



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 146/2023**

Present: Smt. Preetha P. Menon, Member

Dated 11<sup>th</sup> day of November, 2024

**Complainants**

1. Siby Joseph,  
Kakkamthottil House, Vazhoor P.O,  
Nedumavu, Pin – 686504,  
Now Residing at 147/AB1, Kakkamthottil,  
C V Mathappan Lane, Thuthiyoor,  
Cochin Special Economic Zone, Ernakulam – 682037.
2. Celine Siby Joseph,  
Kakkamthottil House, Vazhoor P.O,  
Nedumavu, Pin – 686504.  
Now residing at 147/AB1, Kakkamthottil,  
C V Mathappan Lane, Thuthiyoor,  
Cochin Special Economic Zone, Ernakulam – 682037.

[Adv. P.O Thomas Puthussery]

**Respondents**

1. Nest Infratech (M/s Nest Realities India Pvt. Ltd.,)  
Represented by its Managing Director,



COMPASS, 5<sup>th</sup> Floor, NH-47 By-pass,  
Near Vysali Bus Stop, Chakkaraparambu,  
Cochin – 682032. (Recently Corporate Office  
Shifted to Stone House, Market Road, Alwaye – 683101.

2. Mr. F M Shamier Marickar,  
Residing at A-6, Kent Nalukettu,  
Chakkaraparambu, Vennala P.O,  
Edappally South, Ernakulam – 682028.
3. Javad K Hassan,  
working as Management Consultant,  
Makar Manzil, Aluva Kara,  
Ernakulam District – 683101.  
Recently Corporate Office shifted to Stone House,  
Marked Road, Alwaye – 683101.
4. Meharbanu,  
Makar Manzil, Aluva Kara, Aluva East Village,  
Ernakulam District – 683101.
5. Jehangir Rowther,  
Makar Manzil, Thynothil Lane,  
Aluva, Ernakulam District – 683101.  
Recently Corporate Office Shifted to Stone House,  
Market Road, Alwaye – 683101.
6. Althaf Jehangir,  
Makar Manzil, Thynothil Lane,  
Aluva, Ernakulam District – 683101.  
Recently Corporate Office Shifted to Stone House,  
Market Road, Alwaye – 683101.
7. Kuttymoosa Shamsudin,  
Nest Infratech Director (M/s Nest Realities India Pvt. Ltd.),  
Compass 5<sup>th</sup> Floor NH-47 By-Pass, Chakkaraparambu,



Near Vysali Bus Stop Cochin – 682032.  
Recently Corporate Office Shifted to Stone House,  
Market Road, Alwaye – 683101.

[Adv. S. Ranjithkumar for R1, R5, and R7]

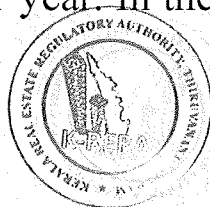
The above Complaint came up for final hearing on 22/08/2024. Counsel for the Complainant Adv. P.O Thomas Puthussery and Counsel for the Respondents No. 1, 5, & 7 Adv. S. Ranjithkumar attended the hearing. Notice to Respondent No. 2 returned unclaimed, Respondents No 2, 3, 4 & 6 set ex-parte. After taking the matter for orders, the counsel for the Complainants requested to reserve it for some more time as there was chance for settlement but he informed later that it could not be settled and hence order is hereby passed.

## **ORDER**

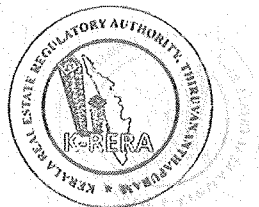
1. The factual matrix of the Complaint are as follows: The Complainant No. 2 is the wife of the Complainant No.1. The 1<sup>st</sup> Respondent is a Company incorporated and registered under the provisions of Indian Companies Act, 1956. The 2<sup>nd</sup> Respondent is the Managing Director of the above Company. The Respondents 3,5,6 and 7 are the Directors of the 1<sup>st</sup> Respondent Company. The Respondents 3 and 4 are the land owners. Based on the advertisements made by the Respondents, the Complainants approached Respondents with an intention to



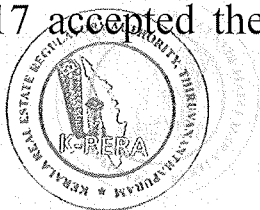
purchase a residential villa. The Respondents have represented that the construction of villa will be completed at the most in a year which will be of very good quality. Lured by the representations made by the Respondents through the advertisements, the Complainant No.1 approached the Respondents and enquired about the time within which the construction will be completed. It was informed to the Complainant No.1 by the Respondents that the entire construction will be completed within one year and the residential building will be handed over to the Complainant No.1 in a ready to occupy condition within one year from the date of booking. Based on the representations as above and after negotiations, the Complainant No.1 and the Respondents 1 and 2 have executed the agreement dated 13.09.2012 for the construction of villa in the property of the Respondents 3 and 4 as above. Another agreement was executed between Respondents 3 and 4 and the Complainant No.1 on the same day, whereby the Respondents 3 and 4 agreed to sell the property having extents of 6.22 cents with undivided share in the common amenities and facilities in the property having total extent of 11.08570 Acres in Re-Survey No. 323/1 and Sy. No. 336/5, Block No. 33 of Aluva East Village to the Complainant No.1. By the agreement for construction, the Respondents agreed to complete the construction within 12 months and further agreed to handover the villa to the Complainant No.1 in a ready to occupy condition with the aforesaid period of 1 year. In the above agreement, it was further



