

**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.197/2021

Dated 5th February, 2022

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

Complainants

Krishnapriya P.B,
Represented by Power of Attorney Holder,
Balakrishnan, Pandiath House,
Puthukkad Desom, Puthukkad P.O,
Thrissur-680301.

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,
Edappally P.O, Kochi-682024.
2. Abdul Nazer N.P,
Director,
M/s Nucleus Premium Properties Pvt Ltd.
Nellayaputhenpeedikakkal House,
Thazhekod West P.O, Perinthalmanna,
Malappuram District -679352.



3. Biju Paul,
Perumpillil House,
Aikkarad South Village,
Kolenchery Desom, Kunnathunadu Taluk,
Ernakulam District-682311.

The above complaint came up for virtual hearing today. The Counsel for the Complainant Adv.Sajeev T Prabhakaran and Counsel for the Respondents Adv.Philip T Varghese attended the hearing.

ORDER

1. The facts of the Complaint are as follows: -
Complainant is an Allottee of 'Nucleus Matrix' project, located at Kalamassery, Ernakulam District, developed by the Respondent company. She had booked commercial space No.2 of the project and the total amount for the same is Rs.79,81,815/-. The project 'Nucleus Matrix' was advertised as the super-premium luxury flaunts 20 sky villas, 2 pent houses and commercial space all packed with elite luxury amenities. The Complainant had paid Rs.30,00,000/- on 30/07/2016 and Rs.11,50,000/- through Federal Bank, Amballoor Branch and she had arranged another Rs.11,50,000/- on 06/09/2016 from her husband's friend Deepak John's home loan allotted by Axis bank, Kottayam directly to M/s Nucleus. Hence as on 06/09/2016, the Complainant had paid Rs.53 Lakhs for the Commercial space 2

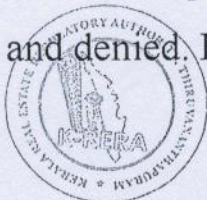


in commercial Matrix project. An agreement for sale dated 29/07/2016 and an agreement for construction dated 29/07/2016 was executed between the Complainant and the Respondent. The said amount of Rs.23 Lakhs paid by the Complainant on 06/09/2016 were fraudulently vouchered in Liji's name and tried to divert to their project Bayvue. The Complainant informed the same to the Respondents and they had given assurance that they will clear all and will add all the 53 Lakhs in 'Matrix' project commercial space 2 only. The completion of the project as per the agreement is 30 months from the date of agreement with a grace period of 3 months. The said period was expired in the month of May 2019 but nothing was happened in the project. As on this date the Complainant had spent Rs.53 Lakhs for commercial plot No.2 in Nucleus, Matrix Project. But till date nothing happened in that project and money of the Complainant is simply using by the Respondent company. Hence the Complainant is entitled to get the said amount paid to the Respondent company. Hence the petitioner had demanded the said amount of Rs.53 Lakhs along with interest from 2016 through E-mail on 03/01/2020 and the Respondents had verbally assured that, they will return the money in instalments of 5.3 Lakhs from May 2019 to February 2020. But till this date the Respondents have not repaid the said money. Copy of sale agreement dated 29/07/2016, Copy of construction agreement dated 29/07/2016, Copy of payment details, copy of brochure, Copy of E-Mail communications regarding the status



of project, copy of mail dated 18/03/2019 regarding transfer of money, Copy of E-mail dated 03/01/2020 are the documents produced from the part of the Complainant. The Relief sought by the Complainant is to direct the Respondent to return the amount of Rs.53 Lakhs along with its interest @ 15.2% from 06/09/2016 to till the order of the Authority.

2. The 3rd Respondent has filed counter statement and denied the contentions of the Complainant and submitted that the complaint is not maintainable before the authority and further submitted that he is not a necessary party to the proceedings and terms contained in the agreement executed between the Complainant and the Respondents 1 & 2 and he is not a party to the agreement at all. It is clear from the agreement that the 3rd Respondent is not a party to the agreement but a deceptive representation had been made by the 1st Respondent as representing this Respondent. He had never given any authority to other Respondents nor to anyone else to represent him in any manner. There is no privity of contract between this Respondent and the Complainant. As admitted by the Complainant, payments were made to the 1st Respondent by the Complainant. No payments were received nor asked by the 3rd Respondent from the Complainant. The statement that an agreement for sale had been entered into between this Respondent and the Complainant or anyone else is false and denied. Even no sale agreement had been



