KARNATAKA SATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT BENGALURU

DATED: 22nd DAY OF FEBRUARY 2023

: CONCILIATORS PRESENT:

Smt. Maheshwari S Hiremath ..... Judicial Conciliator

AND

Sri. Shivabhushan S H ..... Advocate conciliator

COMPLAINT NO : CMP/201014/0006662

Between

Sri. Suresh Babu Mand Smt. Usha Rani M .....Complainants

AND

Nitesh Housing Developers Private Limited .....Respondent/s

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the joint memo dated: 22.02.2023 filed during the pre Lok Adalat sitting on dated: 22.02.2023, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed of as per the joint memo and joint memo is ordered to be treated as part and partial of the award.

22/2

Judicial conciliator

KAR/2064/2012

Advocate conciliator

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ CMP NO' 6662 ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Suresh Babu M & Usha Rani M V/S Nitesh Housing Developers pvt Ltd.,

ಕಂಡಿಕೆ ಸಂಖ್ಯೆ	ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-6662

22.02.2023

On 22/02/2023, both the parties are present and filed separate memos stating that matter has been settled between them and respondent is ready to refund the amount of Rs. 65,69,843/- by way of DD Nos. 187209 and 187211 both dated 21/2/2023 to the complainant. Perused the same. Here in this case judgement is passed on 16/2/2023 by allowing the claim of complainant. Now, both the parties have come up with individual memos that matter has been amicably settled. Therefore, considering the interest of both the parties at this stage it is just and proper to consider their memo for settlement.

Received Original DD

As per the request of the complainants and respondent, this complaint is taken-up for amicable settlement before the National pre Lok Adalat held on 22.02.2023.

The complainants and Advocate for respondent have filed the joint memo stating that matter has been settled between the parties. The settlement entered into between the parties is voluntary and legal one. Hence, settlement is accepted.

M/s. Usha Rani

For NHDPL Software Private Limited

Authorised Signatory

22/2

Judicial Conciliator

KAR/2064/2012

Advocate conciliator

BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY, AT BENGALURU

COMPLAINT NO : CMP/201014/0006662

Complainants : Suresh Babu M & Usha Rani M
-Vs-

Respondent : Nitesh Housing Developers Private Limited

JOINT MEMO

The complainants and the respondent in the above complaint jointly submit as under:

1. During the pendency of the above complaint, the complainants/allottees and the respondent/promoter after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Lok-Adalat.

2. In view of the same, they jointly request this Lok Adalat to dispose of the complaint as amicably settled before the Lok Adalat since the complainants have agreed to receive sum of Rs. 65,69,843/- (Rupees sixty five lakhs sixty nine thousand eight hundred forty three only)/- by way Demand Draft within one week from the date of this Joint Memo and Respondent has agreed to provide the same.

3. The claim of the complainants in this complaint is being fully satisfied and complainants have no further claim against respondent in this complaint. Both parties to the proceedings have no claim whatsoever against each other in respect of the subject matter of the above complaint. If there is any claim by either of the parties to this complaint against the other before any forum or Court relating to the subject matter of the above complaint, they have agreed that the same be disposed of as settled by either party failing an appropriate memo in such cases.

4. Parties further request that this settlement be recorded in the National Lok-Adalat. to be held on 24.06.2023

M. Usha Rani

Complainants/Allottees

Bengaluru

Date: 22/02/2023

For Nitesh Housing Developers Private Limited

Authorized Signatory of Respondent/Promoter

Authorised Signatory

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH - 4

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/201014/0006662

DATED THIS 16th DAY OF FEBRUARY, 2023

COMPLAINANTS.....

1. **SURESH BABU M &**
2. **USHA RANI M,**
   B-119, Sterling Park,
   Sanjeevini Nagar,
   Kodigehalli Main Road,
   Bengaluru – 560092.

(In person)

V/S

RESPONDENTS.....

NITESH HOUSING DEVELOPERS PRIVATE LIMITED.
Nitesh Timesquare, 7th Floor,
No. 8, MG Road,
Bengaluru – 560001.

Now called as,
NHDPL PROPERTIES PRIVATE LIMITED,
No. 110, Level 1, Andrews Building,
M.G. Road, Bengaluru – 560001.

(Rep. by. Sri. Siddharth Suman, Advocate)

PROJECT NAME & REGISTRATION NO.

NITESH MELBOURNE PARK PRM/KA/RERA/1251/446/ PR/170916/000224

* * * * *

1. This complaint is filed under section 31 of the RERA Act against the project "Nitesh Melbourne Park" developed by "M/s. NHDPL Properties Pvt. Ltd.," for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainants had booked a flat bearing No. J-0207 in the project of respondent wherein the complainant entered into an agreement for sale agreement on 04/08/2016 for the total sale consideration of Rs.1,09,58,653/- (Rupees One Crore Nine Lakhs Fifty Eight Thousand Six Hundred and Fifty Three only) and paid Rs.66,16,625/- (Rupees Sixty Six Lakhs Sixteen Thousand Six Hundred and Twenty Five only) which has been paid by the complainant to the respondent from 25/04/2014 to 27/04/2018. The project was stalled and scrapped by Nitesh. The respondent had delayed the project and recently communicated that they are not going ahead with it. The respondent has not refunded the amount and kept postponing the dates for refund by giving excuses for last 20 months. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel and filed objections.

