



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.206/2021

Dated 5th February, 2022

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

Complainants

Deepak Geevarghese John,
Represented by Power of Attorney Holder,
Parayil House, Pallom P.O,
Kottayam-686007.

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. He had booked commercial space No.1 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.1,000,00/- on 14/07/2016. After that petitioner had paid another Rs.4Lakhs on 22/07/2016. Then Respondents entered an agreement for sale with the 3rd Respondent on 29/07/2016 through a representation by 1st and 2nd Respondent regarding land of the project as Vendor and purchaser status. Another agreement for construction of the commercial plot No.1 dated 29/07/2016



was also signed by the petitioner as purchaser of plot and 1st and 2nd Respondents are in the status of builder. The payments done by the Complainant towards Nucleus matrix project is given below.

| | | |
|---------------|---|-----------------------|
| a) 14/07/2019 | - | Rs.1,00,000/- |
| b) 22/07/2016 | - | Rs.4,00,000/- |
| c) 08/08/2016 | - | Rs.24,07,984/- |
| d) 12/08/2016 | - | Rs.92,016/- |
| e) 26/08/2016 | - | Rs.1,00,000/- |
| f) 30/08/2016 | - | Rs.10,00,000/- |
| g) 30/08/2016 | - | Rs.10,00,000/- |
| h) 31/08/2016 | - | Rs.2,00,000/- |
| Total | | <u>Rs.53,00,000/-</u> |

2. Moreover, on 12/02/2019, when Complainant demanded his invested amount of Rs.53 Lakhs from the Respondents and on 15/02/2016 the Respondent promoter showed their readiness of return of 53 Lakhs paid by the Complainant in Matrix project. After that on 19/02/2019 the Respondents confirmed refund of Rs.53 Lakhs paid in Matrix commercial space No.1 in 10 instalments from May 2019 to February 2020. But nothing happened. 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 through E-mail on 12/02/2019 and on 19/02/2019 the Respondents had replied that the refund of the amount will be made 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 are the documents produced from the part of the Complainant.

3. The Respondents have neither filed any Counter statement nor filed any documents.
4. In the suo-motu action taken by the Authority against the Respondent/Promoter for not registering the project in question and thereby violating Section 3 of the Act, 2016, 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 Exbt. A2 agreement dated 29.07.2016 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. The 1st Respondent company was not even obtained any permit for the said project. Without obtaining valid permit for the project the Respondents have fraudulently obtained Rs.53 Lakhs from the Complainant. 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 31.08.2016, the date of payment in the complaint. Hence it is found that the Respondent's 1 and 2 is liable to pay Rs.53 Lakhs along with 14.30 % (12.30 current BPLR rate +2) simple interest from 31/08/2016.

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

1. The Respondents 1& 2 shall return the amount of **Rs.53,00,000/-** to the Complainant @ 14.30%



simple interest per annum from 31.08.2016 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 series- Copy of E-Mail communications