agreed that on completion of the construction, the Respondents will execute sale deed in respect of 6.22 cents and in respect of the common amenities and facilities to be provided in the undivided property having an extent of 11.08570 Acres. The residential villa agreed to be constructed as above is having an area of 2587 square feet with all common amenities and facilities. The plot allotted to the Complainant No.1 will be numbered as Plot No. TRL-24. As per the above agreement, the Complainants agreed to pay a total and mutually agreed sale consideration of Rs.86,66,450/- towards the purchase price of the villa and the Plot No. TRL 24 having 6.22 cents and undivided share of common amenities and facilities. Towards the advance sale consideration, the Complainant No.1 paid a sum of Rs.67,87,132/- to the Respondents. As per the terms of the agreement for construction, the Complainants agreed to pay a total amount of Rs.86,66,450/- in different instalments depending on the progress in construction of the villa and the common amenities and facilities including internal roads. It also includes the registration charges and other incidental expenses including statutory charges. The Complainant No.1 had availed a housing loan for making the payment of sale consideration. Since the Respondents did not commence the construction, the Complainant No. 1 had to close the loan account by borrowing money from money lenders by paying huge amount as interest.



2. The Complainants further submitted that as per the terms of the agreement for construction, the Respondents agreed to complete the construction within 1 year from the date of the agreement. The agreement for construction is dated 13.09.2012 as per which the Respondents are bound to complete the construction on or before 13.09.2013. The Respondents did not complete the construction within the agreed time or within the grace period or thereafter. The construction could not be started for reasons attributable to the Respondents alone and the Respondents misappropriated the amount collected from the Complainant No.1 and other intending purchasers for their other business activities. In spite of several requests from Complainant No.1 to begin the construction of the villa, the Respondents did not resume the construction. Therefore, the Complainant No. 1 lost all his hope to occupy the above villa in the near future. Thereafter, the Complainant No. 1 approached this Authority by preferring Complaint No. 84/2022 and in the said Complaint filed, the Respondents 1,3,5,6 and 7 filed a counter statement admitting the receipt of payments made on 07.12.2012 for Rs. 27,29,618/-, 14.02.2013 for Rs. 14,52,363/- and 19.12.2023 for Rs. 6,05,151/- The Respondents 1,3,5,6 and 7 made a proposal to the Complainant No. 1 to buy back the above villa for a margin of Rs.5,00,000/- and the same was communicated to the Complainant No.1 through an e-mail and that the Complainant No. 1 as per e-mail dated 22.06.2017 accepted the above proposal and further



contented that the Complainants instructed the 1<sup>st</sup> Respondent to transfer the amount paid pursuant to the agreement for sale and agreement for construction towards the purchase price and construction cost of Villa No. TRL 24 towards the purchase price and construction cost of the apartment No. 12-A-D2 in the project called the world apartment developed by the first Respondent. It is submitted that the Complainant No. 1 admits the e-mail dated 22.06.2017. The Complainant No.1 did not pursue his remedies based on the said e-mail as the same is not reduced with a written agreement and therefore the Complainant No. 1 was under the impression that the Respondents 1,3,5,6 and 7 will disown the same as the Respondents 1,3,5,6 and 7 did not issue the allotment letter as mentioned as per the said e-mail communication till date. It was under the above circumstances the Complainant No. 1 has earlier approached this Authority by preferring the Complaint No. 84/2022. Since the Respondents 1,3,5,6 and 7 agreed to act upon the said e-mail communication, the Complainant No. 1 has filed a petition seeking permission of this Authority to withdraw the above Complaint with liberty to approach this Authority again. The above petition was allowed by this Authority as per order dated 01.06.2023 in I.A No. 65/2023 and the above Complaint was dismissed as withdrawn with liberty to approach this Authority again. It is submitted that even though as per the e-mail communication, dated 22.06.2017 the offer made by the Respondent No.2 to buy back Villa No. TRL 24 for a margin of



Rs.5,00,000/- and to appropriate the amount paid by the Complainant No. 1 towards the purchase price and construction cost of TRL 24 is agreed to be appropriated towards the construction cost and purchase price of the apartment to be allowed to the second Complainant in the World Apartment developed by the first Respondent to be numbered as 12-A-D2 was accepted by the Complainant No.1. The Complainant No. 2 is the wife of the Complainant No.1. The Respondents till date did not issue the allotment letter nor executed any agreement based on the e-mail communication dated 22.06.2017. It is submitted that on enquiry by the Complainants, it was revealed that the construction of the apartment 'the World Apartment' is not yet completed and it will take time to complete the construction. Therefore, the Complainants requested to the Respondents to refund the amount. The Respondents did not respond to it till date.

