



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 173/2023

Dated 15th March, 2025

Present: Smt. Preetha P Menon, Member

Complainant

Abraham Jacob
Kalissery House,
Kanichira, Nileswar P O
Kasargod- 671314

Respondents

- 1 Marickar Plantations Pvt Ltd,
Represented by F M Shamier Marickar
A-6, Kent Nalukettu,
Chakkaraparambu,
Vennala P.O, Edappally South Village,
Kanayannoor Taluk, Ernakulam - 682028
- 2 Nest Infratech,
Represented by F M Shamier Marickar
Compass, 5th Floor NH-47
By – Pass Chakkaraparambu Near
Vysali Bus Stop, Cochin – 682032

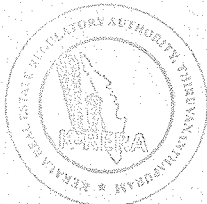


- 3 F M Shamier Marickar,
Director, Marickar Plantations Pvt Ltd.
A-6, Kent Nalukettu,
Chakkaraparambu,
Vennala P.O, Edappally South Village,
Kanayannoor Taluk, Ernakulam - 682028

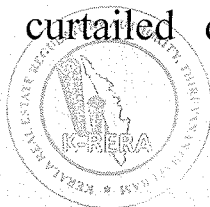
The above Complaint came up for virtual hearing on 13/01/2025. The Complainant attended the hearing but the Respondents were absent on that day. The notices were served to the Respondents and Respondent No.3 representing Respondents 1 &2 was present in all other hearings.

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 flat having a built-up area of 1433 sq. feet marked as 5 B1 on the 5th floor including proportionate share of common areas and facilities together with the right to use a covered car park in the Orchid Park along with the undivided indivisible right title and interest in the land consists of 1433/205000 undivided share. As such, the Respondent executed a sale and construction agreement on 1st August 2011 in favour of the Complainant. The Complainants have invested Rs. 37,76,000 including electricity connection, transformer, KWA connection, Association fee etc. as agreed by the parties. The

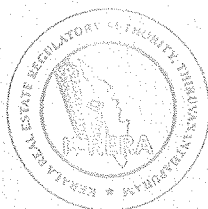


promoter/respondent has assured swimming pool with baby pool, Sauna and lacuzzi, club house, Roof top party area, Barbeque counter, Children's play area, Advanced multi Gym & health club, Billiards, table tennis and card room, Elegant lobby, internet broad band connectivity, High speed elevators, Intercom facility, Round-the-clock security, 24 Hrs generator back up, Association room, Home theatre, Intrusion alarm system, Video door phone, Guard tour system, CCTV, Wi-Fi, In house convenience store, Vasthu friendly layouts, Garbage chute, Land scaped gardens, Sewage treatment plant, Rain water harvesting, spacious covered car parking and common toilets for drivers and domestic help. But the Respondent has not completed any of these. In spite of the repeated request and demands of the Complainant, the Respondent has not yet made any arrangement for permanent electricity connection to individual flats. The Respondent has not yet fulfilled the required parameters for obtaining the Occupancy Certificate to the Complainant. The Respondent, instead of completing the work as per the terms of agreement, diverted the funds for other purposes. It is the primary duty of the Respondent to utilize the amount collected from the flat owners for the completion of the apartment and surroundings. Due to the inordinate delay and inactive attitude of the Respondent, the Complainants suffer much emotional, mental, physical and social trauma among the relatives, friends and society at large. Even after investing the hard-earned money for this apartment, the dream of peaceful life had been curtailed due to the carelessness and



irresponsibility of the Respondent. No electricity meter is installed, in spite of the repeated request by the apartment owners. The relief sought by the Complainant is to i) Direct the Respondent to ensure all parameters including, Permanent electricity connection, drinking water connection, Safe and secure living with power back up, Installation of Fire and Safety standards, Safe passage in stairs and corridors, Installation of 2 elevators for residents, Completions of all common area facilities, proper car park facilities and proper sewage treatment plant to obtain Occupancy Certificate to the Complainant at the earliest. ii) Direct the Respondent to pay an amount of Rs. 58,75,147 being the interest payable @ 16.85% (SBI – PLR 14.85% + 2%) as per the RERA Acts & Rules V(18) and the original agreement signed by the builder for the delay period in handing over of the flat 5-B1 and the project from 31-12-2013 to 10-05-2023. The Complainant produced copies of the sale agreement, construction agreement, payment receipts and no due certificate. The Respondents neither filed any written statement nor submitted any documents even after giving ample time to do so.

