

KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**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**

Dated 17th March 2021

Present: Sri. P. H Kurian, Chairman
Smt. Preetha P Menon, Member

Complainants

1. Joji Cyriac & Smt Linda Kuriakose : Complaint No.148/2020
Cherusseriyil House
Nedumkunnam
Nedumeni, Kottayam-686542
2. Aleyamma John : Complaint No.165/2020
158/c Linton Street
Kolkata 700014, West Bengal
3. Radhakrishnan Pillai & : Complaint No.173/2020
Usha R. Pillai
TA-6, 11th floor,
Nest Orchid Park
Kalathipady, Kottayam
4. P.A Philip : Complaint No.174/2020
4 B2, Nest Orchid Park
Kalathipady, Kottayam
5. P.J Jose& Smt. Mariamma Jose : Complaint No.175/2020
2-A-1, Nest Orchid Park
Kalathipady, Kottayam

6. George Joseph & Thankamani George : Complaint No.176/2020
8 -B/3, Nest Orchid Park
Kalathipady, Kottayam
7. Mathew T.P : Complaint No. 219/2020
Thuruthayil House,
Champakulam, Alleppy Dist
8. Indirabai Vijayaraghavan : Complaint No. 220/2020
Vijay Nivas, 5th Cross Road
E-3/141, KSHB Gandhi Nagar Housing Scheme
Kottayam-685630
9. Ajish Samuel Thomas & Neethu Ajish : Complaint No. 225/2020
Nest Orchid Park
Kalathipady, Kottayam
10. Lillykutty Thomas & K.Thomas : Complaint No. 226/2020
Santhosh Bhavan, Chemmanthoor
Punalur P.O, Pathanapuram Taluk
Kollam District, Kerala- 691305
11. Lekha .G & Radhakrishnan .S : Complaint No. 228/2020
Thumpayil House, Kumaranalloor
Kottayam- 686016
- 12.Thomas V Francis : Complaint No. 229/2020
K16 Kailas Nagar, Pattom
Trivandrum- 695004
13. Santhosh Abraham Oommen & C.A Oommen : Complaint No. 232/2020
7-A-6, 7th floor,
Nest Orchid Park,
Kalathypady, Kottayam

14. John Thampi : Complaint No. 251/2020
Karaparambil House,
Power House Ward
A.S Road, Alleppey
15. Biji Thomas : Complaint No. 258/2020
Apartment No: B4, 6th floor
Nest Orchid Park
Kalathipady, Kottayam
16. K.T Chacko & K. Thomas Chacko : Complaint No. 278/2020
Kuttivalachel House, Onamthuruthu
Ettumanoor, Kottayam- 686602
17. Dr. Jose James : Complaint No. 282/2020
Pannivelil House, S H Mount
Kottayam – 686006
18. Annamma Abraham : Complaint No. 298/2020
B/103, Akashnidhi C.H.S Ltd
Ramdev Park Road, Thane 401107
19. P. Kurian John & Binny J. Kurian : Complaint No. 317/2020
Velloormanor Vadavathoor P.O
Kottayam
20. Shibu Jacob & Ginu Jacob : Complaint No. 318/2020
5A-4, 5th floor, Nest Orchid Park
Kalathipady, Kottayam-686010
21. Dr. Nirmala Joseph : Complaint No: 38/2021
7-B-4 (7th Floor) Nest Orchid Park
Kalathipady, Kottayam-686010

Respondents

1. Nest Infratech (Nest Realities India Pvt Ltd)
Represented by F.M Shamier Marickar
5th Floor, Compass,

N.H 47 Bypass, Chakkaraparambu,
Near Vysali Bus stop, Cochin,
Kerala-682 032

2. F.M shamier Marickar,
A-6, Kent Nalukettu,
Chakkaraparambu, Vennalakkara P.O,
Edapally South Village-682 028

COMMON ORDER

1. As the above 21 complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Complainants in the above cases have booked their respective residential apartments in the real estate project named "Nest Orchid Park" at Vijayapuram Panchayath, Kottayam developed and constructed by the 1st Respondent M/s. Marickar Plantation Pvt. Ltd represented by the 2nd Respondent. All of them had entered into agreements for sale and construction with the Respondent. The Complainants have invested the amounts with the Respondent who assured them a peaceful life there. The Respondent/Promoter has assured in addition, to a decent residential apartment with all the basic facilities of life swimming pool with baby pool, sauna and jacuzzi, club house, roof top party area, barbeque counter, childrens play area, advanced multi gym and health club, billiards, table tennis and card room, elegant lobby, internet broad band connectivity, highspeed 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, inhouse 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. The Respondent has not completed any of these including the basic amenities such as water and electricity. The Respondent even after obtaining full payment for permanent KSEB connection, KWA connection, owners association deposit building tax, common facilities has not yet fulfilled the required parameters for getting occupancy certificate for the Complainants. The Complainants also point out that the project site remains unhealthy and unhygienic dusted atmosphere which shall be detrimental to the Complainants' health. Instead of utilizing the invested funds, the Respondent has channelized it to various other projects. He ought to have maintained 70% of the invested amount in the escrow account of the project for completion of the project. The Respondent holds more than 7 ongoing projects with an estimated project value of minimum 500 crores. The Respondent is dechannelizing the amount invested by the Complainants for increasing his movable and immovable assets and add standard to his luxury. The Complainants suffers much emotional, mental, physical and social trauma among friends, relatives and society at large. If the invested amount was deposited in a Nationalised bank, the Complainants would have received monthly interests as per the rules. A huge business tycoon like Respondent can successfully complete the assured facilities, if he wholeheartedly concentrated into the project. But the Respondent who is having malicious intention had misappropriated money of these Complainants. The Respondent having wilfully collected the amount from the Complainants, make unlawful profit and loss to the Complainants, most among them are senior citizens. The reliefs sought by the Complainants are to direct the Respondent to complete the full work pending and to execute the sale deeds in respect of undivided portion of land as per agreement for sale and the apartment, to direct the Respondent to handover of the Apartment and sale deeds immediately to the Complainant, and to 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 3 elevators for residents, completion of all common area facilities, proper car park facilities and proper sewage treatment plant to obtain occupancy certificate to the Complainants, to direct the Respondent to pay nationalized Bank interest for the amount collected from the Complainant from the date of entrustment onwards till the date of realization, and to direct the Respondent to pay a compensation of 10 lakh rupees considering the higher degree irregular and irresponsible behaviour shown by the Respondent in lagging the completion of the project. The Complainants have produced copies of agreements executed by them with the Respondent, copies of sale deeds, Photographs showing present condition of the project, minutes of project meeting with clients, payment against statutory expenses, copies of building permits, final bills and payment details, brochures of Nest Infratech, final invoice showing different heads of payment by the builder, village office tax receipts, copies of allotment letters, copies of receipt on booking the apartment and no dues certificates.

