

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/210120/0007478**

**DATED THIS 16<sup>th</sup> DAY OF FEBRUARY, 2023**

**COMPLAINANT.....**

**NACHIKETA TRIVEDI,**  
Flat No. 51, Ankur Apartments,  
Plot No. 7, Narwana Road,  
Indraprastha Extension,  
Delhi - 110092.

**(In person)**

**V/S**

**RESPONDENTS.....**

**NITESH HOUSING DEVELOPERS  
PRIVATE LIMITED.**

Nitesh Timesquare, 7<sup>th</sup> 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**

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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 complainant had booked a flat bearing No. I-0005 in the project of respondent wherein the complainant entered into an agreement for sale agreement on 29/08/2016 for the total sale consideration of Rs.1,04,85,601/- (Rupees One Crore Four Lakh Eighty Five Thousand Six Hundred and One only) and paid Rs.52,65,738/- (Rupees Fifty Two Lakh Sixty Five Thousand Seven Hundred and Thirty Eight only) which has been paid by the complainant to the respondent from 13/10/2014 to 09/03/2018. 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

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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 28/02/2021. 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 complainant has produced in all 9 documents such as copy of Sale agreement, Allotment Letter, Payment details, Legal report, Valuation report, Email communications between the complainant and respondent, Tripartite Agreement, Progress report and memo of calculation.

16/9



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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 finding on 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 29/08/2016. 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,

6/28

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*"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:-

*Asst*

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**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	13-10-2014	300,000	930	30-04-2017	68,794
2	15-06-2016	30,000	319	30-04-2017	2,359
3	17-06-2016	270,000	317	30-04-2017	21,104
4	29-06-2016	999,999	305	30-04-2017	75,205
5	30-06-2016	496,300	304	30-04-2017	37,202
6	10-08-2016	2,910	263	30-04-2017	188
7				<b>TOTAL INTEREST ( I1 )</b>	<b>204,852</b>

**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	2,099,210	1861	05-06-2022	8.15	10.15 as on 01-05-2017	1,086,364
2	29-08-2017	1,058,136	1741	05-06-2022	8.15	10.15 as on 01-08-2017	512,287
3	29-11-2017	1,059,488	1653	05-06-2022	8.1	10.1 as on 01-11-2017	484,615
4	09-03-2018	1,048,905	1549	05-06-2022	8.35	10.35 as on 01-03-2018	460,717
5	<b>TOTAL AMOUNT</b>	<b>5,265,739</b>				<b>TOTAL INTEREST ( I2 )</b>	<b>2,543,983</b>

**MEMO CALCULATION**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 05-06-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
5,265,739	2,748,835	0	8,014,574

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

*Handwritten signature/initials*



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**ORDER**

In exercise of the powers conferred under Section 31, of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210120/0007478 is hereby allowed

1. The respondent is directed to pay the amount of Rs.80,14,574/- (Rupees Eighty Lakhs Fourteen Thousand Five Hundred and Seventy Four Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 13/10/2014 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 05/06/2022.
2. The interest due from 06/06/2022 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

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