2. 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



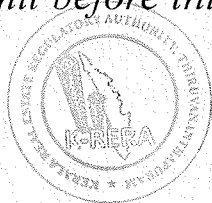
that the project is still not completed and the occupancy certificate has not been obtained for the same.

3. Here, the reliefs sought by the Complainant is for completion, handing over possession and interest for delay. As far as the prayer for completion, handing over and sale deed execution is concerned, the Authority passed a common order dated 17.03.2021 in Complaint Nos. 148/2020, 165/2020, 173/2020, 174/2020, 175/2020, 176/2020, 219/2020, 220/2020, 225/2020, 226/2020, 228/2020, 229/2020, 232/2020, 251/2020, 258/2020, 278/2020, 282/2020, 298/2020, 317/2020, 318/2020, 38/2021 filed by the allottees of the same Project 'Nest Orchid Park' directing the Respondents -1) *To complete and hand over, the project 'Nest Orchid Park' to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities as agreed as per the agreements entered into with them and with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 30.06.2021 without fail ; 2) To enable the formation of the Association of allottees in the project and its registration as provided under Section 11(4) (e) of the Act ;3) to open an escrow account with the Association of allottees and all the allottees shall deposit the respective due amounts to be paid by them in the said account ;4) To complete all the executions of sale deeds, if any, related to apartments / common areas in favour of allottees/Association ;5) to handover all the documents pertaining to the project such as a) title deeds of land, b)*



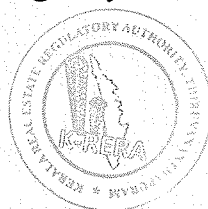
permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association ;6) to submit before this Authority, the compliance report in the form of an affidavit on 01.07.2021. It was stipulated that in the event of any non-compliance of this order by the Respondent, this Authority shall initiate severe penal actions as provided under Section 63 of the Act.

4. Thereafter, Complaints No. 186/21, 326/21, 327/21 were filed before this Authority relating to the same Project. As the 24 complaints including the earlier Complaints were related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints were one and the same, the said Complaints were clubbed together and Authority through order dated 20/05/2021 directed the Respondent (1) to complete and hand over the project 'Nest Orchid Park' to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities as agreed as per the agreements entered into with them and with all the mandatory sanctions/approvals required to be received from the Authorities concerned, **on or before 31.08.2022** without fail, (2) to complete all the executions of sale deeds, if any, related to apartments/common areas in favour of allottees/Association (3) to handover all the documents pertaining to the project such as a) title deeds of land, b) permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association, within the above said period, (4) to submit before this Authority, the compliance report in



the form of an affidavit on 01.09.2022. It was also stipulated that in the event of failure on the part of the Respondent / Promoter to complete the entire works of the project and hand over the apartment as stated above, the Respondent/ Promoter shall be liable to pay Rs. 25,000/- per day from 01/09/2022 to the date of actual compliance with said direction, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016. The above said order dated 20/05/2021 for completion and handing over shall be applicable to all the allottees of the Project in question including the Complainant herein.

5. Thereafter, the Complainant in Complaint No. 174 of 2020 filed Execution Petition No. 7 of 22. The Judgement Debtor No.2 submitted an affidavit with regard to the present status of works in the Project. He submitted that almost all the works were completed and assured that the works still not completed will be completed by 30/10/2023. The Decree Holder also submitted that the affidavit has been received and agreed that the work is going on as agreed. Hence, the Authority decided to dispose of the petition based on the assurance given by both parties. The Authority directed the Judgement Debtors to file a compliance report in the form of an affidavit with respect to the order dated 20.05.2022 and remit the amount of penalty imposed therein from 01.09.2022 till the date of compliance of the said order, within 2 weeks from the date of receipt of the order. It was stipulated that in case of failure to comply with the above direction, the Registry shall be constrained to initiate steps

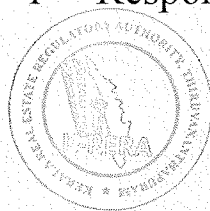


to recover the above said penalty from the Judgement Debtor, in accordance with the provisions of the Act 2016 and Rules 2018 made thereunder and the EP was closed accordingly. As the Respondent/Promoter herein has failed to remit the penalty, the secretary (Legal) of this Authority has initiated necessary steps to remit the penalty till date from the Respondent/Promoter.

6. Heard both parties in detail on the claim of interest for delay in handing over the apartment to the Complainant as per the terms of the agreement. After hearing on either side and perusing the pleadings and documents submitted with respect to the claim of the Complainant, the points arose for consideration are as follows:

- (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 is 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?

