



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

## Complaint No. 199/2021

Dated 16<sup>th</sup> December 2021

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

### Complainant

Krishnan Sundaresan  
& Nithya Chittur Ramakrishnan  
Rep: by Power of Attorney Holder  
P.K Sundaresan  
Residing at 2 1162, New Kalpathy  
Near Mandakkara Temple, Palakkad

### 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,  
Thazhekode West P O, Perinthalmanna,  
Malappuram-679352.
3. Roy Alias Roymon  
Ambat House



4/466 of Thrikkakkara Municipality  
Vazhakkala Village, Pallipram kara  
Edapally P.O, Ernakulam

The Counsel for the Complainant Adv. Sajeev T Prabhakaran and Counsel for the Respondents Philip T Varghese attended the hearing. Heard the parties in detail.

### **ORDER**

1. The facts of the case are that the Complainant is the purchaser of Apartment number 6B 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 2015, believing the words of Respondents, the Complainant had given Rs. 13,24,188/-(Rupees Thirteen Lakhs twenty four thousand and One hundred and eighty eight only) for Apartment number No. 6B in Nucleus Aura Sky villas and paid Rs. 1,98,025/- (Rupees One Lakh Ninety Eight lakhs and Twenty five) on 16/02/2015. After that, Complainant had paid another Rs. 4,63,909/- (Rupees Four Lakhs Sixty Three Thousand Nine Hundred and Nine only) on 25/02/2015. On the same date, another amount of Rs. 6,62,254/- (Rupees Six lakhs Sixty Two thousand and two fifty four only) was also paid by the Complainant. After four months Respondents had informed the Complainant that the Respondents got the building permit copy with a reference number TP1-TBA(18917)/2015(1149) 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 23/05/2015. The



2<sup>nd</sup> respondent had signed as the power of attorney holder of landowners. The payments done by the complainant towards Nucleus Aura sky villas apartments 6B as given below.

Payment Schedule

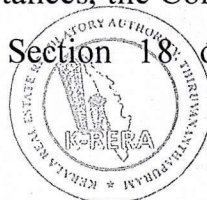
a. 16/02/2015	-	Rs. 1,98,025/-
b. 25/02/2015	-	Rs. 4,63,909/-
c. 25/02/2015	-	Rs. 6,62,254/-
Total	-	Rs. 13,24,188/-

4. The completion of the project and possession of the Nuclear AURA Sky Villa 6B 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. 13,24,188/- but the Respondents were not ready to repay the amount but insisted the Complainants for cancellation of agreement after 4 and half years of their investment.
5. In view of the above the Complainant prayed for the following reliefs.
  - a. Direct the respondents to return Rs. 13,24,188/- (Thirteen Lakhs Twenty four thousand One hundred and Eighty eight only) along with its interest @15.2% from 25/02/2015.
6. The complainant had approached the Adjudicating Officer, Thiruvananthapuram vide case No. CCP.143/2020 and the Hon'ble Adjudicating Officer had passed an order dated 04/11/2020 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 25/10/21 and the Respondent Counsel sought time for filing Vakalath and Counter. The case was posted on 11/11/2021.
8. On 11/11/2021, the Counsel for the Complainant and Respondents were heard. The Counsel for the Respondent accepted the fact that they have received the amount from the Complainant and was not able to deliver the Project in time and has abandoned the Project Nucleus Aura Sky Villas.
9. The tripartite agreement for Sale and Construction dated 23/05/2015 entered between the Complainant, the landowners represented by M/s Nucleus Premium Properties Pvt. Ltd, the promotor/1<sup>st</sup> Respondent through its Director Nashid M P, 2<sup>nd</sup> 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 September 2017. However, even the commencement of the works of the apartment above the ground level has not been commenced and the Counsel for the Respondent has accepted the fact that they have abandoned the project. The Respondents have not filed any Counter Statement or submitted any documents from their part even though sufficient time was granted by the Authority.
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

a. 16/02/2015	-	Rs. 1,98,025/-
b. 25/02/2015	-	Rs. 4,63,909/-
c. 25/02/2015	-	Rs. 6,62,254/-
<b>Total</b>	-	<b>Rs. 13,24,188/-</b>

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 on 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 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. 13,24,188 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 1<sup>st</sup> and 2<sup>nd</sup> Respondents are directed to return the total amount received by them, **Rs.13,24,188/-** 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 1<sup>st</sup> and 2<sup>nd</sup> 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 16<sup>th</sup> December of 2021

Sd/-	Sd/-	Sd/-
Smt. Preetha Menon	Sri M.P Mathews	Sri. P H Kurian
Member	Member	Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

## APPENDIX

### Exhibits on the side of the Complainants

- Exhibit A1 : Copy of the Sale and Construction agreement dated 23/05/2015
- Exhibit A2 : Payment details
- Exhibit A3 : Photographs showing status of work site AURA Sky Villas
- Exhibit A4 : Email to the respondents from the Complainants.
- Exhibit A5 : Building Permit given by Builder