3. The Complainants further submitted that the amounts paid by the Complainant No. 1 on 15.02.2011, 21.05.2012, 21.07.2012 and 09.10.2012 are agreed to be appropriated towards the sale consideration of the apartment in the apartment project by name 'Campus Woods' at Kalamassery carried out by the 1<sup>st</sup> Respondent. Therefore, the amounts paid by the Complainant No. 1 to the Respondents is an unmerited gain at the hands of the Respondents for which the Respondents are bound to pay interest at the rate of 16.85% to the Complainant. The



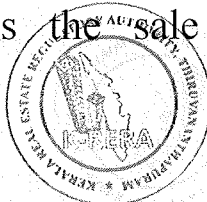


Complainant No. 1 has already caused to issue the notice dated 22.06.2021 requiring the Respondents to return the amount of Rs.67,87,132/- paid by him towards the sale consideration with interest at the rate of 15.2% for the above amount from 13.09.2012 onwards till payment/realization, and pay the compensation, cost and damage. Till now, none of the Respondents did respond to the notice issued on behalf of the Complainant No. 1. Before issuing the notice dated 22.06.2021, the Complainant No.1 has issued another letter requiring the Respondents to complete the construction of the villa and handover the same in a ready to occupy condition at the earliest. The above referred letter was issued on 26.02.2021, after the order passed by this Authority. The Complainants issued the notice dated 29.06.2023 requesting the Respondents to return the amount of Rs. 47,87,132/- as admitted by them in the counter statement filed by the Respondents 1,3,5,6 and 7 in Complaint No. 84/2022 with interest at the rate of 16.85%. None of the Respondents responded to it positively till date though they have received the notice. Hence the amount paid by the Complainants to the Respondents as consideration is to be returned with interest at rate of 16.85% and pay the compensation, damages and costs. The total amount paid by the Complainant No.1 to the Respondents towards the advance sale consideration is Rs.67,87,132/-. Out of aforesaid amount of Rs.67,87,132/- paid towards the purchase price of the villa by the Complainant to the Respondents, Rs.47,87,132/- was adjusted towards the purchase



price of the apartment No.12-A-D2, which has to be returned with interest @16.85% as the balance amount is adjusted towards the other apartment in Campus Wood project for which Complainants reserve the liberty to approach this Authority against them. The Complainants are entitled for the interest @16.85% for the payment of Rs.47,87,132/- made by the Complainants from its date of payment till the realization for which all the Respondents are jointly and severally liable. Because of the delay in completion of the construction, the Complainant No.1 had to unnecessarily stay in a rented house. This has caused untold miseries and hardships to the Complainants. It was because of the undue delay in completing the construction of the villa by the Respondents that the Complainant No. 1 agreed for residential apartments in the 'World Apartment' at Aluva and the Campus Wood' at Kalamassery. The apartments at the World Apartment and the Campus Wood at Kalamassery are also not completed till date. The Complainants reserve their liberty to proceed against the Respondents for the balance amount with interest and compensation in the event of their failure to complete the construction of the Campus Wood at Kalamassery within a reasonable time.

4. The reliefs sought by the Complainants are as follows: 1) Direct the Respondents to return the advance sale consideration of Rs.47,87,132/- paid by the Complainants to the Respondents towards the sale consideration, 2) Direct the



Respondents to pay the interests at the rate of 16.85% per annum for all the payments made by the Complainant to the Respondents till realization which is calculated as Rs. 83,26,062.40/-, so as to secure the ends of justice and 3) Award the cost of the proceedings to the Complainant from the Respondents. The copies of agreement for construction dated 13.09.2012, agreement for sale dated 13.09.2012, copies of payment receipts issued by the 1<sup>st</sup> Respondent, e-mail dated 22.06.2017 issued by the Complainant to the 2<sup>nd</sup> Respondent, counter statement dated 15.03.2023 filed by the Respondents No.1, 3,5, 6 & 7 in Complaint No.84/2022 before the K-RERA, order dated 01.06.2023 in Complaint No. 84/2022 passed by the Authority, lawyer notice dated 22.06.2021 issued by the Complainant No.1, lawyer's notice dated 29.06.2023 issued by the Complainants have been produced by the Complainants.

5. The Respondents No 1, 5 and 7 have submitted their counter statement stating that the Complaint is not maintainable either in law or on facts. Nowhere in the Complaint, it is averred that the Complainants herein belongs to which project and as the Complainants failed to plead and established that aspect, the Authority lacks jurisdiction to entertain this Complaint. The Complainant, through 2<sup>nd</sup> Respondent approached the 1<sup>st</sup> Respondent for purchasing an apartment in the project "The World". The intention of the Complainant can be seen from the Receipt dt. 15-02-2011 produced by the Complainant. These



Respondents are not admitting the receipt because the said amount collected in US dollars is not reflected in the ledger of the company and do not admit the payments dated 21-05-2012, 21-07-2012 and 09-10-2012 because the said payments are not reflected in the ledger of the company. So, the 1<sup>st</sup> Respondent Company is not liable to return the said sum to the Complainants. On the other hand, the payments made on 07-12-2012, 14-02-2013 and 19-12-2013 are acknowledged by the Company. The receipts dated 21-05-2012, 21-07-2012 and 09-10-2012 shows that the Complainant made payments to purchase Villa No. TRL 24 in “The World Villa” project. Thereafter, the Complainant never took the pain to get the sale deed executed in his name. He never co-operated with these Respondents to obtain necessary permissions from the authority concerned. The Complainant requested these Respondents to buy back the villa. So, these Respondents giving margin amount bought back the villa and sold to Rajesh C G and Vandana Varma. -On 22-01-2017 the Complainant No. 1 through email, acknowledged that he has received an amount of Rs. 5 Lakhs as margin money from the 1<sup>st</sup> Respondent, for the buyback of Villa No. TRL – 24, in world project. This amount was to be adjusted with consideration of apartment No.12 A D2 in the name of his wife Celine Siby Joseph. The said email communication itself shows that the Complaint is no longer an allottee of “World Villa” project. Hence this petition is not maintainable as per the Act.