7. **Points No. 1&2:** The documents produced by the Complainant are marked as **Exhibits A1 to A4**. **Exhibit A1** is the agreement for sale dated 10/08/2011 entered into between the Complainant and the 1st Respondent represented by the 3rd



Respondent for the 1433/205000 undivided share equivalent to 0.685 cents in the said 98.051 cents of land together with the right to construct a three bed room Apartment No.5-B-1 facing East having a super built-up area of 1433 sq.ft in the Fifth floor of Nest Orchid Park Apartments and proportionate share in the common areas and common facilities and one covered car parking area for a total sale consideration of Rs. 2,05,600/- 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 10.08.2011 entered into between the Complainant and the 2nd Respondent represented by the 3rd Respondent for the construction of the flat described in the B schedule with car parking for a consideration of Rs. 32,18,650/- along with 1433/205000 undivided share equivalent to 0.685 cents in the said 98.051 cents of land together with the right to construct a three-bedroom Apartment No. 5-B-1 having a super built-up area of 1433 sq. ft in the Fifth floor of the said project and proportionate share in the common areas and common facilities and a covered car parking area in which the promised date of completion is shown as 30.09.2012 with 3 months grace period. **Exhibit A3** series are the payment receipts. **Exhibit A4** is the no due certificate issued in the name Complainant by the Respondent no.2 represented by Respondent No.3.

8. The 2nd relief sought by the Complainant is to direct the Respondent to pay interest @ 16.85% for the amount collected from the Complainants. 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 Complainants have opted to continue with the project and claimed interest for delay in handing over possession of the apartment to them.



9. 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, the construction agreement dated 10.08.2011 entered into between the Complainant and the 2nd Respondent represented by the 3rd Respondent for the construction of the flat described in the B schedule with car parking for a consideration of Rs. 32,18,650/- along with 1433/205000 undivided share equivalent to 0.685 cents in the said 98.051 cents of land together with the right to construct a three-bedroom Apartment No. 5-B-1 having a super built-up area of 1433 sq. ft in the Fifth floor of the said project and proportionate share in the common areas and common facilities and a covered 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.

10. 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



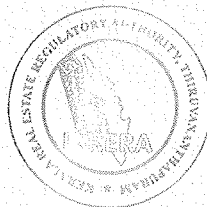
over physical possession of the building/apartments to the allottees therein. Section 17 of the Act, 2016 stipulates that “*conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter 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.*”

11. 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 Exhibit A3 series receipts and Exhibit A4 no due certificate produced, it is understood that the payments were made on time, 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.

12. 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 Complainants 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.”*

13. 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 and 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 Complainant.

14. In the instant case, the Complainant had remitted Rs. **37,76,000/-** to the Respondent No.2 which is supported by Exbt 3 series documents. The said documents reveal that the Complainant has paid an amount of Rs.18,50,000/- before the promised date of completion, i.e. on 30.09.2012. 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.
10.08.2011	1,00,000/-
12.08.2011	6,00,000/-
21.09.2011	3,50,000/-
21.09.2011	3,00,000/-
07.04.2012	2,00,000/-
26.04.2012	2,00,000/-
30.08.2012	1,00,000/-
22.11.2012	1,50,000/-
22.02.2013	49,000/-
06.06.2013	49,000/-
05.07.2013	5,00,000/-
10.02.2014	2,00,000/-
25.03.2014	1,00,000/-
29.05.2014	2,00,000/-
15.07.2014	1,00,000/-
21.12.2015	78,000/-
15.11.2018	1,00,000/-
22.12.2018	3,00,000/-
24.01.2019	1,00,000/-
Total	37,76,000/-



15. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents/Promoters are liable to pay interest to the Complainant as per the proviso to 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. 18,50,000/- 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 BPLR rate is 15.15% with effect from 15/06/2024. The Respondents are liable to pay interest on the amount paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%]. Here, as the Complainant has sought relief of interest for delay @16.85% on the amount paid to the Respondent, the Authority has decided to grant same after the detailed perusal of pleadings and documents submitted by the Complainant.

16. 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 shall pay to the Complainant, simple interest @ 16.85% per annum, (a)for Rs. 18,50,000/-, the amount paid before 30/09/2012, the promised date of completion and handing over, for every month from 1/10/2012 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 14 till the actual date of handing over possession of the apartment to the complainant.
- 2) If the Respondents fail 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 and Rules.

Sd/-

Smt. Preetha P Menon
Member

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Documents produced by the Complainant

Exhibit A1: Copy of agreement for sale

Exhibit A2: Copy of agreement for construction

Exhibit A3 Series: Copy of payments receipts

Exhibit A4: Copy of no dues certificate

Documents produced by the Respondents

Nil