



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 120/2022

Present: Sri. M. P Mathews, Member

Dated 26th July, 2022

Complainants

1. R. Sathish,
242, Supreme Enclave,
Mayur Vihar Phase -1, Delhi-110091.
2. Sujatha M,
242, Supreme Enclave,
Mayur Vihar Phase -1, Delhi-110091.

Respondents

1. National Buildings Construction Corporation(NBCC),
Represented by its Chairman/Managing Director,
NBCC Bhawan, Lodhi Road, New Delhi- 110003.
2. National Buildings Construction Corporation(NBCC),
Represented by its General Manager,
NBCC Bhawan, Bhisma Pitama Marg,
Pragati Vihar, New Delhi- 110003.
3. Managing Director,
National Buildings Construction Corporation(NBCC),
NBCC Bhawan, Lodhi Road, New Delhi- 110003.
4. General Manager,
National Buildings Construction Corporation(NBCC),



NBCC Bhawan, Bhisma Pitama Marg,
Pragati Vihar, New Delhi- 110003.

5. National Buildings Construction Corporation (NBCC),
Represented by its Manager,
Valley view Apartments, Kendriya Vihar,
Karimugal, Ambalamedu, Kochi, Kerala.

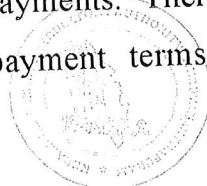
(By Adv. Aneesh James)

The above Complaint came up for final hearing on 26/07/2022 along with other connected complaints. Only the counsel for the Respondents attended the hearing.

ORDER

1. The case of the Complainant is as follows:- the Complainants are the allottees of project named 'NBCC VALLEY VIEW APARTMENTS' at Karimukul Near Ambalamedu, Ernakulam developed by the Respondents. Based on an advertisement in Hindustan Times, Delhi, the Complainants have booked an apartment No.H-301, in the 3rd floor. Type-II in the said project by paying Rs.2,00,000/- as application money. The value of the said apartment is Rs.40,54,877/- inclusive of service taxes. On 09/12/2014 Rs.1,63,289/- was paid as allotment money.

2. The Complainant further submitted that as per the original contract terms, cost had to be paid in 7 instalments which is linked with the construction or milestones achieved which ever is later. But the construction was delayed. On 02/03/2016 the Complainants have issued a notice to the Respondents stating that they were not responsible for any delay and was always ready and willing to make the payments. Thereafter on 05/04/2016 the Respondents informed that the payment terms originally scheduled was



unilaterally amended and time is unilaterally extended to a full year later to 25/04/2016. Accordingly a demand for the 1st instalment of Rs.3,63,289/- was raised after delay of one and a half years in April 2016 to be payable before 04/04/2016 and was paid by hand on the due date. The Complainant bound by one sided terms had made all 5 subsequent instalments demanded in time. The Complainants have paid a total amount of Rs.36,64,695/- to the respondent towards the cost of the said flat in the above project. The details of the payment made to the respondent is as follows:-

<u>Date</u>	<u>Amount</u>
27/06/2014	Rs.2,00,000.00
09/12/2014	Rs.1,63,289.00
04/04/2016	Rs.3,63,289.00
13/05/2016	Rs.7,30,245.00
30/07/2016	Rs.8,54,764.00
15/09/2016	Rs.5,52,387.00
30/01/2017	Rs.3,65,175.00
20/12/2018	Rs.4,10,546.00
Service Tax	Rs.25,000.00
Total	Rs.36,64,695.00

3. The Complainants further submitted that when they visiting the site, it was found that the work had come to stand still over 3 years now. The shopping complex envisaged for the convenient enjoyment of the apartment owners was red herrings to attract and is abandoned. The shopping complex inside the complex was one consideration to take an informed decision to book a flat in the project. This was an unfair trade



practice and misleading advertisement to allure unsuspecting home buyers to book a flat in the complex. Besides the intrinsic value and utility of the apartment is also eroded. The structure itself is idle, neglected, left to vagaries of monsoon impairing its value. Due to the same a written request dated 23/12/2019 was handed over to the Respondent to cancel allotment and refund the amount with interest. But the Respondents didn't reply nor cancelled the allotment and not responded in any manner till today. Thereafter on 08/02/2021 a registered notice was issued to the Respondents demanding the cancellation and refund.

