



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 1/2024

Present: Sri. P H Kurian, Chairman
Smt. Preetha P Menon, Member

Dated 13th August, 2024

Complainant

- 1 P M Thambi alias Thambi Mathai,
Puthukkunnath House,
Vadakkumbhagam, Kottappady P.O,
Kothamangalam Taluk, Ernakulam – 686695,
Now Residing at Puthukkunnathu House TARA 32,
Periyar Nagar, Thottakkattukara, Aluva, Pin - 683108
- 2 Sali Thambi,
Puthukkunnath House,
Vadakkumbhagam, Kottappady P.O, Kothamangalam
Taluk, Ernakulam – 686695, Now residing at
Puthukkunnathu House, TARA 32, Periyar Nagar,
Thottakkattukara, Aluva – 683108

[By Adv P O Thomas Puthussery]

Respondents

- 1 Nest Infratech (M/s Nest Realities India Pvt Ltd),
Having its corporate office at COMPASS,



5th Floor, NH-47 By-pass, Near Vysali Bus Stop,
Chakkaraparambu, Cochin – 682032,
Represented by its Managing Director,
Recently Corporate Office Shifted to Stone House,
Market Road, Alwaye - 683101

- 2 Mr F M Shamier Marickar,
Son of Dr Y M Fazil Marickar,
Aged 49 years, Residing at A-6,
Kent Nalukettu, Chakkaraparambu,
Vennala P.O, Edappally South,
Ernakulam - 682028
- 3 Althaf Jehangir, S/o Jehangir Rowther,
Aged 37 years, Director Nest Infratech,
Residing at Makar Manzil, Thynothil Lane,
Aluva, Ernakulam District – 683101,
Corporate Office at Stone House, Market Road,
Aluva – 683101
- 4 Nishi Jehangir, Makar Manzil,
Thynothil Lane, Aluva,
Ernakulam District – 683101,
Corporate Office at Stone House,
Market Road, Aluva - 683101
- 5 Jehangir Rowther, S/o Nagoor Rawther,
Aged 62 years, Director Nest Infratech,
Residing at Makar Manzil, Thynothil Lane,
Aluva, Ernakulam District - 683101
Corporate Office at Stone House,
Market Road, Aluva – 683101
- 6 Javad K Hassan, S/o Nagoor Rawther,
Aged 78 years, Working as Management Consultant,
Nest Infratech, Residing at Makar Manzil, Aluva Kara,
Aluva East Village, Ernakulam District - 683101



Corporate Office at Stone House,
Market Road, Aluva - 683101

- 7 Kuttymoosa Shamsudhin,
Nest Infratech Director,
Compass 5th floor NH 47,
By-Pass Chakkaraparambu,
Near Vysali Bus Stop Cochin,
Kerala 682032
Corporate Office at Stone House,
Market Road, Aluva – 683101

The above Complaint came up for virtual hearing on 29/05/2024. The counsel for the Complainant Adv P O Thomas Puthussery, the Respondent's representative and the Respondent's counsel for the Respondents attended the hearing.

ORDER

1. The facts of the case are as follows: - The Complainants approached Respondents intending to purchase a residential flat based on print and electronic media advertisements. The 1st Respondent herein is a Company represented by 2nd Respondent and the third and fourth Respondents are the land owners. The Respondents 2,3,5,6 and 7 are the Directors of the 1st Respondent Company. It was submitted that before starting the construction of the multi-storied building, Respondents 1 and 2 offered a flat for sale to the Complainants on the 4th floor of the proposed building with a built-

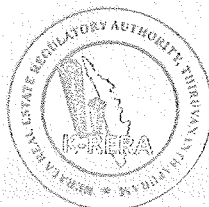


up area of 3398 square feet. An agreement was executed between Respondents 1 and 2 on the one hand and the Complainants on the other hand on 20-11-2013 and another agreement was executed between the Complainants and the Respondents 3 and 4 and by the agreement executed between the Complainants and the Respondents, the Respondents agreed to sell 3398/160000 undivided share of the aforesaid property to the Complainants. The Respondents 3 and 4 agreed to sell the property having an extent of 2.295 cents undivided share in the aforesaid property. The Respondents also agreed to sell the building to be constructed as Flat No.4-C-2 having a super built-up area of 3398 square feet on the 4th floor of the multi-storied building in flat system to be constructed in the name and style 'Nest JKH Signature' along with other amenities as stated in the agreement. As per the agreement dated 20-11-2013, the Complainants agreed to pay a total amount of Rs. 1,54,00,000/- as consideration, including car parking and other expenses. Therefore, the Complainants paid a sum of Rs. 20,00,000/- on 16.08. 2013 and after the execution of the agreement, the Complainant paid Rs. 20,00,000/- on 21-11-2013 and Rs. 37,00,000/- on 21-11-2013. Thereafter, the Complainants again paid the sum of Rs. 20,00,000/- on 16.12.2013, Rs. 25,00,000/- on 04.06.2014 and Rs. 28,00,000/- on 18.11.2014. The Respondents diverted the funds collected from the Complainants and other purchasers and they could not undertake or complete the work within the stipulated time and they proceeded with the construction only by the year 2015. The construction was abandoned by the Respondents



