



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 141/2023

Dated 15th March 2025

Present: Smt. Preetha P Menon, Member

Complainant

Bindurani P
Pournami, Vettuveni,
Haripad P O, Alapuzha- 690514
Now residing at Sivadam, Manganam P O,
Kottayam, Kerala- 686018

Respondents

- 1 M/s Nest Realities India Pvt Ltd.,
Represented by F M Shamier Marickar
Compass, 5th Floor NH-47
By – Pass Chakkaraparambu Near
Vysali Bus Stop, Cochin – 682032
- 2 F M Shamier Marickar,
Director, Marickar Plantations Pvt Ltd.
A-6, Kent Nalukettu,
Chakkaraparambu,
Vennala P.O, Edappally South Village,

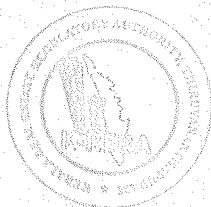


Kanayannoor Taluk, Ernakulam – 682028
3 Marickar Plantations Pvt Ltd,
Represented by F M Shamier Marickar
Registered office at 41/3611, Old Railway
Station Road, Thrikkannarvattom P O, Cochin,
Kerala- 682018

The above Complaint came up for virtual hearing on 21/11/2024. The Complainant attended the hearing. The Respondents did not attend the hearing. The notices were served to the Respondents and Respondent No.3 attended the hearing for the first 3 posting and requested time for filing counter statement.

ORDER

1. The facts of the case are as follows: - The Complainant is an allottee in the project 'Nest- Orchid Park' developed by the Respondents. The Complainant had booked a three-bedroom apartment having super built up area of 1486 sq. meter on the seventh floor of the Nest Orchid Park Apartments, including proportionate share of common areas and facilities together with the right to use covered car park along with the undivided indivisible right title and interest in the land consists of 1486/205000 undivided share. Accordingly, the Respondent executed a sale agreement on 11.04.2011, as per which the handing over date is 31.12.2012. The Respondent also executed a construction agreement on 11.04.2011. The Complainant registered a case on 28/11/2022 as complaint No. 279 of 2022 in which the Authority issued an order dated 27/03/2023 directing the



Respondent to complete the remaining works within 60 days. The total consideration was Rs. 34,69,200/- and the Complainant had invested Rs. 30,64,220/- as per the payment schedule in the construction agreement dated 20.02.2016, and the balance amount of Rs. 4,04,980/- excluding the registration fee and electricity deposit were to be paid as the last two instalments on completion and handing over. Furthermore, the Complainant had directly paid a sum of Rs. 1,10,000/- directly to the Contractor. On the hearing dated 30.05.2023, the Authority instructed the Respondent/Builder to complete the remaining works in the apartment 7-B-2 in all respects before 30.06.2023, and thereafter to make the balance payment of Rs. 2,79,980/-. The Complainant has reminded the same via email dated 18.07.2023 to the Respondents.

2. The reliefs sought by the Complainant are to (1) Direct the Respondent to pay the delay interest till the handing over of the apartment for the amount paid. (Rs. 50,45,080/- as on 30.05.2023.) (2) to complete the pending works in the apartment No. 7-B-2 and to execute the sale deed. The Complainant produced copies of the sale agreement, construction agreement, payment receipts, payment statement, email communications.

3. The Respondents neither filed any written statement nor submitted any documents even after giving ample time for the same. The notices were served to the Respondents and Respondent No.3 attended the hearing for the first 3 posting and requested time for filing counter statement.



4. 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 30.09.2022. On perusal of the web page concerned, it is seen that the Respondents have not 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.

5. After hearing both sides and perusing the pleadings and documents submitted by the Complainant, 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 are 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?

6. **Points No. 1&2:** The documents produced by the Complainant are marked as **Exhibits A1 to A9**. **Exhibit A1** is the agreement for sale dated 11/04/2011 entered into between the Complainant and the 3rd Respondent represented by the 2nd Respondent for the aforesaid 1486/205000 undivided share equivalent to 0.710 cents in the said 98.051 cents of land together with right to construct a three bed room Apartment No.7-B-2 facing west having a super built-up area



of 1486 sq. ft in the seventh floor of Nest Orchid Park Apartments and proportionate share in the common areas and common facilities for a total sale consideration of Rs. 2,13,500/- and the delivery of possession of the property was to be completed in all respects on or before 31.12.2012. **Exhibit A2** is the construction agreement dated 11.04.2011 entered into between the Complainant and the 1st Respondent represented by the 2nd Respondent for the construction of the flat described in the B schedule for a consideration of Rs. 32,55,700/- with 1486/205000 undivided share equivalent to 0.710 cents with right to construct a three-bedroom Apartment No. 7-B-2 having a super built-up area of 1486 sq. ft in the seventh floor in the said project and proportionate share in the common areas and common facilities and car parking area in which the promised date of completion is shown as 30.09.2012 with 3 months grace period. **Exhibit A3 series** is the payment receipts. **Exhibit A4** email communication.