6. The Respondents No 1, 5 and 7 further submitted that the Complainants had withdrawn from the project named "World Villa". So, the Complainants herein are no longer and allottee in the World Villa project. So, the impugned Act has no application on the alleged agreement between the Complainants and the Respondents. These Respondents never told that the construction will be completed in one year. Nowhere in the agreement it is stated as the construction will be completed in one year. The averments in Para Nos. 4(5) to (17) of the Complaint is with respect to the project namely "World Villa". The Complainants through email dated 22-01-2017 withdrawn from the said project. Hence the averments with respect to a withdrawn project cannot be looked into by this Authority. The payments dated 15.02.2021, 21-05-2012, 21-07-2012 and 09-10-2012 are not reflected in the ledger of this Respondent. Hence this Respondent disputed the genuineness of the same. These Respondents acknowledge the payments on 07.12.2012, 14.02.2013 and 19.12.2013. The said amount was adjusted with the price of the apartment in the name of his wife Celine Siby Joseph as per the request of the Complainant through email dated 22-06-2017. Thus, these Respondents bought back the villa No. TRL-24 and sold to Rajesh and Vandana Varma. The said villa is completely constructed. Since no amount is due from these Respondents, the Complainant is not entitled to get any interest from these



Respondent. It is true that the Complainants earlier approached the adjudicating officer and this Authority. The Complainants have no specific case with respect to the purchase of a particular apartment or villa, they even don't know under which project they spent money and how much money they paid. The Complaint No. 84/2022 was withdrawn by the Complainants due to lack of pleadings in their Complaint. Nowhere in our objection, it was stated that the Complainants are included in the project name "World apartments". The Complainants never approached these Respondents to execute an agreement in any of the projects belong to 1<sup>st</sup> Respondent. Accepting of money by a promoter will not come within the jurisdiction of this Authority. According to the Complainants, the sale consideration paid by them is appropriated towards the project namely "Campus Wood", then the Complainants have to produce the communications or agreements with respect to that project namely "Campus Woods". If any amount is due to the Complainants, they have to approach the proper forum to redress their grievance. Since the Complainants failed to plead and prove that "in which project they belong to", the Complainants have no right to get a remedy from this Authority. The agreement dated 13.09.2012 executed between the parties is a discharged agreement and the Complainants cannot claim any remedy based on a discharged agreement. The Complainants have no cause of action. The Complainants have no connection with World villa project after email dated 22.06.2017.



Hence, they are not entitled to get any relief as prayed for in the Complaint and pray to dismiss the Complaint with cost. No documents have been produced from the part of the Respondents.

7. The learned counsels for both the Complainants and the Respondents No.1, 5 & 7 were heard in detail through multiple hearings and examined the documents carefully. Notice to Respondent No. 2 was returned as “unclaimed” and the Respondents No 2, 3, 4 & 6 were set ex-parte. The issue of maintainability was heard initially at the request of learned counsel appeared for the Respondents No. 1,5, & 7 and after hearing both parties in detail, the said issue was decided vide order dated 23/07/2024 in favour of the Complainants with finding that the Complainants herein are the Allottees of the project. After hearing the parties appeared before this Authority and perusal of the pleadings and documents submitted by them with respect to the claim for refund of the amount paid by the Complainant along with interest, the remaining issues came up for consideration of this Authority were as follows: -

1. Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants?
2. Whether the Complainants herein are entitled to withdraw from the project and claim refund

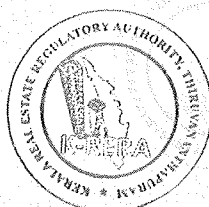


of the amount paid with interest as provided under Section 18 (1)(a) of the Act 2016 or not?

3. What order as to costs?

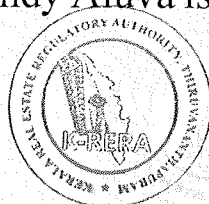
8. **Point No.1&2:** The real estate project in question named “The World Always” developed and promoted by the Respondents herein as the one with residential plots for construction of apartments and villas by providing roads and other common facilities at the expense of the purchasers/allottees therein. But the Respondents have registered only the apartment portion namely ‘The World Apartments’ as an ongoing project as per Section 3 of the Real Estate (Regulation & Development) Act 2016, [herein after referred as ‘the Act 2016’] vide Registration No. K-RERA/PRJ/016/2022. But they have not registered the villa portion namely ‘Nest the World’ so far, despite several directions from this Authority and the final order dated 09.01.2024 and as the Respondents/promoters had grievously failed to comply with the directions of this Authority in this regard, penal proceedings have been initiated against them, as prescribed under Section 59(1) of the Act 2016.

