

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 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 05th January 2024

COMPLAINT NO: CMP/00182/2023

COMPLAINANTS...

1. Vimala Kumari Gulab Jain
No. T3B-604, Godrej Woodsman Estate,
Bellary Road, Near Columbia Asia Hospital,
Hebbal,
Bangalore-560024.
DISTRICT: Bengaluru.
STATE: KARNATAKA

(Mr. Shashank.S, Advocate)

Vs

RESPONDENT.....

1. Nitesh Housing Developers Pvt. Ltd.,
Nitesh Timesquare,
7th Floor, No.8,
M G Road,
BENGALURU-560001.

(Mr. Ahaan Mohan, Advocate)

2. H R Suresh,
Land Owner,
Nitesh Timesquare,
7th Floor, No.8, M G Road,
BENGALURU-560001.
(Ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Nitesh Columbus Square Phase II" developed by Nitesh Housing Developers Pvt Ltd., seeking for the relief of interest on delay period and possession.

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2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/180509/001673 and valid till 31-12-2018.

3. Said project is situated at Venugopal Nagar, Hulimavu Village, Arekere sub division Bommanahalli Zoen, Bengaluru South, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had purchased a flat bearing No.A-1005, in the project "Nitesh Columbus Square Phase II" of respondent by entering into booking form dated 17/09/2010 for a total sale consideration of Rs.1,03,05,045/- (Rupees One crore Three Lakhs Five Thousand and Forty Five only). At the time of booking, the complainant had paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the respondent. The respondent wrote a letter to the complainant of updating the progress of the project and also demands for payment of 20% of the total sale consideration of the project. In response to the same the complainant had made a payment of Rs.17,61,010/- (Rupees Seventeen Lakhs Sixty One Thousand and Ten only). As per the agreement the complainant had paid substantial sale consideration of Rs.98,32,850/- (Rupees Ninety Eight Lakhs Thirty Two Thousand and Eight Hundred and Fifty only). The complainant has approached the respondent for the possession of the said flat, but the complainant has not received proper response from the respondent for the handing over the possession of the said flat. Hence, the complainant is requested this Hon'ble Authority to give instruction to the respondent to complete the project at the

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earliest and instruction to the respondent to pay interest at the rate of 18% per annum on the paid amount. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainant has appeared before the Authority and filed a memo of calculation, agreement of sale, payment receipts and copies of email conversation between both the parties etc. The respondent no.1 has appeared before this Authority through his counsel and submitted written arguments along with commencement certificate; Memorandum of Understanding with Nitesh Columbus Square and agreement of Limited liability Partnership for Columbus Square Facilitators LLP documents and respondent no. 2 has remained absent.

Hence, the respondent no.2 was placed as ex-parte. It is pointed out by the Advocate for the complainant that the respondent No.1 is the GPA holder of respondent No.2 and the respondent No.1 has signed on behalf of respondent No.2 in all the earlier documents in his capacity as GPA holder.

6. In support of her claim, the complainant has produced documents such as copies of booking form, agreement of construction and sale, payment receipts, e-mail conversation of both the complainant and respondent and memo of calculation as on 07-06-2023.

7. Respondent no.1 has produced written arguments along with commencement certificate; Memorandum of Understanding with

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Nitesh Columbus Square and agreement of Limited liability
Partnership for Columbus Square Facilitators LLP documents.

8. This matter was heard on 13-06-2023, 12-07-2023, 25-07-2023,
01-08-2023, 06-09-2023, 15-11-2023 and 13-12-2023.

9. **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?

10. **My answer to the above points are as under:-**

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

REASONS

11. **My answer to Point No. 1:-** The complainant has approached this forum seeking for the relief of interest on delay period and requesting for handing over the possession. The grounds urged are that the complainant had booked a flat bearing No. A-1005 in the project of the respondent by entering into an agreement of sale on 19/11/2020. As per the said agreement, the respondent was supposed to handover possession of the said flat to the complainant on or before November 2013 but, the respondent has not handed over possession of the said flat to the complainant as agreed.

