



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos. 198 of 2022

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

Dated 29th December 2022

Complainants

1. Sinil Mubarak
Valiyapurayil House, Kuttamangalam,
Edathiruthy P O, Thrissur- 680 703
2. Aysha Jasmin Sinil
Valiyapurayil House, Kuttamangalam,
Edathiruthy P O, Thrissur- 680 703

Both represented by their POA holder
Mr. Abdul Samath,
Ayyaril House, XXXIII/264,
Shankthan Manor Apartment,
Shankthan Thampuran Nagar, Thrissur-680 001

[Adv. P O Thomas Puthussery]

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



Represented by its Managing Director.
Recently corporate office shifted to Stone House,
Market Road, Alwaye- 683 101

2. F.M Shamier Marickar

Director, Nest Realities India Pvt Ltd
Paradise, Palarivattom, now residing at
Kent Nalukettu, Chakkaraparambu
Ernakulam- 682 028

3. Javad K Hassan

Director, Nest Realities India P Ltd
5th Floor, Compass, NH 47 By-pass
Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
Recently corporate office shifted to Stone House,
Market Road, Alwaye- 683 101

4. Jehangir Rawther

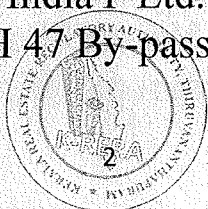
Director, Nest Realities India P Ltd
5th Floor, Compass, NH 47 By-pass
Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
Recently corporate office shifted to Stone House,
Market Road, Alwaye- 683 101

5. Althaf Jehangir

Director, Nest Realities India P Ltd
5th Floor, Compass, NH 47 By-pass
Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
Recently corporate office shifted to Stone House,
Market Road, Alwaye- 683 101

6. Kuttymoosa Shamsudeen

Director, Nest Realities India P Ltd.
5th Floor, Compass, NH 47 By-pass



Chakkaraparamb, Near Vaishali Bus stop,
Chakkaraparambu, Cochin- 682 032
Recently corporate office shifted to Stone House,
Market Road, Alwaye- 683 101

The above Complaint came up for final hearing on 30/11/2022. Only the counsel for the Complainants, Adv. Puthusseri Thomas attended the hearing. The Respondents did not attend the hearing even though notices were served and ex-parte notices were issued to all of them.

ORDER

1. The facts of the case are as follows: - The Complainants are the allottees in the project named NEST-CAMPUS WOOD situated at Ernakulam developed by the 1st Respondent Company. In the year 2012-2013, the Respondents proposed to make the construction of a multi-storied building on the property for 40.207 cents, and based on the advertisements made by the Respondents, the Complainant decided to purchase a residential flat. The 2nd Respondent is the owner in possession of the landed property over which the construction is to be made. The Respondents 2,3,4,5 and 6 are the directors of the 1st Respondent Company. When the Complainants approached the Respondents, it was informed that they are making residential flats in the above property and the construction will be completed within 1 year. The Respondents started the Project in the year 2013 and the Complainants booked 3 BHK Apartment comprising 1245 sq.ft in

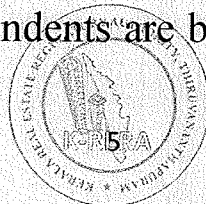


'Maple Block' of the said project, with reference to allotment letter CWM/014/2013 dated 04/03/2013 for a total cost of Rs. 36,73,750/-. Based on the discussions, an agreement for sale was entered into between the 1st and 2nd Respondent and the Complainants as per which the Respondents agreed to sell Flat No. GF-G in the Ground Floor of the multi-storied building is to be constructed in the name and style 'Nest-Campus woods- Maple-Block' along with other amenities as shown in the agreement. According to the Complainants, though the agreement was executed, no copy was provided to them. It was orally and mutually agreed that the Respondents would complete the construction by the month of March 2015 and hand over possession of the apartment with all facilities and amenities including car parking. Even before the execution of the agreement dated 03/04/2013, the complainant started making payments, and out of the total consideration of Rs. 36,73,750/-, the Complainant paid a sum of Rs. 1,00,000/- on 04/03/2013 and Rs. 2,00,000/- on 09/05/2013. Thereafter the Complainant paid a sum of Rs. 2,00,000/- on 16/05/2013, Rs. 2,00,000/- on 20/05/2013, and further paid Rs. 2,00,000/- on 03/07/2013. As the Respondents could not start the construction of 'Maple Block' till the year 2017, they offered a flat in another building in the same project named 'Pine Block', with flat No. 2F of the built-up area of 1245 sq ft. and accordingly, the Respondents issued a letter on 30/11/2017 showing the allotment of new flat 2F in Pine Block in the same



project. Thus, the amount of Rs. 9,00,000/- made as advance payment towards the 3BHK apartment GF-G in Maple Block was adjusted towards the sale consideration of Flat No. 2F of Pine Block to be constructed by the Respondents in the project "Nest Campus Woods".

