



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 196/2021

Dated 09th December 2021

Present: Sri. M.P Mathews, Member

Complainant

Vimal Ravi
"Souparnika"
Nattakom P O
Kottayam- 686013

Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
(Represented by its Managing Director)
34/239 C, Near Mariya Park,
Padivattom Pipeline road,
Near NH Bypass, Palarivattom
Edapally P O, Kochi-682024
Compass, N.H. Bypass, Thammanam P.O,
Ernakulam, Kochi-32.
2. Mr. Nashid N P,
Director,
M/s Nucleus Premium Properties Pvt Ltd.,
Nellayaputhenpeedikakkal House,
Thazhekod West P O, Perinthalmanna,
Malappuram-679352.

ORDER

1. The facts of the case are that the Complainant is the purchaser of Apartment number 4B of Nucleus AURA which is the project of the Respondent



company. Project "Nucleus Aura" was advertised as the combination of 14 villas and a sky villa containing 12 floors and 22 apartments.

2. In the year 2014-2017, believing the words of respondents, the complainant had given Rs. 11,30,000/- (Rupees Eleven Lakhs thirty thousand only) for Apartment number No. 4B in Nucleus Aura Sky villas and paid Rs. 1,00,000/- (Rupees One Lakh) on 06/12/2014. After that complainant, had paid another Rs. 5,30,000/- (Rupees five Lakh Thirty Thousand only) on 17/12/2014. After six months Respondents had informed the complainant that the respondents got the building permit copy with a reference number TP1-TBA(18917)/2015 dated 19/06/2015.
3. The complainant submitted that the respondents collected huge money from the complainant and other persons in the AURA Villa Project. Then the respondents entered into an agreement with the complainant on 06/10/2015. The 2nd respondent had signed the agreement as the power of attorney holder of landowners. Then in 2017, the respondent company asked for another 5 Lakhs Rupees after getting a fire certificate. The complainant had paid that also. The payments done by the complainant towards Nucleus Aura sky villas apartments 4B as given below.

Payment Schedule

Date	Amount Paid
a 06/12/2014	- Rs. 1,00,000/-
b. 17/12/2014	- Rs. 5,30,000/-
c. 27/10/2017	- Rs. 5,00,000/-
Total	- Rs. 11,30,000/-

4. The completion of the project and possession of the Nuclear AURA Sky Villa 4B apartment given in the agreement as 24 months with a grace



period of 3 months from the effective date or the date of the building plan sanctioned whichever is later (total 27 months). This period had expired in the year 2018 itself. According to the complainant, nothing happened in the project Nucleus AURA Sky Villas and even after 5 years of the agreement, the site for the sky villa is a vacant place with few piles and water. Hence the complainant had demanded to the respondents to repay the amount of Rs. 11,30,000/- on 07/09/2020 and 09/09/20. On 19/08/21, an e-mail was also forwarded, but the respondents were not ready to repay the amount and have not started the Sky Villa Project.

5. In view of the above the complainant prayed for the following relief.
 - a. Direct the respondents to return Rs. 6,30,000/- (Six Lakhs thirty thousand only) along with its interest @15.2% from 17/12/2014 and to return Rs. 5,00,000/- (five lakhs only) along with its interest @15.2% from 27/10/2017.
6. The complainant had approached the adjudicating officer, Thiruvananthapuram vide complaint No. CCP.122/2020 and the Hon'ble adjudicating officer had passed an order dated 02/08/2021 stating that the adjudicating officer has no jurisdiction to grant the relief for return of amount with interest as sought for in the above petition and directed the petitioner to present the complaint before this authority.
7. Consequent to this, the above complaint was filed before this authority on 25/08/21. The complaint was taken up on 21/10/21 and the respondent's counsel sought time for filing Vakalath and counter. The case was posted to 09/12/2021.
8. On 09/12/2021, the counsel for the complainant and respondents were heard. The counsels for the respondent accepted the fact that they have abandoned the project Nucleus AURA Sky Villas.
9. The tripartite agreement for Sale and Construction dated 06/10/2015 entered into between the Complainant, the landowners represented by M/s



Nucleus Premium Properties Pvt. Ltd., the promotor/1st respondent through its Director Nashid M P, 2nd respondent and Nucleus Premium Properties Pvt. Ltd., promotor/builder is produced and marked as Exhibit A1. As per the agreement, the builder/promotor was to complete construction of the said apartments and hand over possession to the allottee within 24 months with a grace period of 3 months from the effective date or from the date on which the building plan/permit are sanctioned by the authorities concerned, whichever is later.

10. As per the above, the building must have been completed on or before January 2018. However, even the commencement of the works of the apartment above the ground level has not commenced and the counsel for the respondent has accepted the fact that they have abandoned the project.

11. In the above circumstances, the complainant is entitled to withdraw from the project under Section 18 of the Real Estate (Regulation & Development) Act 2016, and claim the return of the amount paid to the respondents along with interest from the date of receipt of payment by the promotor till refund to the complainant with interest.

12. The complainant had admittedly paid the instalment as detailed below on the respective dates as per the receipts produced with the complaint.

Payment Schedule

Date		Amount Paid
a 06/12/2014	-	Rs. 1,00,000/-
b. 17/12/2014	-	Rs. 5,30,000/-
c. 27/10/2017	-	Rs. 5,00,000/-
Total	-	Rs. 11,30,000/-



13. The non-completion and non-delivery of possession by the Respondent are also admitted by the Respondents. The interest payable by the Respondent to the allottees is by State Bank of India PLR rate plus 2% from the date of payment till the date of refund as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBI PLR rate is 12.15% as of the date of the Order. The Complainant is entitled to get 14.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund.
14. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in 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, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”*.
15. Section 19(4) of the Act specifies that *“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance*



of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder”.

16. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced 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 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”

17. Hence, the Complainant herein is entitled to get the refund of amount along with interest and Respondents are liable to refund the amount along with the interest as prayed for. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter to the Allottee shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The Complainant is entitled for refund of the amount of Rs. 11,30,000 Lakhs paid by him along with interest at the rate of SBI PLR + 2 Percent per annum, from the date of payment till date of receipt of refund with interest.



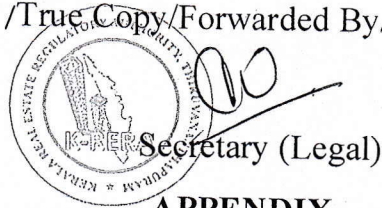
18. On the basis of the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order:-

- 1) The Respondents are directed to return the total amount received by them, **Rs.11,30,000/-** to the Complainant with simple interest @ 14.15% per annum from the date of payment to the promoter/respondents, as per the payment schedule above till date of receipt of refund of the amount paid to the respondents with interest
- 2) If the Respondents fail to pay the aforesaid sum with interest as directed above within a period of 45 days from the date of receipt of this order, the Complainant is 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.

Dated this the 9th December of 2021

Sd/-
Sri M.P Mathews
Member

/True Copy/Forwarded By/Order/

Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of the Sale and Construction agreement
Exhibit A2 : Payment details
Exhibit A3 : Photo status of work site AURA Sky Villas
Exhibit A4 : Email to the respondents.