4. The reliefs sought by the Complainants are refund of Rs.36,64,695/- together with interest @ 15% from the date of payment.

5. The Respondents have filed written statement and denied the averments in the Complaint and stated that the Respondents had obtained building permit No.BA-103/09-10 dated 12/4/2010 as well as the consent to establish dated 28/07/2010 from the Kerala State Pollution Control Board for the said project. The Complainants have submitted application dated 05/07/2014 seeking allotment of apartment and had given his consent to the terms and conditions set out by NBCC (INDIA) Ltd. It was further submitted that the Complainants have applied for allotment of an apartment in the project 'NBCC Valley View Apartments' and the said application was accepted and the Complainant was allotted Apartment No.H301 vide allotment letter dated 28/10/2014. The total cost of the apartment allotted to the Complainant was Rs.40,54,877/- excluding VAT. The allotment to the Complainant was subject to the Complainant paying the allotment money of Rs.1,63,289/- on or before 12/12/2014. The Complainants paid an amount of Rs.1,63,289/- by way of demand draft dated 09/12/2014.



6. The Respondents further submitted that the instalments would have become due on the dates mentioned in the allotment letter or on achievement of payment milestone whichever was later. The initial payment plan was linked with the construction of six residential towers. However the Respondents had decided to restrict the initial construction to five residential towers and therefore the payment plan for the Allottees was suitably amended. The changed payment plan was beneficial to the Allottees as the Allottees were given more time to make the instalment payment as compared to the original payment plan. The said changes in the payment was duly communicated to the Allottees, including the Complainant, and no one had raised any demur with respect to the changed plan.

7. The Respondents further submitted that the Complainant had paid an amount of Rs.1,63,289/- on 09/12/2014, Rs.3,63,289/- on 04/04/2016, Rs.7,30,245/- on 13/05/2016, Rs.8,54,764/- on 30/07/2016, Rs.5,52,387/- on 15/09/2016, Rs.3,65,175/- on 30/01/2017, Rs.25,000/- on 01/03/2017 and Rs.4,10,546/- on 20/12/2018. Thus the Respondents have received an amount of Rs.34,64,695/-. Thus the Respondents have received an amount of Rs.34,64,695/- from the Respondents apart from the application money of Rs.2,00,000/-.

8. The works in the project had progressed more or less as per the schedule and 95% of the work in 5 blocks under phase I of the project has been completed by January 2018. The Respondents could not further proceed with the work as when the Respondents had applied for renewal of the consent to establish to the Kerala Pollution Control Board, the Respondents were informed that consent to establish can be renewed only if the Respondents obtain environmental clearance for the project. The Respondents already submitted the requisite application for obtaining



environmental clearance and the same is under process. The work on the project came to a stand still since February 2018 for want of the requisite statutory approvals. The only works that is remaining is the external services like STP, Sewer connections, water supply connections, painting, external electrification works etc., in addition to the testing and commissioning of lifts, transformers and DG sets. The Respondents are unable to proceed further and complete the remaining 5% of the work on the project on account of the delay in obtaining environmental clearance from the MOEF. The building already constructed is well attended to and protected by the employees of the 1st Respondent.

9. The Respondents further submitted that the Respondent has already intimated the Complainant vide communication dated 05/05/2022 that they are unable to handover possession of the allotted flat to the Complainant on account of non-availability of statutory approvals and had offered full refund to the Complainant in terms of the agreement. A further communication dated 06/08/2022 was also issued to the Complainant requesting to provide the necessary documents, so that the refund of the amounts paid by the Complainant can be processed. However the documents sought for by the Respondents for processing the refund has not been provided by the Complainant till date. The Complainant was a defaulter and had committed defaults in the timely payment of all instalments, which has severely affected the cash flow of the Respondents and adversely affected the progress of the work. Hence the Complainants are not entitled to get any refund.