9. The documents produced by the Complainants herein are marked as **Exhibit A1 to A8. Exbt.A1** is the copy of agreement for construction dated 13.09.2012 executed between the 1<sup>st</sup> Complainant and the Respondents 1 represented by

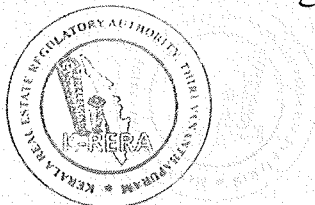




the 2<sup>nd</sup> Respondent. As per the said agreement the 1<sup>st</sup> Respondent agreed to construct villa on the plot No.TRL-24 with 5 bed rooms with a built up area of 2587 sq.ft for a construction cost of Rs.68,00,450/- in the project named “Nest The World”. It was stated in the said agreement that the 1<sup>st</sup> Respondent shall complete and handover possession of the building to the Complainant within 24 months from the date of obtaining building permit. **Exbt.A2** is the copy of agreement for sale dated 13.09.2012 entered into between the 1<sup>st</sup> Complainant and Respondents No.3 & 4. As per the said agreement the Respondents No. 3 & 4 agreed to sell and the 1<sup>st</sup> Complainant agreed to purchase Plot No.TRL-24 having an extent of 6.22 cents for constructing a villa together with undivided share in the common areas for a total consideration of Rs.18,66,000/-. It was also stated in the said agreement that the sale deed shall be executed and delivery of possession of property shall be completed in all respects on or before 31/12/2013. **Exbt.A3 series** is the copies of payment receipts issued by the 1<sup>st</sup> Respondent. **Exbt.A4** is the copy of e-mail dated 22.06.2017 issued the 1<sup>st</sup> Complainant to the Respondent regarding the receipt of Rs.5 Lakhs for buy back of villa No.TRL-24 in the ‘The World’ project in Aluva. **Exbt.A5** is the copy of counter statement dated 15.03.2023 filed by the Respondents No.1, 3,5, 6 & 7 in Complaint No.84/2022 before the Authority. In para 2 of Exbt.A5, the Respondents 1,3,5,6, and 7 have stated that “the World Villa” project situated in Choondy Aluva is not registered under K-RERA



due to the non-approval of layout and plotted development plan from the local authorities concerned. The 1<sup>st</sup> Respondent is under the process of taking necessary steps to obtain the same” and in para 3 the Respondents stated that “the receipts issued on 07-12-2012 for Rs 27,29,618/- 14-02-2013 for Rs. 14,52,363/- and 19-12-2013 for Rs. 6,05,151/- are true and hence it is acknowledged by the 1<sup>st</sup> Respondent”. In para 4 it was stated that “In the meantime the 1<sup>st</sup> Respondent had offered to buy back the said villa for a margin of Rs. 5,00,000/- and the Complainant through an e-mail dated 22-06-2017 agreed and accepted the said proposal to buy back the Villa bearing No. TRL 24” In para 5 it was stated that “As per e-mail dated 22-06-2017, the Complainant had directed the 2<sup>nd</sup> respondent to transfer the amount paid against TRL24 Villa towards purchase/allotment of another apartment having number 12A-D2 in the Project called “The World Apartment” developed by the 1<sup>st</sup> Respondent, in his wife’s name.” In para 6 it was stated that “Under such circumstances, buyback of TRL24 villa was finalised between the complainant and 1<sup>st</sup> respondent upon the request of the complainant himself. Thereafter the 2<sup>nd</sup> respondent sold the TRL 24 villa to another customer”. In para 13 it was stated as follows: “It is true that the Respondents executed Annexure A1 and A2. Thereafter as per request of the complainant the 1<sup>st</sup> Respondent was compelled to buy back the Villa No. TRL-24 with a margin of Rs. 5,00,000/”. In para 14, it was stated that “the “respondents herein acknowledged the payments through

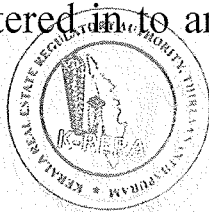


Annexure A7 to A9 only. The said amount received by the Respondents were adjusted with the price of the apartment in the name of the Complainant's wife Celine Siby Joseph as per the request of the Complainant though e-mail date 22-06-2017. Thus, the 1<sup>st</sup> Respondent bought back the villa No TRL-24 and later sold to some other customer". **Exbt.A6** is the copy of the order dated 01.06.2023 in Complaint No. 84/2022 passed by the Authority. **Exbt.A7** is the copy of lawyer's notice dated 22.06.2021 issued on behalf of the Complainant No.1, calling upon the Respondents to refund the amount paid by him along with interest and compensation. **Exbt.A8** is the copy of lawyer's notice dated 29.06.2023 issued by the Complainants, calling upon the Respondents to refund an amount of Rs.47,87,132/- along with 16.85 % interest.