entered into between this Respondent and Respondents 1 and 2 or anyone else regarding the subject matter property. Diverting funds by the 1st Respondent company and the like are not binding on the 3rd Respondent. Admittedly, the E-mails were sent and repayments were demanded from the Respondents 1 and 2. Regarding the monetary transactions the 3rd Respondent has no connection at all and he is not liable to pay any amount to the Complainant towards compensation / damages or under any other pretext. There had been an MOU by the Respondents 1 and 2 with the 3rd Respondent to roll out a project subject to conditions contained therein. The same got terminated and terms therein specifically mandated that without due authority and POA the Respondents 1 & 2 cannot proceed with any transaction in relation to the matter along with other specific terms and conditions and neither any sale agreement nor furtherance in that regard was affected by the parties in the matters as per MOU otherwise since the project as envisaged was found as not workable. The property had never been handed over to nor permitted to be put in use by the Respondents 1 & 2 or anyone else in any manner. The 3rd Respondent is independently using the property for his personal purposes. In the dispute between the Complainant and the Respondents 1 and 2 alleged in the above application, the 3rd Respondent has absolutely no nexus or relation for the amounts received by the Respondents 1 and 2 from the Complainant. It was further submitted that there had



been no approval for the project and there had been no joint development agreement, execution of the sale agreement or the like as well and the very understanding had been terminated by the parties as well. In violation of the above, if any agreements were made by the Respondents 1 and 2 deceptively and fraudulently, that too without the knowledge of the 3rd Respondent, the same cannot be binding and legally not sustainable. Respondents 1 and 2 have not filed any counter statement. No documents were produced by Respondent No.3.

3. The Respondents 1&2/Promoters did not file any counter statement even the Authority granted ample time to them. No documents have been produced from the part of the Respondents.

4. In the suo-motu action taken by the Authority against the Respondent/Promoter for not registering the project in question and violating Section 3 of the Act, the Respondent/Promoter gave an explanation with false and misleading statements regarding the project which came to the notice of the Authority after getting the complaints from allottees of the project. As it is observed that the project is a registerable project under Section 3 of the Act, show cause notice has been sent to the Promoter who was called for a separate hearing and process is going on in that regard.



5. Heard both sides in detail. After hearing both sides and perusing the documents placed on record, it is evidently found that the Respondent/Promoter has grievously failed to complete the project 'Nucleus Matrix' till this date. The completion of the project as per the agreement dated 29.07.2016, marked as Exbt.A2 is 30 months from the date of agreement with a grace period of 3 months. The said period was expired in the month of May 2019 but nothing was happened in the project so far. The 1st Respondent company has not even obtained any permit for construction of the said project. Without obtaining valid permit for the project the Respondents have fraudulently obtained Rs.53 Lakhs from the Complainant. The Respondent No. 1&2 have not even bothered to file a written statement from their part to the complaint. **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". The **Section 19(4)** of the Act also 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". Hence, the Complainant herein is entitled to get the refund of amount along with interest and Respondent is liable to refund the amount along with the interest. Here, the Respondent No. 1 is the Promoter Company and Respondent No. 2 is the Director of the said Company who signed in the Exbt. A1 & A2 agreements, representing the 1st Respondent Company. It is also to be noted herein that as per **Section 69** of the Act 2016, "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.

6. 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. However, the Complainant herein prayed for refund of the amount of Rs.53 Lakhs paid by him along with interest at the rate of 15.2% per annum from 06.09.2016, the date of payment. Hence it is found that the Respondent's 1 and 2 are liable to pay Rs.53 Lakhs along with 14.30 % (12.30 current BPLR rate+2%) simple interest from 06/09/2016.

7. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order: -

1. The Respondent's 1 & 2 shall return the amount of **Rs.53,00,000/-** to the Complainant @ 14.30% simple interest per annum from 06.09.2016 the date of payment, till realization.



2. If the Respondent fails to pay the aforesaid sum 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 aforesaid sum from the Respondent's 1 & 2 and its assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

[Handwritten mark]

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order



[Handwritten signature]
Secretary (legal)

Exhibits

Exhibits marked from the Side of Complainants

Ext.A1- Copy of agreement for sale dated 29/07/2016.

Ext.A2- Copy of construction agreement dated 29/07/2016

Exbt.A3 series- Copy of payment details.

Exbt.A4- Copy of brochure.

Exbt.A5- Copy of E-Mail communications regarding the status of project.

Exbt.A6- Copy of mail dated 18/03/2019 regarding transfer of money.

Exbt.A7- Copy of E-mail dated 03/01/2020.