10. The Authority heard the learned counsels on either side, gave careful consideration to their submissions, and perused the material documents available on record. The documents produced from the part of



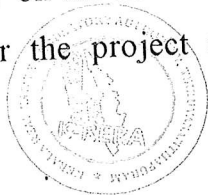
Complainant is marked as Exbt.A1 to A9. The Complainant has not produced any agreement for sale or construction executed between the Complainant and the Respondent. Exbt.A1 is the copy of advertisement in the Hindustan Times, Delhi, Exbt,A2 is the copy of allotment letter issued by the Respondents regarding allotment of Type II Apartment No.H301 on the third floor having 1450 of super area. Exbt.A3 series is the copies of payment receipts issued by the Respondents to the Complainant evidencing the payment including application money and allotment money, Exbt,A4 is the copy of letter dated 02/03/2016 issued by the Complainant to the Respondents reminding the delay. Exbt,A5 is the copy of letter dated 05/04/2016 issued by the Respondents to the Complainant regarding the amendment of contractual terms and revised payment schedule. Exbt.A6 is the letter dated 22/11/1018 issued by the Respondents demanding the 6th instalment, Exbt.A7 is the letter dated 27/02/2017 issued by the Complainant to the Respondents, Exbt.A8 is the copy of letter dated 28/11/2019 forwarded to the Respondent requesting cancellation of allotment and refund of the amount paid by the Complainant, Exbt.A9 is the registered notice dated 08/02/2021 issued to the Respondents demanding refund of the amount paid with interest.

11. The documents produced by the Respondents are marked as Exbt.B1 to B15. Exbt.B1 is the copy of the application for allotment submitted by the Complainant with general terms and conditions of allotment agreed by the Complainant. Exbt.B2 is the allotment letter dated 28/10/2014 issued by the Respondents to the Complainant regarding allotment of apartment No.H301 in the third floor of the project. Exbt.B3 is the copy of notice dated 09/02/2016 published by the Respondents regarding the amendment in the payment plan. Exbt.B4 is the copy of the letter dated 01/04/2016, issued to the Complainant intimating the change



in payment plan. Exbt.B5 is the copy of letter dated 09/01/2019 received from the Complainants requesting for change of allotment to type II apartment. Exbt.B6 is the reply dated 11/02/2019 given to the Complainant expressing their inability to approve the change requested for. Exbt.B7 is the copy of payment details maintained by the Respondents regarding payments received from the Complainant. Exbt.B8 is the copy of payment ledger maintained by the Respondents with respect to the Complainant. Exbt.B9 is the copy of communication dated 05/05/2022 issued to the Complainant intimating that few statutory approvals from the concerned authority are still in progress, due to which the Respondents have been unable to hand over the possession of the flat and thereby given an opportunity to the Complainant of full and final refund of the amount paid by him without any interest and requested him to convey his consent within 15 days from the date of this notice. Exbt.B10 is the building permit dated 12/04/2010 issued by Vadavukadu Puthencruze Panchayat, Exbt.B11 is the copy of renewal application dated 14/12/2020 submitted to Vadavucode-Puthencruz Grama Panchayath. Exbt.B12 is the copy of consent to establish dated 28/07/2010 issued by the Kerala State Pollution Control Board. Exbt.B13 is the copy of consent to establish renewal order dated 05/09/2014 issued by the Kerala State Pollution Control Board. Exbt.B14 is the copy of communication dated 20/07/2018 issued to Kerala State Pollution Control Board. Exbt.B15 is the letter dated 15/03/2021 issued to the State Environment Impact Assessment Authority regarding the submission of challan as processing fee for the said project.

12. During the hearing on 16/05/2022, the Authority found that the said project is ongoing and is liable to be registered under section 3 of the Act. Hence the Authority on the same day vide interim order directed the Respondents to register the project named 'NBCC Valley View



Apartments' with the Authority. Thereafter the Respondent has filed four petitions. IA.No.105/2022 in Complaint No.90/2022, IA.No.106/2022 in Complaint No.91/2022, IA.No.107/2022 in Complaint No.92/2022 & IA.No.108/2022 in Complaint No.120/2022 to recall the interim order dated 16/05/2022. Since the said project is ongoing and has not obtained occupancy certificate till date, the said project is registerable under section 3 of the Act. Hence the said IA's were dismissed by the Authority. During the hearing on 01/06/2022, the counsel for the Respondents sought 30 days time to complete the registration process and the same was granted by the Authority. In compliance of the said order the Respondents have filed application for registration on 01/07/2022 and the same is under scrutiny. It is found that the permit issued by the local body was valid only up to 31/12/2020.