at its various stages and substantial damage is already caused to the structure because of corrosion and other natural process. It was submitted that even though the Complainants approached the Respondents to resume the construction activities, the Respondents did not resume the construction activity. Therefore, an unregistered Association was formed by the intending purchasers to persuade the Respondents to resume the construction, after much persuasion and requests, the Respondents resumed construction activities by the end of the year 2018 and again they stopped the construction activities in the project due to insufficiency of funds. The building permit which was issued for 3 years expired and no steps were taken by the Respondents to get the validity of the permit extended for further periods. The Complainants submitted that they had already paid Rs. 1,50,00,000/- as sale consideration out of the total amount of Rs. 1,54,00,000/- on the following dates:-

Date	Amount
16-08-2013	Rs. 20,00,000/-
21-11-2013	Rs. 20,00,000/-
21-11-2013	Rs. 37,00,000/-
16-12-2013	Rs. 20,00,000/-
04-06-2014	Rs. 25,00,000/-
18-11-2014	Rs. 28,00,000/-
TOTAL	Rs. 1,50,00,000/-



2. It was submitted that the structural work of the building was almost completed. As per the agreement dated 20.11.2013, the Respondents agreed to complete the construction and to handover the building for occupation by June 2014 by obtaining the requisite statutory clearances and to carry out the entire plumbing, electrical wiring, plastering, painting, fixation of fixtures etc. by the time. The Respondents failed to discharge the obligations as per the agreement within the agreed time and it is clear violation of the terms and conditions of the agreement dated 20.11.2013 entered into between the Complainants and the Respondents. The reliefs sought by the Complainants are as follows: - (i) Issue a direction to the Respondents to apply for and obtain the requisite registration contemplated under Section 4 of the Real Estate (Regulation and Development) Act 2016. (ii) Direct the Respondents to complete the construction of the building in the property having an extent of 108.083 cents and to handover the possession of the flat No 4-C-2 within a time frame fixed by the Authority, so as to secure the ends of justice (iii) Direct the Respondents to pay a sum of Rs. 2,36,10,894/- as interest for the delayed completion of the project (iv) Award the cost of the proceedings to the Complainant from the Respondents. The Complainants have produced the copies of the construction agreement, and account statements.

3. The Respondents did not file any written statement or submit any documents.



4. Heard both sides in detail. The project in question is a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the "Act 2016"] in which the proposed date of completion is shown as 30.12.2022. On perusal of the web page concerned, it is seen that the Respondents have not yet uploaded the occupancy certificate from which it is clear that the project is still not completed and the occupancy certificate has not been obtained for the same. It is also noted that the Respondents have not taken any steps for extension of registration as provided under the provisions of the Act 2016.

5. The Authority in other four Complaints No. 116,128,182 &307/2021 related to the same project issued a common order dated 31.03.2022 directing the Respondents to complete and hand over the apartments to the Complainants after completing the whole project 'Nest JKH Signature', in all aspects as committed/promised to the Complainants, along with all the amenities and facilities as agreed as per the agreements entered into with them and with all the mandatory sanctions/ approvals required to be received from the Authorities concerned, on or before 30.12.2022 without fail. The Respondents were also directed to complete the executions of sale deeds in favour of the Complainants within the said time frame. It was also stipulated that in the event of any non-compliance of the said order by the Respondents, a penalty of Rs. 10,000/- per day from the date mentioned above till compliance with



the direction, shall be imposed by the Authority invoking Section 63 of the Act.

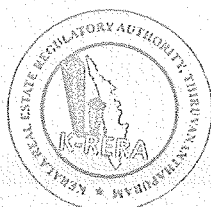
6. After hearing both sides and perusing the pleadings and documents submitted by the Complainants, the following points are being considered and decided herewith:

(i) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?

(ii) Whether the Complainant herein is entitled to get interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?

(iii) What order as to the costs?

7. **Points No. 1&2:** The documents produced by the Complainant are marked as **Exhibits A1 to A2**. **Exhibit A1** is the construction agreement dated 20.11.2013 entered into between the Complainant and the 1st Respondent represented by the 2nd Respondent for the construction of the apartment along with two car parking spaces for a total consideration of Rs. 1,54,00,000/- along with 3398/160000 undivided share equivalent to 2.295 cents with right to construct a four-bedroom Apartment No. 4-C-2 having a super built-up area of 3398sq.ft in the Fourth floor in the said project and proportionate share in the common areas and common facilities and



two covered car parking areas in which the promised date of completion is shown as 30.06.2014 with 6 months grace period. **Exhibit A2** is the copy of the account statement.

8. As the other prayers in the above Complaint have already been adjudicated and the order has been passed, the only prayer to be considered herewith is for the direction to pay interest for delay in completion and handing over the apartment allotted to the Complainant. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as “the Act, 2016”], “If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act – Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date



specified therein. Moreover, Section 18(1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here, the Complainant has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to him.