12. In Written submission, same is resisted by the respondent no.1 through his written arguments that the complainant husband Mr. Gulab Chand Jain, initially approached the respondent that he was a non-resident Indian residing in Sharjah, United Arab Emirates and he has interest in purchasing an apartment in

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the said project and he entered into booking form. The complainant entered sale and construction agreement on 16-06-2011 with respondent no. 1 & 2. The respondent no.1 has noticed that at all times during this period complainant's husband was communicated with the respondent and not his wife. The respondent stated that, as per the agreement of sale and construction the date of possession was 12-06-2015 but the complainant falsely stated that the deadline of May 2013. The respondent no.1 stated that the reason for delay in completion the project was respondent no.2. The project was delayed due to the various acts of god and force majeure conditions; the respondent no.2 reneged on various contractual obligations under the JDA, numerous strikes, changes in law and other disruptions in the availability of raw materials which occurred during this period which led to a delay in the project. The respondent No.1 has made para-wise explanation for the details of claim which was filed by the complainant. Accordingly, the respondent no. 1 argued that the reliefs are filed by the complainant are far from the truth. The complainant and her husband have filed underlying causes of the delays and how the same were excluded under the force majeure clause contained in both the agreement to sell and construction. The respondent no.1 stated in his written submission that the reasons for the delay of the said project is respondent no.2 also which has lead to the delay. The respondent no.1 requested to this Authority to reject the complaint with exemplary costs.

13. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 11/06/2011. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of said flat to the complainant in June 2015.

12. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State Of Uttar Pradesh it is held as under

Para No.22. 'If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.

13. The said principle laid down in the above decision is aptly applicable to the present case on hand.

14. As per sec.18 of RERA Act, the respondent is liable to pay interest for delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority sees no legal impediment in allowing the complaint as prayed. The complainant had paid Rs. 67,12,548/- (Rupees Sixty



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Seven Lakhs Twelve Thousand and Five Hundred and Forty Eight only) to the respondent for substantial sale consideration.

15. The complainant had claimed Rs.94,10,124/- (Rupees Ninety Four Lakhs Ten Thousand One Hundred and Twenty Four only) as delay period interest vide their memo of calculation as on 07/06/2023 calculated from 01/05/2013 to 17/05/2023. Despite opportunities were given, the respondent has not filed his memo of calculation.

16. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 01/05/2013 to 17/05/2023.

17. A thorough verification of the documentary evidence placed by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for interest on delay period as submitted vide their memo of calculation as on 07/06/2023.

Payment Details

S.N O	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	67,12,548	01-05-2013
2	SUBSEQUENT PAYMENT 1	5,19,992	07-05-2013
3	SUBSEQUENT PAYMENT 2	5,19,992	14-06-2013
4	SUBSEQUENT PAYMENT 3	4,16,169	24-07-2013
5	SUBSEQUENT PAYMENT 4	4,15,993	02-09-2013
6	SUBSEQUENT PAYMENT 5	4,16,169	10-09-2013
7	SUBSEQUENT PAYMENT 6	4,15,994	17-02-2014

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8	SUBSEQUENT PAYMENT 7	4,15,993	18-12-2014
9	TOTAL PRINCIPLE AMOUNT	98,32,850	
10	TOTAL DELAYED INTEREST as on 07/06/2023	94,10,124	

18. Accordingly the point raised above is answered in the Affirmative.

19. The respondent No.1 is the GPA holder of land lord respondent No.2. hence, the respondent builder cannot stay away from responsibilities and force majeure reasons are vague and unsubstantiated.

20. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I 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/00182/2023** is hereby allowed.

1. Respondent is directed to pay a sum of **Rs. 94,10,124/- (Rupees Ninety Four Lakhs Ten Thousand One Hundred and Twenty Four only)** towards delay period interest as on 01/05/2013 to 07/06/2023 the complainant within 60 days from the date of this order, calculated at 9% from 01/05/2013 to 30/04/2017 and at MCLR + 2% from 01/05/2017 till 08/06/2023.

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2. The interest due from 09/06/2023 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.
3. Further, the respondent is directed to complete all the pending works, execute the sale deed and hand over the possession of flat bearing no. A-1005 in the project 'Nitesh Columbus Square Phase II' to the complainant.
4. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to comply with the order of this Authority.

No order as to costs.


(G R REDDY, IRS)
Member, K-RERA

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