

BEFORE ADJUDICATING OFFICER RERA
BENGALURU, KARNATAKA

Presided by:- Sri K.PALAKSHAPPA
Adjudicating Officer.

Complaint No.CMP/190813/0003867
DATE 23rd DECEMBER 2019

Complainants : Manisha Dubey
B-501, Adarsh Rhythm Apartments
Panduranga Nagar, Off Bannerghatta Road
Bengaluru-560 076
Rep. by Sri G.Vikram, Advocate

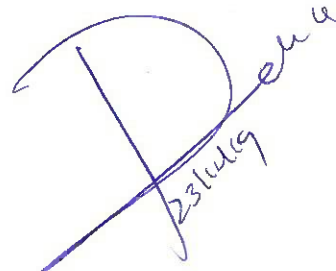
AND

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. Manisha Dubey 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.,)

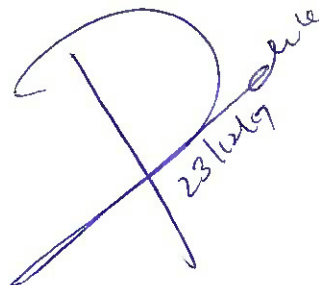

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bearing Complaint no. CMP/190813/0003867. The facts of the complaint is as follows:

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 husband of the first complainant and is aged about 46 years. The Tel No. of the second complainant is 9611811733 and is father's name is Ganesh Prasad Dubey and his email id is subirdubey@hotmail.com. 2. The complainants submit that M/s NSL SEZ (Hyderabad) Private Limited along with the respondent entered into an agreement of sale dated 2nd September 2014 with the complainants with respect to 0.29% undivided share, right, title, interest (566.22 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 2nd September 2014 in favor of the complainants pursuant to the aforesaid agreement of sale for constructing a residential apartment bearing No.00905 in ninth 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 two covered car parking space. A copy of the construction agreement is produced herewith as Document No. 2 4. The complainants submit that they had entered into a tripartite agreement with the respondent and Housing Development Finance Corporation Limited. Under the aforesaid agreement, the respondent had agreed to pay the interest upto 31st December 2014. Thereafter vide a letter dt Sept 06th 2014, the respondent agreed to pay the Pre EMI till the completion/readiness of the Apartment.

Relief Sought from RERA :Interest for every month's delay in delivery

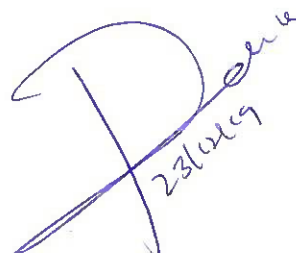
2. In pursuance of the summons issued by this authority the complainant was present through her advocate Sri G.Vikram, who filed the vakalath. The developer has appeared through his representative.
3. Heard the arguments after filing objections to the averments made in the complaint.



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

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-0905. In this regard, the parties have entered into agreement on 02.09.2014. As per the agreement the Developer was expected to complete the project on or before 31.12.2015 including the grace period.
8. The learned counsel for the complainant submitted that the complainant has paid a total sum of Rs.1,22,39,163/- 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


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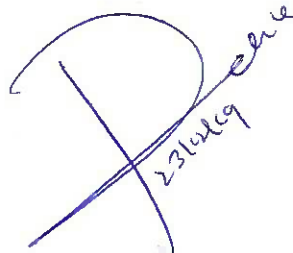
these reasons it is the case of the Developer that the delay was not intentional and all of them are founded on reasonable and excusable reasons.

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 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.


23/04/19

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.

12. 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.

13. 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 13/08/2019. 60 days be computed from the date of appearance of the parties. In the present case the parties have appeared on 04/10/2019. 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/190813/0003867 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 January 2016 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

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