Objections of the respondent are as under:-

4. The respondent has denied all the allegations made against it by the complainant as false. It contends their name was changed to M/s. NHDPL Properties Pvt. Ltd., as per the order of Registrar of Companies dated 26/06/2019. Therefore, their name is changed to NHDPL South Private Limited, as per the order of Registrar of companies dated 22/04/2020. The Respondent is represented by its vice president – legal Sri. Gopinath K.S.

5. The complaint should be dismissed for non-joinder of the necessary parties. The landowners have not been parties to the complaint. Landowners have

received consideration towards the purchase of apartment by the complainant.

6. It is submitted that as agreed in Clause – 7.1 of the sale agreement, if the delay in the project has caused due to the reason of act of god / force majeure / any unforeseen happening in such event it was agreed by the complainant that respondent developer will have the right to extend the time period for the delivery of the constructed flat. The agreed date of the possession of the apartment is 03/08/2020. As agreed in clause 7.5 of the sale agreement, if the purchaser cancels / withdraw his allotment in the project, the developer is entitled to forfeit a sum equivalent to 20% of the total sale consideration.

7. It is further submitted that, due to COVID-19 pandemic and shortage of labour and storage of raw materials the construction of the project was delayed. The complainant is requesting for the refund of deposit amount without any valid reason and the date of handing over of the questioned flat is not over and hence, the complainant is stopped from cancelling the booking of the flat at this juncture causing inconvenience and irreparable loss to the respondent.

8. Further, the complainant has not made full payment of consideration towards the purchase of apartment. The complaint should be directed to pay full consideration towards the purchase of the apartment. Hence, prayed to dismiss the complaint.

9. In support of their claim, the complainants have produced in all 9 documents such as copy of Sale agreement, construction agreement, Allotment Letter, Email communications between the complainant and respondent, photographs, Payment details and memo of calculation.

10. On the other hand, the respondent has produced in all 2 documents such as copy of Company incorporation certificate and certified true extract of the

schedule of Authority approved by the board of directors of NHDPL south private limited (Formerly NHDPL Properties Private Limited) at their meeting held on February 14, 2020.

11. Hearings were conducted on 29/04/2022, 27/05/2022, 01/07/2022 and finally on 12/12/2023.

12. Heard arguments of both sides.

13. **On the above averments, the following points would arise for my consideration:-**

    1. Whether the complainant is entitled for the relief claimed?
    2. What order?

14. **My findings to the above points is as under:-**

    1. In the Affirmative.
    2. As per final order for the following

REASONS

15. **My finding on point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an sale agreement to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 04/08/2016. There seems to be no possibility of completing the project or handing over possession in near future.

16. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

> *"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly*

completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

17. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

18. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest.

19. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:-

INTEREST CALCULATION TILL 30/04/2017 (BEFORE RERA)

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	25-04-2014	400,000	1101	30-04-2017	108,591
2	16-07-2016	1,787,879	288	30-04-2017	126,963
3				TOTAL INTEREST (I1)	235,554

INTEREST CALCULATION FROM 01/05/2017 (AFTER RERA)

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	2,187,879	1855	30-05-2022	8.15	10.15 AS ON 01-05-2017	1,128,600
2	12-06-2017	16,162	1813	30-05-2022	8.15	10.15 AS ON 01-06-2017	8,148
3	12-06-2017	985,428	1813	30-05-2022	8.15	10.15 AS ON 01-06-2017	496,816
4	27-09-2017	9,885	1706	30-05-2022	8.15	10.15 AS ON 01-09-2017	4,689
5	17-10-2017	822,249	1686	30-05-2022	8.15	10.15 AS ON 01-10-2017	385,508
6	24-10-2017	294,000	1679	30-05-2022	8.15	10.15 AS ON 01-10-2017	137,268
7	29-01-2018	430,000	1582	30-05-2022	8.1	10.1 AS ON 01-01-2018	188,236
8	29-01-2018	480,000	1582	30-05-2022	8.1	10.1 AS ON 01-01-2018	210,124
9	30-01-2018	100,000	1581	30-05-2022	8.1	10.1 AS ON 01-01-2018	43,748
10	05-02-2018	87,235	1575	30-05-2022	8.1	10.1 AS ON 01-02-2018	38,018
11	16-02-2018	9,885	1564	30-05-2022	8.1	10.1 AS ON 01-02-2018	4,278
12	27-04-2018	9,885	1494	30-05-2022	8.35	10.35 AS ON 01-04-2018	4,187
13	27-04-2018	1,097,235	1494	30-05-2022	8.35	10.35 AS ON 01-04-2018	464,833
14	TOTAL AMOUNT	6,529,843				TOTAL INTEREST (I2)	3,114,453

MEMO CALCULATION

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 30-05-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
6,529,843	3,350,007	0	9,879,850

20. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.

21. Accordingly, the point raised above is answered in the Affirmative.

22. **My findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201014/0006662 is hereby allowed

1. The respondent is directed to pay the amount of Rs.98,79,850/- (Rupees Ninety Eight Lakhs Seventy Nine Thousand Eight Hundred and Fifty Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 25/04/2014 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 30/05/2022.
2. The interest due from 31/05/2022 up to the date of final payment will be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.

(H.C. KISHORE CHANDRA)
Chairman
K-RERA