



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.141/2021

Present: Sri.M.P.Mathews, Member

Dated 1st February, 2023

Complainant

Dr.Melvin Aby Simon,
Tharamannil House,
Kottathoor P.O, Ayroor,
Ranny, Pathanamthitta.

Respondents

1. Shameer Marickar,
C.E.O, Nest Infratech,
Nest Realities India Pvt.Ltd.
5th Floor, Compass, NH Bypass,
Chakkaraparambu, Near Vysali
Bus stop, Kochi-682032.
2. Nest Infratech,
Nest Realities India Pvt.Ltd.
5th Floor, Compass, NH Bypass,
Chakkaraparambu, Near Vysali
Bus stop, Kochi-682032.



The above Complaint came up for virtual hearing today. Counsel for the Complainant Adv. Abraham Samson & the 1st Respondent Shameer Marickar attended the hearing.

ORDER

1. The Complainant is an Allottee of project named 'Nest Mosaic' located at Trivandrum developed by the Respondents. Later the project was renamed as 'Nest Crown'. The said project is not registered with the Authority under section 3 of the Act, 2016.

2. Believing the words of the 1st Respondent and the as per the advertisement given by the Respondents the Complainant had agreed and later agreed to purchase a flat and thereby the 1st Respondent issued as allotment letter dated 08/12/2014 vide No.TMA/004/2014 under his signature and seal, allotting Apartment No.12B with a super built up area of 1472 sq.ft for an amount of Rs.54,02,000/-. True copy of the said allotment also produced. The Respondents also issued a payment schedule. In acceptance of the offer the Complainant had paid amount of Rs.2,00,000/- by way of cheque No.132477 dated 02/12/2014 to the Respondents towards booking amount and the Respondent has acknowledged the same and a receipt was issued. Thereafter the Complainant paid an amount of Rs.15,65,545/- by direct transfer from the account of the Complainant on 13/01/2015 towards booking of Apartment No.12-B in the

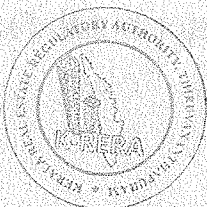


project. Thus a total amount of Rs.17,65,546/- was paid by the Complainant to the Respondents.

3. The Complainant further submitted that the Respondent sent an allotment letter dated 30/07/2015 to the Complainant, in which the Respondent has acknowledged the payment of the above Rs.17,65,546/- by the Complainant. True copy of the revised allotment letter with the communication dated 30/07/2015 is also produced.

4. It was further submitted by the Complainant that the Respondents have not constructed the apartment or registered the apartment in the name of the Complainant and even after repeated requests the amount was not reimbursed the amount advanced. Hence the Complainant had issued a lawyer's notice dated 06/04/2019 to both the Respondents but the letter to the 2nd Respondent returned with endorsement that the addressee left. The entire action of evasion of amounts to cheating on the part of the Respondents are against the provisions of the Act, 2016. Hence this Complaint.

5. The reliefs sought by the Complainant is refund of the amount paid by him along with interest and compensation of Rs.25 Lakhs.



6. The Authority vide interim order dated 25/04/2022 directed the Respondents to (1) register the project under section 3 of the Act within 15 days from the date of receipt of this order or produce copy of occupancy certificate received for the project before 01/05/2017 (2) The Complainant is also directed to produce copy of the permit or details of the project like name of the project, name of land owners in whose name permit if any was obtained, survey number of land etc. before the next posting date for obtaining details of permit if any obtained.

7. The Respondents have not complied with the said order and they have neither filed any counter statement not produced any documents.

8. The Authority heard the learned counsel for the Complainant and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced by the Complainant is marked as Exbt.A1 to A7.

9. The Respondents have not submitted any counter statement even after ample time was granted by the Authority and no documents were produced from the part of the Respondents. 1st Respondent had appeared on 21/02/2022, 08/03/2022, 10/03/2022, 05/04/2022, 25/05/2022 and 19/01/2023 and offered to settle the matter but the issue is not yet settled. The



Respondent had admitted the fact that the project is abandoned and no permit was obtained for the project.

