enforced in isolation of agreement of even date executed for the construction of apartment. 10. The complainants submit that they have entered into a tripartite agreement with the respondent and HDFC Bank. Under the aforesaid agreement, the respondent had agreed to pay the Pre EMI. The copy of the tripartite agreement is produced as Document 6. The complainants submit that the respondent has agreed to pay the Pre-EMI till the completion (readiness of the Project ? Nitesh One Hyde Park project) vide its letter dated 03.04.2013. A copy of the said letter is produced as Document 7. The respondent has defaulted on its obligation to pay the Pre EMI since May 2015 and has acknowledged the same vide its email dated 5th August 2016. A copy of the email dated 5th August 2016 is produced as Document 8. 11. The complainants at this stage do not intend to withdraw from the project. The complainants have filed this complaint seeking interest for every month of delay till the handing over of the possession in addition to the non-payment of Pre-EMIs from May 2015 till handing over of the possession. 12. The complainants are entitled to interest @ 15% p.a. which is 2% above the State Bank of India highest marginal cost of lending as provided under Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017. The complainant is

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entitled to interest @ 15% p.a. on Rs. 1,09,23,099/- (Rupees One Crore Nine Lakhs Twenty Three Thousand Ninety Nine only) from 1st July 2015. As of date there is already a delay of 49 months. The interest payable is Rs. 66,90,398/- (Rupees Sixty Six Lakhs Ninety Thousand Three Hundred Ninety Eight only). 13. The respondent is liable to pay Pre EMI from May 2015 till 31st July 2019 amounting to Rs. 37,40,941/- (Rupees Thirty Seven Lakhs Forty Thousand Nine Hundred and Forty One only). The detailed calculation is produced as Document 9. 14. Thus the respondent is liable to pay a sum of Rs. 1,04,31,339/- (Rupees One Crore Four Lakhs Thirty One Thousand Three Hundred Thirty Nine only) being the interest and non-payment of Pre-EMIs till 31st July 2019. The respondent is further liable to pay the interest of Rs. 1,36,538/- @ 15% p.a for every month of further delay, as well as future pre EMIs to be paid till the handing over of possession. 15. The complainants submit that, in similar complaints filed against the respondent, this Hon'ble authority, while allowing the applications has directed the respondent to pay compensation. 1
 CMP/180522/0000848 09-11-2018 MOHIT MATHAI 2
 CMP/180521/0000846 16-11-2018 Vinod Kumar V 3
 CMP/180811/0001131 28-11-2018 Nirvikar Singh 4
 CMP/181010/0001440 14-12-2018 Reghu Kadavath and Rekha K. Nair 5
 CMP/180817/0001152 17-12-2018 Nirmal Tengarai Sankaranarayana

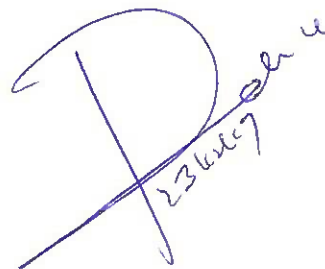
Relief Sought from RERA : Interest and Pre-EMI reimbursement p.m. for delay

1. In pursuance of the summons issued by this authority the complainants were present through their advocate Sri G.Vikram who filed the vakalath. The developer has appeared through his representative and filed objections.
2. Heard the arguments after filing objections to the averments made in the complaint.
3. The point that arisen for my consideration were:
 Are the complainants entitled for the relief as sought in their complaint ?
 If so what is the order?
4. My answer is affirmative for the following


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REASONS

5. The complainant has filed this complaint U/s 31 of the RERA Act claiming for delay compensation and also to reimburse EMIs. The respondent Developer has appeared through his representative and filed objections.
6. The complainant has booked the flat bearing No.0402. In this regard, the parties have entered into agreement on 03.05.2013. As per the agreement the Developer was expected to complete the project on or before 30.06.2015 including the grace period.
7. The learned counsel for the complainant has given a chart. According to this chart, the complainant has paid a total sum of Rs.1,09,23,099/- towards purchase of the flat. Though the Developer was expected to pay the EMIs, but the complainant has paid till this date which comes to Rs.70,377/- towards EMIs. 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.
8. 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.


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9. 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 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.
10. Hence, question of dismissing the complaint for the reasons stated by the Developer holds no water.
11. 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 31/07/2019. 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 24/09/2019. 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/190731/0003636 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. Intimate the parties regarding this order.
- (Typed as per dictated, corrected, verified and pronounced on 23/12/2019).

(K.Palakshappa)
Adjudicating Officer