2. The Complainants submit that as per the agreement, the total consideration was supposed to be made in instalments depending on the progress of construction and handing over was to be done in a ready-to-occupy condition after registering the same in the name of the Complainant for which a loan was availed by the Complainants. Since the Respondents did not start the construction, the Complainants had to close the loan account by borrowing money from money lenders for paying huge amounts as interest. As per the new allotment dated 30/11/2017, the agreed completion time was 6 months, as per which the Respondents were bound to complete the project by 30/05/2018, which is not done even now. In spite of several requests from the Complainants to complete the construction of the Flat, the Respondents did not resume the Construction. Even if they start the construction, it will not be completed within a reasonable time and the Complainants lost all hope to occupy the above-said flat in the near future. Hence the Complainants are no more interested in continuing with the agreement and want the refund of the amount paid by them to the Respondent. The Respondents are bound to pay interest @15.2%



for the amount already paid by the Complainants and the Complainants issued a notice dated 03/05/2022 for the refund of the amount with interest @15.2% and compensation, cost, and damage. But the Respondents did not respond to the notice. The schedule of payments is also shown in the complaint. The cause of action arose on 03/04/2013 on which date the agreement was executed, the amount of Rs. 9,00,000/- was paid by the Complainant, and the Respondents failed to construct or hand over the flat on the date as per the agreement. The reliefs sought by the Complainants are to (i) direct the Respondents to return the advance sale consideration of Rs. 9,00,000/- paid by the Complainants to the Respondents towards the sale consideration (ii) direct the Respondents to pay the interest @15.2% for all the payments made by the Complainants to the Respondents till realization which is calculated as Rs. 12,42,296/- and (iii) and cost of proceedings. The Complainants produced copies of the Allotment Letter No. CWM/014/2013 dated 04/03/2013, the letter dated 30/11/2017, the payment receipts, the General Power of Attorney, and the email communications.

3. Heard the learned counsel appeared for the Complainants and perused the documents produced by him. But the Respondent failed to appear before the Authority. Notices were duly served on all the Respondents and after noting their absence on the first hearing date, notices have been served on them



specifically stating that in case of further failure to appear before the Authority, they would be set ex-parte. Even then, none of the Respondents appeared before the Authority on any of the subsequent hearing dates. Hence the Respondents No. 1-6 set ex-parte and it has been decided to pass an ex-parte decree allowing the complaint as prayed for.

4. The project in question is registered under section 3 of the Act,2016 vide registration number K-RERA/PRJ/002/2022. It is noticed that the registration expired on 30/09/2022 and no application has been submitted so far by the Respondents for an extension of the registration as per the provisions under Section 6 of the Real Estate (Regulation & Development) Act 2016 r/w Rule 8 of the Kerala Real Estate (Regulation & Development) Rules 2018. It is also found that the Respondents/Promoter have not uploaded Form-5 for 2021-22 or any quarterly progress reports in the web portal as mandated by the law. As it is found that the Respondents/Promoters are chronic defaulters, the Authority has decided to initiate penal actions against them prior to which notices have been issued.

5. The above complaint was filed on 08/07/22 and came up for final hearing on 30/11/2022. The documents produced by the Complainants are marked as Exhibit A1 to A5. Even though the Complainants referred about the agreement



executed between them and the Respondents, copy of the said agreement is not produced by them. The payment receipts issued by the Respondents/Promoters are produced along with the complaint and marked as Exbt. A3 Series. The Complainants have made the payments as detailed below.

Payment Schedule

Date	Amount Rs.
04/03/2013	Rs. 1,00,000/-
09/05/2013	Rs. 2,00,000/-
16/05/2013	Rs. 2,00,000/-
20/05/2013	Rs. 2,00,000/-
03/07/2013	Rs. 2,00,000/-
Total	Rs. 9,00,000/-

6. It is evident from Exhibit A1, Allotment letter and Exhibit A3 series, payment Receipts produced by the Complainants that the Respondents have received the amount of Rs. 9,00,000/- as advance from the Complainants. The Respondents neither appeared nor represented by anybody despite the notices issued by the Authority. Subsequently, exparte notices were issued on 1/10/2022 by the Authority, even after which the Respondents failed to appear before the Authority on any of the hearing dates. Hence the Respondents No. 1-6 ~~were~~ set ex- parte. In these circumstances, we found that the Complainants herein are



entitled to get an ex-parte decree allowing the complaint as prayed for. According to the Complainant, the Respondents No. 2 to 6 are the directors of the 1st Respondent Company, the Promoter of the project in question. Section 69 of the Act, 2016 lays down that

(1) 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:

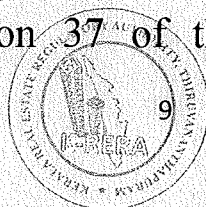
Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(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.

(a) "company" means anybody corporate and includes a firm, or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

6. In view of the above, this Authority, under the provisions of Order IX Rule 6 of Code of Civil Procedure 1908 and invoking Section 37 of the Real Estate (Regulation &



Development) Act 2016, hereby directs the Respondents No.1 to 6 to return the total amount received by them, **Rs.9,00,000/-** to the Complainants with simple interest @ 15.45% per annum, from the date of payment of amounts by the Complainants as per the above-mentioned payment schedule, till the date of refund of the total amount with interest.

7. If the Respondents No.1 to 6 fail to pay the aforesaid sum with interest as directed above, within a period of 60 days from the date of receipt of this order, the Complainants are 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.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Documents produced by the Complainant

- Exhibit A1- True copy of the Allotment Letter No. CWM/014/2013 dated 04/03/2013.
- Exhibit A2- True copy of the letter dated 30/11/2017.
- Exhibit A3 series- True copy of the receipt dated 09/05/2013.
- Exhibit A4- True copy of the General Power of Attorney.
- Exhibit A5 series- True copy of the email communications.