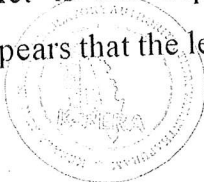
13. The Respondents in their written statement admitted that the said project is not complete and works such as external services like STP, Sewer connections, water supply connections, painting, external electrification works etc., in addition to the testing and commissioning of lifts, transformers and DG sets are still pending. The Respondents also admitted that they are unable to proceed further and complete the remaining 5% of the work on the project on account of the delay in obtaining environmental clearance from the MOEF. Hence it is clear that the Respondents have miserably failed to complete and handover the project as per the promises made by them and the Complainants are entitled to withdraw from the project and claim refund of the amount paid by him, with interest under section 18 of the Act, 2016.

14. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that "*if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a),*



accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, 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 an 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". The Section 19(4) of the Act also specifies that "The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".

15. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below "The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided



this right of refund on demand as an unconditional absolute right to the allottee. 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 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”.

16. On going through the Exbt.A3 series which is the payment receipts produced by the Complainants and Exbt.B7, which is also the payment details submitted by the Respondent it is clear that the Complainants have paid an amount of Rs.36,64,695/- to the Respondents as cost of apartment flat No.H301, of the said project developed by the Respondents. The Respondents admitted the said payment in their counter also.

17. Hence, the Complainant herein is entitled to get the refund of the amount paid to the Respondents along with interest and the Respondent is liable to refund the amount to the complainant along with the interest according to section 18(1) of the Act,2016. 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 reliefs sought by the Complainants are refund of Rs.36,64,695/- together with interest @ 15% from the date of payment. The present SBI PLR rate is 12.75% with effect from 15/06/2022. The Complainant is



entitled to get 14.75% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. Hence it is found that the Respondent's are liable to pay Rs.36,64,695/- along with 14.75 % simple interest on each payment as per the statement given above and sought for by the Complainant.


18. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order: -

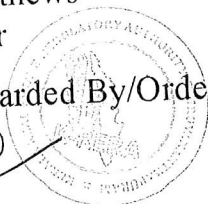
1. The Respondents shall return the amount of Rs.36,64,695/- to the Complainant with simple interest @ 14.75% per annum on each payment from the date as shown in the statement above, till the date of realization.

2. If the Respondents fails to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondent No.1 and its assets & Respondents No.2 and his assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Sri.M.P.Mathews
Member

/True Copy/Forwarded By/Order


Secretary (legal)



Exhibits**Exhibits marked from the Side of Complainants**

- Ext.A1 - Copy of advertisement in the Hindustan Times, Delhi.
- Ext.A2 - Copy of allotment letter dated 28/10/2014.
- Ext.A3 series - Copies of payment receipts issued by the Respondents.
- Ext.A4 - Copy of letter dated 02/03/2016.
- Ext.A5 - Copy of letter dated 05/04/2016.
- Ext.A6 - Copy of letter dated 22/11/1018.
- Ext.A7 - Copy of letter dated 27/02/2017.
- Ext.A8 - Copy of letter dated 28/11/2019
- Ext.A9 - Copy of registered notice dated 08/02/2021.

Exhibits marked from the Side of Respondents

- Ext.B1 - Copy of application for allotment submitted by the Complainant.
- Ext.B2 - Copy of allotment letter dated 28/10/2014.
- Ext.B3 - Copy of notice dated 09/02/2016.
- Ext.B4 - Copy of communication dated 01/04/2016.
- Ext.B5 - Copy of letter dated 09/01/2019.
- Ext.B6 - Copy of reply dated 11/02/2019.
- Ext.B7 - Copy of payment details.
- Ext.B8 - Copy of payment ledger maintained by the Respondents.
- Ext.B9 - Copy of communication dated 05/05/2022.
- Ext.B10 - Copy of building permit dated 12/04/2010.
- Ext.B11 - Copy of renewal application dated 14/12/2020.
- Ext.B12 - Copy of consent to establish dated 28/07/2010 issued by Kerala Pollution Control Board.
- Ext.B13 - Copy of consent to establish Renewal order dated 05/09/2014 Issued by the Kerala State Pollution Control Board

Ext.B14 - Copy of communication dated 20/07/2018 sent to Kerala State
Pollution Control Board

Ext.B15 - Copy of communication dated 15/03/2021 sent to State
Environment Impact Assessment Authority.