7. The reliefs sought by the Complainant is to direct the Respondent to pay delay interest till the date of handing over of the apartment for the amount paid by the Complainant and complete the pending and works of the Complainant's apartment. The relief regarding the completion has been ordered through vide order dated 27.03.2023 in Complaint No. 279 of 2022. With regard to the relief for delay interest, 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 have opted to continue with the project and claimed interest for delay in handing over possession of the apartment to them.

8. As per clause 2 of the Exhibits A2 construction agreement, “The Builder undertakes to ensure the completion of the said construction on or before 30th September, 2012 with a further grace period of 3 months to provide for unforeseen contingencies.” Exhibit A2 agreement dated 11.04.2011 entered into between the Complainant and



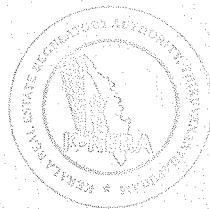
the 1st Respondent represented by the 2nd Respondent for the construction of the flat described in the B schedule for a consideration of Rs. 32,55,700/- with 1486/205000 undivided share equivalent to 0.710 cents with right to construct a three-bedroom Apartment No. 7-B-2 having a super built-up area of 1486 sq. ft in the seventh floor in the said project and proportionate share in the common areas and common facilities and car parking area in which the promised date of completion is shown as 30.09.2012 with 3 months grace period. According to the Complainant, 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. Before obtaining the occupancy certificate, the Respondents are not supposed to execute the sale deed in favour of any of the allottees.

9. 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 sub-section (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.”

10. 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.” From the receipts produced, it is understood that the payments have been made and 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.



11. 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.A2 the Respondents should have handed over possession of the apartment on 30.09.2012, 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 Complainant is 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.”

12. 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 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 Complainants.

13. In the instant case, the Complainant had remitted a total amount of **Rs. 30,64,220/-** to the Respondents and the Complainant prayed for interest for the delayed months. As the Respondent/ Promoter is a defaulter, he is not entitled to get the benefit of the grace period mentioned in the Exhibit A2 agreement. The respective dates of payments and amounts in total are as follows:

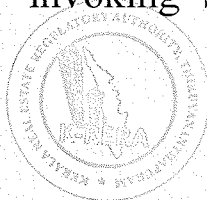
| Date | Amount in Rs. |
|------------|---------------|
| 05.04.2011 | 1,00,000/- |
| 12.04.2011 | 1,20,380/- |
| 12.04.2011 | 3,00,000/- |
| 09.06.2011 | 3,46,920/- |
| 29.12.2011 | 3,46,920/- |
| 21.01.2013 | 1,50,000/- |
| 22.04.2013 | 1,00,000/- |



| | |
|--------------|--------------------|
| 06.08.2013 | 1,00,000/- |
| 09.01.2014 | 3,00,000/- |
| 11.04.2014 | 1,00,000/- |
| 06.05.2014 | 1,00,000/- |
| 20.02.2016 | 10,00,000/- |
| Total | 30,64,220/- |

14. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents herein are liable to pay interest to the Complainant as per the proviso of Section 18(1) of the Act, 2016. Hence the Complainant herein is entitled to get interest for the period from 01/10/2012, the promised date for handing over till the actual date of handing over possession, on Rs. 12,14,220/- 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 of the apartment. 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 15.00% with effect from the date of handing over. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17.00% [15.00(current BPLR rate) +2%].

15. 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 No.1 to 3/Promoters shall pay to the Complainant, simple interest @ 17% per annum, (a) for Rs. 12,14,220/-, the amount paid before 30/09/2012, the promised date of completion and handing over, for every month from 01/10/2012 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 30/09/2012, from the date of each payment as mentioned in the table inserted above in para 13 till the actual date of handing over possession of the apartment to the complainant.

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 Complainant is 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/-
Smt. Preetha P Menon
Member

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits produced by the Complainant

- Exhibit A1 - Copy of sale agreement.
- Exhibit A2 - Copy of the construction agreement.
- Exhibit A3 series- Copy of the payment receipts.
- Exhibit A4 - Copy of the email communication

Exhibits produced by the Respondent

Nil

