



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

**Complaint No.191/2020,196/2020, 302/2020 & 26/2021,
27/2021,112/2021,115/2021,117/2021,119/ 2021**

Dated 5th October 2021

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

Complainants

1. Thahir Ahmed S/o : Complaint No.191/2020
Ahammed K.P, Thejas,
Kutery, Puthur P.O,
Ponoor, Kannur District-670692.
2. Dr. Shankar.M & Reshmy R : Complaint No.196/2020
Karthika, Eloor East,
Udyogamandal P.O,
Ernakulam-683501.
3. Sheeja. P : Complaint No.302/2020
Soubhagya,
Mangalath Nagar-16,
Punthalathazham, Kilikolloor P.O,
Kollam-691004.
4. Arjun.A : Complaint No.26/2021
Thundil Lekshmi, Pallickal P.O,
Kuttanam Village, Mavelikkara,
Alappuzha-690503.
5. Sebastian K.John & : Complaint No.27/2021
Mettilda Jacob
Kochupalackal House No.27/362,
University – Temple road, Kochi,
University P.O-682022.



6. Dr. Rinku Kurian George : Complaint No.112/2021
S/o George Kurian,
No.15 (old), New No.21,
Balfour Road, Kelys, Chennai-600 010.
7. Dr.Rinku Kurian George, : Complaint No.115/2021
S/o George Kurian,
No.15 (old), New No.21,
Balfour Road, Kelys, Chennai-600 010.
8. Issac Daniel, S/o T.I.Daniel, : Complaint No.117/2021
Thekkekara House,
CMRRA-39, Mammala Road,
Edappally, Kochi-682 024.
9. Ifthekar S, S/o Shafeque Falke : Complaint No.119/2021
Represented by Kishore Kumar S.S
S/o Shanmughn S.R,
Srakkadu House, South Paravoor P.O,
Ernakulam-682 307.

Respondents

1. NEST Infratech (Nest Realities India Pvt Ltd)
5th Floor, Compass, NH 47 By-pass
Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
2. Nagoor Jehangir Rawther
Managing Director,
Nest Realities India P Ltd
Door No: XX/125
Thynothil Lane, Aluva, Ernakulam.
3. Javad Kuttikaran Hassan
Director, Nest Realities India P Ltd
Door No: XX/125
Macker Manzil,
Thynothil Lane, Aluva



4. Althaf Jehandir
Director, Nest Realties India P Ltd
Door No: XX/125
Thynothil Lane, Aluva
5. F.M Shamier Marickar
Director, Nest Realties India Pvt Ltd
Paradise, Palarivattom, now residing at
Kenmt Nalukettu, M Chakkaraparambu
Ernakulam
6. Kuttymoos Shamsudeen
Director, Nest Realties India P Ltd.
Neena Manzil, Kuthiyathode,
Alapuzha- 688533

COMMON ORDER

1. As the above three complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.
2. The Complainants are Allottees of the 2 residential Towers Campus Woods OAK & Campus Woods PINE of the project named 'Nest Campus Woods' located at Thrikkakara North Village, Kanayannur Taluk, Ernakulam, developed by the Respondents. All of them had entered into agreements for sale and construction with the Respondent. The copies of said agreements are produced by the Complainants in all the complaints. But the project got stalled and there is uncertainty in the completion of the project as agreed to the Complainants. The completion date was



unilaterally extended by the builder many times and fact remain same as on date that Complainants have no idea when Respondent is going to handover flat with all required documents to occupy the flat. The flat owners have met the Respondents individually and collectively several times but always offered false promises of completion date. Till now the Respondents have not fulfilled their promises. The reliefs sought by the Complainants are to direct the Respondent to complete the construction and deliver possession with all the amenities and facilities as promised in the agreement, to register the sale deeds in favour of the Complainants and for interest for delay in completion of the project. The documents produced by the Complainants are marked as Exts.A1 to A5.

3. The 3rd Respondent in Complaint No.117/2021, Siji Tono @ Siji Jose only has filed Objection stating that he was the previous land owner who has assigned the land to the 2nd Respondent for valid consideration and is in no way connected either with the development of the land or the sale of the Flats to the prospective purchasers. No other Respondents filed any objection/counter statement to the complaints.
4. The Authority vide Interim Order dated 16/12/2020 directed the Respondents to convene a joint meeting with all Allotees of the project at the project site of 'Nest Campus Woods' in the presence of the Counsel appearing for the Complainants, and to form an Association of all the Allotees, and arrange for the registration of the project as laid down under the Real Estate (Regulatory and Development) Act 2016, List out all the works to be completed and arrive at a conclusion regarding the completion of the project in all respects with all the amenities, facilities and sanctions/approvals as promised to the allottees and the Respondents



shall file an affidavit with clear affirmation regarding the completion of whole project in all respects with all statutory approvals, amenities and facilities as committed/ promised to the allottees, and also to show stage wise work schedule with clear dates. But the Respondents failed to comply with the said direction and requested for extension of time for compliance of the order. During the hearing on 22/02/2021, the Complainants submitted that the meeting was conducted but it was found that he had not observed the directions of the Authority properly. Hence, the Authority has decided to send a separate show cause notice to the Respondent for non-compliance of the order invoking Section 63 of the Real Estate (Regulation and Development) Act 2016.