9. As per Exbt. A1 construction agreement, Clause No. 2 is as follows: - "The Builder undertakes to ensure the completion of the said construction on or before 30th June, 2014 with a further grace period of 6 months to provide for unforeseen contingencies." Exhibit A1 agreement dated 20.11.2013 entered into between the Complainants and the 1st Respondent represented by the 2nd Respondent for the construction of the apartment along with two car parking spaces for a total consideration of Rs. 1,54,00,000/- along with 3398/160000 undivided share equivalent to 2.295 cents with right to construct a four-bedroom Apartment No. 4-C-2 having a super built-up area of 3398 sq. ft in the Fourth floor in the said project and proportionate share in the common areas and common facilities and two covered car parking areas in which the promised date of completion is shown as 30.06.2014 with 6 months grace period. According to the Complainants, the Respondents have not handed over the possession to the Complainant. It is understood from the documents submitted and the web portal of the Authority that the



project is still not completed and the occupancy for the same has not been obtained so far.

10. Under Section 11(4) of the Act, 2016, the Respondents/Promoters are responsible to obtain the occupancy certificate, from the Competent Authority and after obtaining all the mandatory sanctions for the project, the Promoters are bound to hand over physical possession of the building/apartments to the allottees therein. Section 17 of the Act, 2016 stipulates that *“conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of subsection (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”*

11. With respect to the right of the allottees for getting interest for delay in getting handed over the apartments in such cases, certain remarkable observations were made by the Hon'ble Supreme Court in its judgement **Wg. Cdr. Arifur Rahman Khan &**



Others vs Dlf Southern Homes Pvt. Ltd., as follows: “.....*Judicial notice sought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequences of a delay in not handing over possession.*” Even if the Complainant/allottee had made delay in any of the payment of instalments, the Promoter has undoubtedly made use of the investments of the Complainant’s hard-earned money for the past years and failed to complete the work and hand over possession as per the terms of the agreement.

12. It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. As per Exbt.A1 the Respondents should have handed over possession of the apartment on 30.06.2014, and the Complainant could take over possession within the grace period. Since the Respondents could not hand over possession as per the terms of the agreement, the Complainants are eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to Section 18(1) provides that “where the allottee does



not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It will not be out of place to reproduce here, the observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11.11.2021 of M/s Newtech Promoters and Developers Pvt Ltd Vs State of UP & Others which are as follows: *“If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

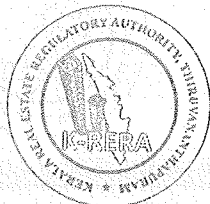
13. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete the handover possession of the apartment as promised to the Complainant herein and hence the Complainant is entitled to get interest for delay in handing over possession as provided under the proviso to Section 18(1) of the Act, 2016. Points 1 & 2 are answered accordingly in favour of the Complainant.



14. In the instant case, the Complainant had remitted a total amount of **Rs. 1,50,00,000/-** to the Respondents and the Complainant prayed for interest for the delayed months. According to the complaint, the Complainant has paid an amount of **Rs. 1,22,00,000/-** before the promised date of completion, i.e., 30.06.2014. As the Respondent/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the Exhibit A1 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
16.08.2013	20,00,000/-
21.11.2013	37,00,000/-
21.11.2013	20,00,000/-
16.12.2013	20,00,000/-
04.06.2014	25,00,000/-
18.11.2014	28,00,000/-
Total	1,50,00,000/-

15. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the Complainant as per the proviso of Section 18(1) of the Act, 2016. Hence the Complainants are entitled to get interest for the period from 30/06/2014, the promised date for handing over till the actual date of handing over possession, on **Rs. 1,22,00,000/-** which



is the amount paid by him before the promised date of completion and also, he is entitled to get interest from the dates of payment of each amount, as shown in the table inserted above, paid after the promised date of handing over till the actual date of handing over possession. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 15% with effect 15.03.2024. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17% [15(current BPLR rate) +2%].

16. On the basis of the facts and circumstances of the case as detailed above and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, the Respondents/Promoters are hereby directed as follows: -

1) The Respondents/Promoters shall pay to the Complainants, simple interest @ 17% per annum, (a) for Rs. 1,22,00,000/-, the amount paid before 30/06/2014, the promised date of completion and handing over, for every month from 01/07/2014 till the date of handing over possession of apartment to the Complainants and (b) for the amounts paid after 30.06.2014, from the date of each payment as mentioned in the table inserted above in para 14 till the date of handing over possession of the apartment to the Complainants.

2) If the Respondents fails to pay the aforesaid amount of interest as directed above within a period of 60 days from the date of



receipt of this order, the Complainants are at liberty to recover the amount from the above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act 2016 and Rules 2018.

Sd/-
Preetha P Menon
Member

Sd/-
P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Documents from the side of the Complainant

1. Exhibit A1- copy of the construction agreement
2. Exhibit A2- copy of the statement of accounts issued by the Axis Bank.