3. The Respondent did not file any Counter Statement to the Complaints filed against him. During the 1st hearing itself, the Respondent admitted that the project could not be completed on time as promised to the allottees. He also admitted that a project loan has been taken by him and the Bank has issued NOC for 15 flats. He submitted that there are 165 units in total out of which 85 were sold and 20 sale deeds have been executed. The Respondent assured the Authority that he shall complete the project, if he is allowed with some more time. On the basis of initial hearing, the Authority, vide its interim order dated 21.10.2020, directed the Respondent to conduct a formal meeting of the Complainants at the project site within two weeks and enable formation of Association and its registration, list out all the pending works and arrive at a decision as to completion and handing over the project with all the promised

amenities and also clearance of the loan availed by him. It was also directed to submit the minutes of meeting before the next hearing date.

4. The Respondent failed to comply with the said order within the time limit and he requested for further time to convene the meeting and submit the minutes of meeting. Time was granted. The Complainants submitted before us that the electricity connection is very urgent because household equipment's are getting affected and in response the Respondent submitted that the electricity works, individual connections and STP works will be completed by 28th February 2021. During the hearing on 23.01.2021, the Respondent has again undertaken that the whole project shall be completed before 30th June 2021 without fail. On perusal of the documents submitted by the Complainants, it is evident that the Respondent has gravely failed to complete the project and hand over it to the allottees on time and thereby violated the promises given to the Complainants as per the terms and conditions of the agreements entered into between them. But we have decided not to invoke penal provisions at this stage against the Respondent builder only to protect the interest of the Complainants who are eagerly waiting to get their dream homes as early as possible to start a comfortable living there. We observed that imposing a punishment at this stage may cause the financial drain on the Respondent/promoter who already is said to have availed a loan for the project and that would render the completion of the construction an impossibility. For these reasons we have decided to grant time up to 30.06.2021 for completion of the project in all respects, as requested by the Respondent. Hence the Authority, vide interim order dated 23.01.2021, directed the Respondent to file a detailed affidavit with milestones for completion of the total project with the promised amenities and handing over the same to the allottees by **30th June 2021** as assured by him, with copies to the Complainants. In compliance, the Respondent submitted a sworn affidavit along with the Minutes of meeting held at the project site on 24.11.2020, as directed by this Authority

which is marked as Ext B1. The affidavit contains separate completion dates for individual works to be completed. It is confirmed in the affidavit that the works are progressing at the site and all works listed are being arranged to be completed and will be fully completed by 30th June 2021. An escrow account is also being set up as directed by the Authority. Arrangements have been done for registration of the Association formed in the project. It is also prayed in the affidavit for a direction to the Complainants to pay the outstanding amounts to the Respondent, so that all the balance work can be completed as planned.

5. On the basis of the confirmations and undertakings by the Respondent as per the Exbt. B1 affidavit and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions:

1) The Respondent shall 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) The Respondent shall enable formation of the Association of allottees in the project and its registration as provided under Section 11(4) (e) of the Act.

3) The Association of allottees, formed and registered as directed by us, shall monitor the progress of works and make sure that it is being carried out as per the Work Schedule given in the Exbt. B1 affidavit. In case of any default from the part of the Respondent, the Association can approach this Authority seeking further intervention.

4) The Respondents shall 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.

5) The Respondents shall complete all the executions of sale deeds, if any, related to apartments / common areas in favour of allottees/Association.

6) The Respondents shall 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.

7) The Respondent shall submit before this Authority, the compliance report in the form of an affidavit on **01.07.2021**.

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.

This order is issued without prejudice to the right of the Complainants to approach the Authority with claims for compensation in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Sd/-

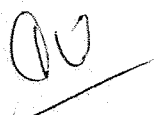
Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order




Secretary (legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 series : True Copy of agreement for construction produced by the Complainants.
- Exhibit A2 series : Copy of agreement for Sale deed executed with Respondent.
- Exhibit A3 series : Photographs produced by Complainants.
- Exhibit A4 series : Brochures produced by the Complainants.

Exhibits on the side of the Respondents

- Exhibit B1 : Affidavit along with the Minutes of meeting held at the Project site on 24.11.2020