5. During the hearing on 07/09/2021 the Counsel for Respondent No:3 in Complaint No: 117/2021 filed an Affidavit stating that he is only the previous owner of the land from whom the land is purchased by the Builder/ Respondent which was also admitted by the Builder/ Respondent previously in the hearing. It is noted that he is made a party in Complaint No:115/2021 too. Hence the Respondent No:3 in the above Complaints were deleted from party array, as per the request made by the Counsel for Respondent No: 3. It is observed by the Authority that the Respondent/ Promoter against whom several cases are pending before the Authority with respect to various Projects developed by him, has been continuously flouting the Orders/ directions passed by the Authority on various dates. The Respondents has not even complied with the direction to form the Association of Allottees in the Project in question so far. Such a negligent and recalcitrant attitude of the Respondent/promoter has been viewed very seriously by the Authority. Thereafter, the Respondents were finally directed to file an Affidavit in the proper format with list of works to be completed and clear schedule with the date of completion of each



work, the amount collected from the Allottees, amount spent on the Project and the amount required further to complete the Project in all respects with all amenities, facilities and sanctions/ approvals as promised to the Allottees within 10 days after serving copy to all the Complainants.

6. In Compliance of the said order dated 07/09/2021, the Respondent No. 5, representing the Respondent No. 1 Company, has filed Affidavit on 21/09/2021 and submitted that the project 'Campus Woods Oak' has 25 apartments of which only 14 are sold and 'Campus Woods Pine' has 45 units of which only 21 are sold till date. As per interim Order dated 16/12/21 a zoom meeting of the Allottees of 'Campus Oak' project was held on 21/02/2021 and wherein a detailed discussion on the balance pending works and final completion plan was discussed in detail. 9 out of the 14 allottees attended the meeting. It was tentatively planned to finish the balance pending works in Campus woods Oak by September 2021. Due to the present Covid situation and government guidelines it was not possible to convene a meeting at project site as directed by this Authority. Hence immediate steps will be taken to convene a monthly Zoom meeting of all Allottees of 'Campus Woods Oak & Pine' so that all Allottees can be apprised of the progress of work at site. The Respondents had initiated the balance works in 'Campus Woods Oak' in accordance with the said discussion and schedule. But due to the second wave of Covid-19 and the subsequent lock down in the month of May & June, the schedule for completion and handing over of the total project including the common amenities of Campus Woods Oak is planned to be completed by 30/12/2021 as per the schedule mentioned in the affidavit. All balance works pertaining to the apartment project including amenities listed in the agreement for construction will be fully completed by 30/12/2021. The project 'Campus Woods Oak' will be fully handed over to the Allottees in



all respects with all amenities, facilities, statutory approvals, and completion certificate by 30/12/2021. All documentation and registration of title deeds in the names of the purchasers will be fully completed subject to the receipt of all balance payments receivable. It is submitted that an amount of Rs.3.5 Crores has been collected from the 14 allottees till date and an amount of Rs.9 Crores has been spent on the project till date. A balance amount of Rs.1.5 Crores is required to complete the balance works in the project which will be funded from the balance customer receivables and promoter's own contributions. The procedure for getting the Association registered in the 'campus Woods Oak' project is being initiated and we will form an association of all Allottees as directed by this Authority. It is assured that in the case of 'Campus Woods PINE' the balance works will be fully completed by April 2022 and it will be handed over to all Allottees in all respects with all the amenities and facilities, statutory approvals, and completion certificate by 30/04/2022. All documentation and registration of title deeds in the names of the purchasers will be fully completed subject to receipt of all balance payments receivable. An amount of Rs.4 Crores has been collected from the 21 Allottees till date and an amount of Rs.7 Crores has been spent on the project till date. A balance amount of Rs.3 Crores is required to complete the balance works in the project which will be funded from the balance customer receivables and own promoter contributions. The procedure for getting the Association registered in the 'Campus Woods Pine' project is being initiated and will form an association of Allottees as directed by the Authority. The said Affidavit is marked as Exbt. B1.