10. As the facts and findings in the abovementioned maintainability order passed earlier are found to be having much significance here for adjudication of rest of the issues, I feel it appropriate to repeat them as follows: According to the Complainants, Complainant No. 1 was an allottee of the Villa part of the project named 'Nest the World' developed by the Respondents herein and entered in to Exhibit A1 agreement for construction dated 13.09.2012 between the Respondents 1 and 2, in which it was stated that Respondents No. 3 and 4 became vested with property around 11.08570 Acres in Aluva East Village vide 7 sale deeds mentioned therein and that the "Vendors entrusted the



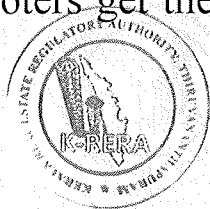
1<sup>st</sup> Respondent to develop the said land by providing roads and other common facilities and to demarcate the remaining area into convenient residential plots for construction of house or villa therein at the expenses of the purchasers of the project". It was further stated that "the 1<sup>st</sup> Respondent has a proposal to develop the land by providing roads and other common facilities and to demarcate remaining area into convenient residential plots for construction of apartments and villas therein at the expense of the purchasers of the plots therein and the Project is called NEST 'THE WORLD'ALWAYE". As per Exhibit A1, first party/1<sup>st</sup> Respondent agreed to arrange for getting approved plan from Keezhumadu panchayath for construction of villa having a built-up area of 2587 sq ft in the plot in the NEST 'THE WORLD'ALWAYE and the second party/the Complainant wants to entrust construction work of the villa and construction of share in the common area and common facilities to the first party and the first party agreed to construct villa for a construction cost of Rs. 68,00,450/-. The first party/Respondent No.1 agreed to construct the building on the plot No. TRL-24 in accordance with the plan finalised and specification attached along with the agreement. The total consideration agreed was Rs. 86,66,450/- including the land cost of Rs 18,66,000/- As per the agreement for construction, the Respondents agreed to complete the construction within 24 months from the date of obtaining building permit. On the same day, the Complainant No. 1 entered in to an agreement for sale also with



the Respondents No. 3 and 4 which is marked as Exhibit A2, as per which, the Respondents 3 and 4 agreed to sell the property having extents of 6.22 cents with undivided share in the common amenities and facilities in the property having total extent of 11.08570 Acres in Re-Survey No. 323/1 and Sy. No. 336/5, Block No. 33 of Aluva East Village to the Complainant No.1. In the above agreement, it was further agreed that on completion of the construction, the Respondents will execute sale deed in respect of 6.22 cents and in respect of the common amenities and facilities to be provided in the undivided property having an extent of 11.08570 Acres before 31.12.2013. As agreed above, the complainant paid consideration of Rs. 67,87,132/- vide payment receipts as Exbt.A3 series. The Complainant No.1 was admittedly an allottee of the Nest World Villa project developed and promoted by the Respondents herein as divulged from the aforementioned Exbts. A1 & A2 agreements. Exbts. A3 series, the copies of payment receipts validate the contentions of the Complainants with regard to the payments made by Complainant No. 1 to the Respondent No. 1/Promoter Company towards consideration for purchase of Villa No. TRL-24 in 'The World' project. It is to be noted that the Respondents never had a case that they had completed the villa project on time as agreed to the Complainant No. 1 herein as per the contract entered into with him. Moreover, this Authority received several complaints from the allottees of both the Villas as well as the Apartments of 'The World' project



of the Respondents. Though the total project, consisting of both parts of villas and apartments, is an ongoing real estate project required to be registered as per Section 3 of the Act 2016, the Respondents /Promoters had shown severe disregard towards the law by not registering the project so far and only after the intervention of this Authority on receiving complaints from several allottees of both villas and apartments, they had registered the Apartments portion of the project. The Respondents stated in Exhibit A5 that the World villa project cannot be registered before this Authority due to the non-approval of layout and plotted development plan from the local authorities concerned and they are under the process of taking necessary steps to obtain the same. As far as the Villa portion is concerned, it is evident that the Respondents/Promoters had shown severe negligence of law by not obtaining the Development Permit from the local authority as mandated under the Building Rules. Even after the direct inspection by this Authority and hearing conducted at the project site in the presence of the allottees, Promoters and local authority concerned, nothing has been done till date by the Respondents/Promoters to obtain the permit and register the villa portion before this Authority as assured before this Authority. Without even obtaining the Development permit which should have been procured right before commencing the development as mandated under the Building Rules, how could these Respondents/Promoters get the Development certificate which is



supposed to be obtained after completion of the plot development? During the direct inspection of this Authority and hearing of the parties concerned in several complaints, it was found undeniably that the construction works of the common amenities promised to the allottees of both segments i. e; villas and the apartments of the project "Nest the World" have not been completed so far and project could not be handed over by the Promoters to the Association of allottees on time.

11. Here, the case of the Complainants is that the Respondents/Promoters had grievously failed to honour the terms of Exbts. A1 & A2 agreements by completing and handing over the villa allotted to the Complainant No.1 along with the agreed amenities and facilities despite receiving huge amount of consideration from them and thereafter the Respondent made the Complainant No.1 agreed to book/purchase one apartment in the Apartment segment of the World project itself after selling back the villa to the Respondents. It can be seen from the Exhibit A4 e-mail communication from the Complainant No.1 on 22.06.2017 to the Respondent No 2, that the Complainant was given a margin of Rs.5 lakhs for the buyback of villa No TRL-24 and this amount was adjusted with the apartment No 12A-D2 price in the World project itself in the name of his wife, the Complainant No. 2 herein. Surprisingly, it could be found that many facts denied by the Respondents here in the proceedings of this complaint were



admitted by them in Exbt.5, their counter statement filed earlier in Complaint No. 84/22 before this Authority.