10. **Exbt.A1** is the copy of allotment letter issued by the Respondents dated 08/12/2014 with respect to the allotment of apartment No.12B having super built up area of 1472 sq.ft. along with a car parking for a total consideration of Rs.54,02,000/-. In **Exbt.A1** the location of the project is shown as Technopark, Thiruvananthapuram. This Authority had confirmed from the Secretary of the Trivandrum Corporation, Attipra zonal Office vide Letter No.ZAE/UE2/5266//2022 dated 18/11/2022 that there is no permit required for construction within the Technopark. The said reply letter submitted by the Secretary is marked as **Exbt.X1**. **Exbt.A2** is the copy of payment schedule issued by the Respondents. **Exbt.A3** is the copy of payment receipts issued by the Respondents. It is clear from the said receipts that the 1st Respondent has received an amount of Rs.17,65,546/- from the Complainant. **Exbt.A4** is the revised allotment letter dated 30/07/2015 issued by the Respondents with respect to the allotment of Apartment No.12-A having super built up area of 1650 sq.ft. along with a car park for a total consideration of Rs.60,25,000/-. It was also stated that the Complainant had paid an amount of Rs.17,65,546/-. The location of the project is shown as Infosy's junction, Thiruvananthapuram, but the corporation was not able to confirm as to issuing building



permit to any such project. **Exbt.A5** is the copy of revised payment schedule issued by the Respondents along with the revised allotment letter. **Exbt.A6** is the copy of lawyer's notice dated 06/04/2019 demanding refund of the amount of the amount paid with interest as the Respondents have not yet constructed the apartment of the Complainant.

11. The Respondents have not yet commenced the construction of the project and has not entered into an agreement as required under section 13(2) of the Act, 2016 and violated section 13(1) by collecting more than 10% as advance amount. The 2nd Respondent has not yet registered the project and he is liable for punishment under section 59(1) of the Act. Hence the Complainant is eligible to withdraw from the project and claim refund of the amount paid with interest. The details of the payment made to the respondents is as follows:-

<u>Date</u>	<u>Amount</u>
02/12/2014	Rs.2,00,000.00
13/01/2015	Rs.15,65,546.00
Total	Rs.17,65,546.00

12. 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, accordance with the terms of the agreement for sale or*

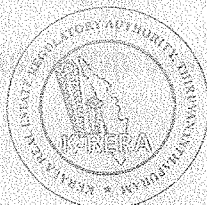


duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, 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". Here, in this case there is no agreement and the date of completion and other terms and conditions in the agreement are not available.



13. The Hon'ble High Court in the Judgment dated 14/07/2022 in MSA No. 4 of 2021, made it very clear that the Real Estate (Regulation & Development) Act, 2016 is a beneficial legislation intending to safeguard the interest of the consumers as well as promoters by imposing certain responsibilities on both. So, bearing in mind the great objectives with which the Act has been promulgated, if at all it could not redress the grievance of consumers, the very purpose of the Act will become otiose.

14. During the hearing the Respondents submitted that the project was abandoned before permit was obtained from the local authority. It is clear from the documents produced that the respondent had collected more than 10% of the value of the apartment, in violation of Section 13(1) of the Act, 2016 and The complainant is entitled to withdraw from the project under section 18 and the respondents are liable to return the amount of Rs,17,65,546/- received in respect of the apartment with interest at the prescribed rate. The respondents are duty bound to refund to the allottee the amount of Rs.17,65,546/-paid with simple interest @ 16.15 % on Rs.17,65,546/- from 13/01/2015 till the date of realization.



15. Hence, it is evident that the Complainant herein is entitled to get the refund of the amount paid by him along with 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 present SBI PLR rate is 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% 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. The Respondents are liable to refund to the allottee the amount of Rs.17,65,546/- paid with simple interest @ 16.15 % per annum from 13/01/2015 till the date of realization. Based on the above facts and findings, this Authority hereby passes the following order: -

1. The 1st Respondent/Promoter shall return the amount of **Rs.17,65,546/-** to the Complainant/Allottee with simple interest on Rs.17,65,546/- @ 16.15% per annum from 13/01/2015 till the date of realization.

2. If the Respondents fail 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 1st Respondent and



its 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 allotment letter dated 08/12/2014.

Ext.A2- Copy of payment schedule issued by the Respondents.

Ext.A3 series - Copy of payment receipts.

Ext.A4- Copy of allotment letter dated 30/07/2015.

Ext.A5-Copy of revised payment schedule.

Ext.A6- Copy of lawyer's notice dated 06/04/2019.

Ext.A7- Copy of floor plan of the project.

Ext.X1- reply Letter No.ZAE/UE2/5266//2022 dated 18/11/2022

Trivandrum Corporation, Attipra zonal Office.

