



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaints No. 197/2022

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

Dated 15th May, 2023

Complainants

Nest Campus Woods Allottees Association,
Registered office at Karthika, Eloor East,
Udyogamandal P O, Ernakulam- 683501
Represented by its President
[Adv. Puthussery Thomas]

Respondents

1. NEST Infratech (M/s Nest Realities India Pvt Ltd)
5th Floor, Compass, NH 47 By-pass
Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
2. F.M Shamier Marickar
Director, Nest Realities India Pvt Ltd
Paradise, Palarivattom, now residing at
Kenmt Nalukettu, M Chakkaraparambu
Ernakulam
3. Javad Kuttikaran Hassan
Director, Nest Realities India P Ltd
Door No: XX/125
Macker Manzil,



Thynothil Lane,Aluva

4. N. Jehangir
Director,
Nest Realities India P Ltd
Door No: XX/125
Thynothil Lane,Aluva, Ernakulam.
5. Althaf Jehangir
Director, Nest Realities India P Ltd
Door No: XX/125
Thynothil Lane,Aluva
6. Kuttymoos Shamsudeen
Director, Nest Realities India P Ltd.
Neena Manzil, Kuthiyathode,
Alapuzha- 688533

The above Complaint came up for virtual hearing today. The Representative of the Complainant association along with their counsel Adv. Puthusseri Thomas and the Respondent No. 2 attended the hearing.

ORDER

1. The Complainant is an Association of Allottees in the Project "Nest Campus Wood Apartments" developed by the Respondents. The relief sought by the Complainant is to direct the Respondents to complete the project by all means and hand over the possession of the common amenities to the Association with all the documents relating to the project. A common order dated 05/10/2021 was passed by the Authority regarding the Completion of the 2 residential Towers Campus Woods OAK & Campus Woods PINE of the same project named 'Nest Campus Woods' developed by the Respondents herein in Complaints No. 191/2020, 196/2020, 302/2020 & 26/2021,



27/2021, 112/2021, 115/2021, 117/2021, 119/ 2021 filed by the allottees of the Project in which the Authority directed the Respondents/Promoters (1) to complete the entire works of the residential Tower named '**Nest Campus Woods Oak**' on or before **30/12/2021** and that of residential Tower named '**Nest Campus Woods Pine**' on or before **30.04.2022** with all the common amenities and facilities offered to the Complainants in accordance with the agreements executed with them, (2) to complete the execution of sale deeds to all the complainants within the above said time periods and as per the terms of the agreements entered with them and (3) to hand over the maintenance of the common areas to the Association formally after completion of the projects. As per the said order, the Complainants who sought interest for delay were directed to file their claims with detailed interest calculation statement in separate applications. It was also specified in the said order that in the event of Non-compliance with the order by the Respondent/promoter, he shall be liable to pay Rs.5000/- per day from the date of compliance of the above order, till completion under Section 63 of the Real estate (Regulation & Development) Act, 2016. Thereafter, 3 more complaints (Complaint Nos 17,63 & 83 of 2022) of the same project were filed before the Authority for which the earlier order dated 05/10/2021 was made applicable vide order dated 26/07/2022. In the order, it was made clear that the promoter is liable to pay Rs. 5000/- per day from 1/05/2022 for the non-compliance with the earlier order.

2. After considering the above complaint, the Authority observed that the Respondent has neither complied with the earlier order nor remitted the penalty amount as directed so far. It has been decided to take action against the Respondent/ Promoter to realise the penalty till date. The Respondent No. 2 repeatedly submitted that the project will be completed and handed over within 2 weeks. The Respondent also sought time for filing written statement.



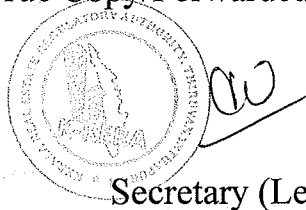
3. It is noticed that an order has been already passed by this Authority directing the Respondents to complete the same project, after considering the complaints filed by the allottees of the said project who are the members of the Complainant Association here in this Complaint. If the said order has not been complied with, the Complainants therein could have filed execution petitions before this Authority for getting the above-said order executed. Instead, the Association of Allottees opted to file the above Complaint with the same cause of action which will not be maintainable before the Authority as it is clearly hit by the *principle* 'Res-judicata' as per section 11 of Code of Civil Procedure, 1908. The common order dated 05/10/2021 is applicable to all the allottees in the Project "Nest Campus Woods". Hence, it has been decided to dismiss the above Complaint with liberty to the members of this Association who obtained the earlier order, as mentioned above, from this Authority to submit execution petitions accordingly.

The Complaint is hereby dismissed.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)