12. As per the Exhibit A4, above mentioned copy of the counter statement dated 15.03.2023 filed by the Respondents No.1, 3, 5, 6 and 7 before this Authority in Complaint No 84/2022, they admitted the payments for receipts issued on 07-12-2012 for Rs.27,29,618/- 14-02-2013 for Rs.14,52,363/- and 19-12-2013 for Rs.6,05,151/- and also seen them admitting that that the 2<sup>nd</sup> Respondent had offered to buy back the said villa for a margin of Rs.5,00,000/-, the Complainant through an e-mail dated 22-06-2017 agreed and accepted the said proposal to buy back the Villa bearing No. TRL 24 and the Complainant had directed the 2<sup>nd</sup> respondent to transfer the amount paid against TRL24 Villa towards purchase/allotment of another apartment, having number 12A-D2 in the Project called "The World Apartment" developed by the 1<sup>st</sup> Respondent, in his wife's name, buyback of TRL24 villa was finalised between the complainant and 1<sup>st</sup> Respondent and thereafter the 2<sup>nd</sup> respondent sold the TRL 24 villa to another customer and the said amount received by the Respondents were adjusted with the price of the apartment in the name of the 1<sup>st</sup> Complainant's wife, the 2<sup>nd</sup> complainant herein. Hence, the contentions of Respondents No. 1, 5, and 7 herein that Complainants had withdrawn from the project named "World Villa" and the Complainants herein are no longer allottees of the





World Villa project and the Complainants failed to establish the fact as to which project they belong to and as the claim of the complainants is based upon a discharged agreement, this Authority lacks jurisdiction to entertain this Complaint, etc., are absolutely meritless and contrary to the facts and circumstances of the case. Since these facts were admitted by the Respondents in a former case before this Authority as mentioned above, they have no right to raise such frivolous allegations that the Complainants never approached them to execute an agreement in any of their projects and accepting money by a promoter will not come within the jurisdiction of the Authority, etc. In fact, it was the responsibility of the Respondents/Promoters to issue allotment letter to the complainants/ allottees and enter into agreement for sale in the proper manner as prescribed under the law, as they had received substantial amount of consideration from the complainants much earlier. It has been admitted by the Respondents in Exbt.A5 that the withdrawal from the villa project by Complainant No.1 was at the initiative of the 1<sup>st</sup> Respondent and undoubtedly and admittedly the Respondents could not complete the said project on time as per the terms of the Exbt. A1 & A2 agreements. The Respondents admitted the execution of the Agreement with the 1<sup>st</sup> Complainant and acknowledged the payment receipts issued on 07-12-2012 for Rs 27,29,618/- 14-02-2013 for Rs. 14,52,363/- and 19-12-2013 for Rs.6,05,151/- Since the execution of Exhibits A1 and A2 agreements were done in one project and payments were received



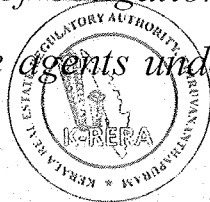
by the 1<sup>st</sup> Respondent/promoter, the buyback was materialised at the initiative of the 1<sup>st</sup> Respondent themselves and amounts received from the 1<sup>st</sup> Complainant had been adjusted towards purchase of an apartment in the residential apartment building in the very same project 'Nest world'.

13. Hence the Respondents being the promoters were duty bound to execute necessary alternate agreement for handing over of the said apartment which they proposed to sell to the Complainants/allottees from whom they received consideration amount admittedly through the buyback scheme and they ought to have issued necessary allotment letter and to fulfil the commitment to the Complainants/allottees. Even if no alternative agreement is executed and allotment letter is issued, the Respondents shall not be absolved from the responsibility of the promoters. Here, the Respondents/promoters themselves had committed serious mischief of selling the villa to some other customer, as admitted by them in Exhibit A5 counter statement, without refunding the amount to the Complainant or entering into fresh agreement in place of the agreement already executed with the Complainants, as admitted in Exhibit A5 counter statement itself. Hence, the Respondents/promoters also have violated the provisions of Section 13 of the Act, 2016 by not executing a proper agreement for sale as per Annexure 'A' under Rule 10 of the Kerala Real Estate (Regulation and Development)



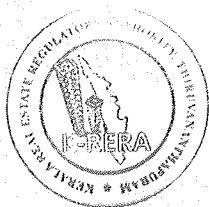
Rules, 2018 with respect to the sale of the apartment in the ‘World Apartment project’ even after receiving a sum more than ten percent of the cost of apartment and also violated Section 17 of the Act, 2016 by not executing a registered conveyance deed in favour of the Complainants/allottees on time or handing over of physical possession of the apartment to the Complainant so far. The Respondents/Promoters herein, after having committed such series of violations of law cannot urge for any benefit out of it as they did in this case. In this context, it is relevant to quote the maxim “*nullus commodum capere potest de injuria sua propria*” which means “*no man can take advantage of his own wrong.*” In *Devendra Kumar vs State of Uttaranchal & Ors.: 2013 (3) KLT (Suppl) 62 (SC): (2013) 9 SCC 363: AIR 2013 SC 3325*, it was held by the Hon’ble Apex Court that “*a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation.*”