7. The Complainant in Complaint No.27/2021 filed counter Affidavit to the Affidavit filed by the Respondents 1 & 5 and submitted that the time limit within which any of the works will be



completed by the Respondents is not stated. Only a vague undertaking was made by the Respondents. The Respondents have made undertakings as above without any bonafides only to protract the proceedings. The time period within which the Respondents agreed to complete the work and to hand over the flat in a ready to occupy condition is long over. The Respondents should have filed this affidavit with specific dates showing the completion of each work in the project. As per the affidavit, the Respondents 1 and 2 undertook to complete the entire works of 'Campus Woods Oak' only by October 2021 and the work of 'Campus Wood Pine' only by 31/03/2022 is not agreeable. It is crystal clear that the Respondent is directed to file an affidavit stating the date on which the project would be completed and could be handed over after registration and after complying with all statutory requirements. There is no specific date on which the project would be completed is not properly stated in the above in the affidavit. As per the agreement, the building ought to have been completed way back in the year 2015 and handed over the possession of the building after complying all statutory requirements to the Allottees at least in the year 2015. Even though more than 6 years have elapsed since, then there is absolutely no progress in work. Even according to the Respondents, the building permit was long expired. Almost all the Allottees have paid 80 % of the instalment as per the agreement. Some of the Complainants are expecting to pay the future instalments after availing loans. The Bank loan instalments will be disbursed by the respective Banks only if the Construction is proceeding in legally permissible manner. The Construction could be preceded in the legally permissible manner only if the building permit and other statutory clearances for making the construction is in subsistence. The said affidavit is marked as Ext.A7. As directed by the Authority, the Respondents No. 1&2 have submitted



application for registration of the project u/s 3 of the Act which is on process.

8. After hearing both parties in detail and examining the documents produced, the Authority is convinced of the miserable condition of the project in which works including common amenities offered to the Allottees are yet to be completed even after this long period and the Respondents have pathetically failed to honour the promises given to the purchasers herein as well as other Allottees of the said project. The Complainants herein belong to 2 residential Towers, Campus Woods OAK & Campus Woods PINE of the project named Nest Campus Woods. Anyhow, the Respondents No. 1&5, through the Exbt.B1 Affidavit, have undertaken that they will complete the apartment Tower named "Campus Woods **OAK**" by **30/12/2021** with all the amenities, facilities, and statutory approvals and the apartment Tower named "Campus Woods **PINE**" by **30/04/2022** with all the amenities, facilities, and statutory approvals. By considering the said affidavit and the present Covid-19 situation, the Authority decided to grant time to the Respondent for completing the project as agreed to the Allottees. It is affirmed in the Affidavit that the 1st and 5th Respondents shall take absolute responsibility to complete the project in all respects as promised in the agreements entered with the Complainants and shall do the needful for transfer of proper title deeds to all the purchasers of apartments. It is also confirmed that the building permit and all statutory approvals for construction have been obtained and are valid as on date.

9. Based on the confirmations and undertakings by the Respondent as per the **Exbt.B1** affidavit and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions: -



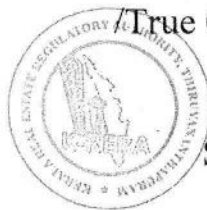
1. The Respondents/Promoters shall complete the entire works of the residential Tower named '**Nest Campus Woods Oak**' on or before **30/12/2021** and that of residential Tower named '**Nest Campus Woods Pine**' on or before **30.04.2022** with all the common amenities and facilities offered to the Complainants in accordance with the agreements executed with them, without fail.
2. The Respondents shall complete the execution of sale deeds to all the complainants within the above said time periods and as per the terms of the agreements entered with them.
3. The Respondents shall hand over the maintenance of the common areas to the Association formally after completion of the projects.
4. The Complainants who sought interest for delay shall file their claims with detailed interest calculation statement in separate applications and each such petition shall be adjudicated individually.

In the event of Non-compliance of this order by the Respondent/promoter, he shall be liable to pay Rs.5000/- per day from the date of compliance of the above order, till completion under Section 63 of the Real estate (Regulation & Development) Act, 2016.


Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri.M.P. Mathews
Member

Sd/-
Sri. P H Kurian
Chairman



/True Copy/Forwarded By/Order/


Secretary (legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 Series : Copy of Agreement.
- Exhibit A2 Series : Copy of legal notice.
- Exhibit A3 Series : Statement of Account.
- Exhibit A4 Series : Payment Receipts.
- Exhibit A5 Series : Letter issued by the Respondent
- Exhibit A6 Series : Letter issued to the Respondent
- Exhibit A7 : Counter Affidavit filed by the Complainant

Exhibits on the side of the Respondents

- Exhibit B1 : Affidavit dated 21/09/2021.