14. The Hon’ble High Court of Kerala in *Unnikrishnan Chandran Pillai V. Tata Reality Infrastructure Ltd.*, observed as follows:- “*Section 38 provides about the powers of K-RERA to impose penalty or interest in regard to any contravention of obligation cast upon the promoters, allottees and real estate agents under the Act or Rules and Regulations.*”



*So, the above provisions under the Act also would speak in volumes about the power and authority of the K-RERA to resolve the issue when a complaint is preferred or Suo moto in relation to the Act and Rules. So, when it has come out there is express violation of the provisions of the Act from the part of the promoter in receiving more than 10% of the sale value as advance without executing agreement by the promoter the Authority is well within its powers to resolve the issue when a Complaint is filed by an aggrieved allottee, without again driving the allottee to civil court for redressal of the grievance to get the advance amount unauthorisedly received by the promoter.”*

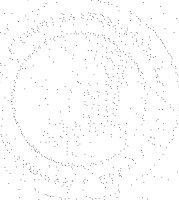
15. As mentioned above, the project in question ‘The World Apartment’ is a registered project under Section 3 of the Real Estate (Regulation & Development) Act 2016 before this Authority and the proposed date of completion given by the Respondent/promoter was 30.04.2023. On verification of the registration webpage of the project maintained by the Authority, it is seen that out of 144 building units, only 81 building units are sold and status is still shown as “in progress”. It is seen that the Respondents/Promoters have not uploaded / obtained occupancy certificate for the project till date. It is also noticed that the Form 6 showing completion of the project is not uploaded as on date in the registration web page which clearly reveals that the project in question is not completed even now.



Since the occupancy certificate is not issued to the said project and the registration web portal clearly discloses that the project is not yet completed, it is apparent that the Respondents/Promoters could not complete and hand over the apartment to the Complainant till date. The provisions under Sections 18(1) and 19(4) of the Act 2016 give entitlement to the allottees to withdraw from the project and obtain refund of the amount paid by them in the circumstances prescribed therein. Both these provisions are reproduced herein below:

Section 18(1): *“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”.*

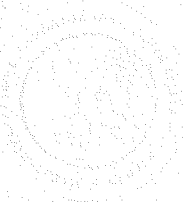
Section 19(4): *“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may*



*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”.*

16. With respect to the above provisions of law, the Hon’ble Supreme Court of India made some remarkable observations in its judgement M/S Newtech Promoters & Developers Pvt. Ltd. Vs State of U. P. & Ors., which are suitable to be replicated herein 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 not attributable to the allottee/home buyer, 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”.*

17. On the basis of the above facts, it is found that the Complainants herein are entitled to get refund of the amount paid them to the Respondents No.1 along with interest, as prescribed under the law. Hence, Points No. 1 &2 are answered accordingly in favour of the Complainants.

18. According to Section 69 of the Act, 2016  
*“(1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary*



*or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”*

19. As per Exbt.A3 series the Complainants have paid an amount of Rs. 47,87,132/- to the Respondents. The details of payment made by the Complainant is as follows: -

<u>Date</u>	<u>Amount</u>
07/12/2012	Rs.27,29,618.00
14/02/2013	Rs.14,52,363.00
19/12/2013	Rs.6,05,151.00
<b>Total</b>	<b>Rs.47,87,132.00</b>

20. 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 15.15% with effect from 15/06/2024. The Complainant is entitled to get 17.15% simple interest on the amount paid, from the respective dates of payments as detailed above in the payment schedule, till the date of refund as provided under the above Rule.





21. In view of the above facts and findings, and invoking Section 37 of the Act, this Authority hereby directs as follows: -

1. The Respondents / Promoters shall return the amount of **Rs.47,87,132/-** to the Complainants with simple interest @ 17.15% per annum from the date of receipt of each payment, as shown in the above table inserted in para 19, till the date of realization of the total amount.

2. If the Respondents / Promoters fail to pay the aforesaid sum with 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 aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

Both Parties shall bear their respective costs.

Sd/-

Preetha P. Menon  
Member

True Copy/Forwarded By/Order

  
Secretary (legal)

**EXHIBITS****Documents marked from the side of Complainants**

Exhibit.A1: The copy of agreement for construction dated 13.09.2012.

Exhibit A2: The copy of agreement for sale dated 13.09.2012.

Exhibit A3 Series : The copies of payment receipts issued by the 1<sup>st</sup> Respondent.

Exhibit A4: The copy of e-mail dated 22.06.2017 issued by the Complainant to the 2<sup>nd</sup> Respondent.

Exhibit A5: The copy of the counter statement dated 15.03.2023 filed by the Respondents No.1, 3,5, 6 & 7 in Complaint No.84/2022 before the K-RERA.

Exhibit A6: The copy of the order dated 01.06.2023 in Complaint No. 84/2022 passed by the Authority .

Exhibit A7: The copy of lawyer notice dated 22.06.2021 issued by the Complainant No.1.

Exhibit A8: The copy of lawyer's notice dated 29.06.2023 issued by the Complainant.

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