



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.209/2022

Present: Sri. M.P Mathews, Member

Dated 25th February, 2023.

Complainant

Lekshmi S L,
B.P 8/135,
Sivajyothi Bhavan,
Single Street, Balaramapuram P.O,
Thiruvananthapuram – 695501.

Respondents

1. Nest Realities India Pvt. Ltd.,
5th Floor, Compass, NH Bypass,
Chakkaraparambu, Near Vysali Bus Stop
Kochi – 682 032.
2. Nagoor Jahangir Rawther,
Managing Director,
Nest Realities India Pvt.Ltd.,
Macker Manzil, Door No.XX/125,
Thynothil Lane, Aluwaye – 683 101.
3. Javad Kuttikaran Hassan,
Director,
Nest Realities India Pvt. Ltd.,
Macker Manzil, Door No.XX/125,
Thynothil Lane, Aluwaye – 683 101.



4. Althaf Jehangir,
Director,
Nest Realities India Pvt. Ltd.,
Macker Manzil, Door No.XX/125,
Thynothil Lane, Aluwaye – 683 101.
5. F.M. Shamier Marickar,
Director,
Nest Realities India Pvt. Ltd.,
Flat No.E-10, Kent Paradise,
Palarivattom, Cochin – 682 032.
6. Kuttymoosa Shamsudin,
Director,
Nest Realities India Pvt. Ltd.,
Neena Manzil Kuthiyathode,
Kodamthuruth, Alappuzha – 688 533.

The above Complaint came up for virtual hearing today. Counsel for the Complainant Adv.Sankara Manikandan and 5th Respondent attended the hearing.

ORDER

1. The Complainant is an allottee of project named 'Nest Campus Woods' located at Kalamassery, Kochi, developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, (Registration No. K-RERA/PRJ/002/2022).

2. The case of the Complainant is as follows:- The Complainant found launching information of Campus Woods project from the Nest Realities India Pvt. Ltd., through nest Infratech website. Further to the discussion with the Respondents the



Complainant had booked 1 BHK Flat in the project Campus woods at Kalamassery and paid Rs.1,00,000/- for allotment and paid some amount progressively by installment, total amounting to Rs.8,30,227/-.

3. The Complainant further submitted that as per the agreement, the 1st Respondent undertook and represented to complete the construction within a defined timeline of 24 months ending on March 31, 2015. On 08/06/2015 the Respondents informed the Complainant that the 'Maple' block will be delayed and advised the Complainant to change the block to 'Pine'. Hence the Complainant decided to change the booking towards Pine 1-D. In 2014,2015 and 2016 the Respondents send some progress photos by email and it shows very slow progress.

4. Due to utter failure and false commitment of the Respondents the Complainant cancelled the booking of flat and requested them to refund the money collected along with interest at the earliest vide email dated 18/01/2018. Until now the Complainant have not received the money and no work has done till date. Hence this Complaint.

5. The reliefs sought by the Complainant is to direct the Respondents to refund the amount paid by the Complainant along with interest as per the Act, 2016.

6. The Respondents have neither filed any counter statement nor produced any documents.



7. The Authority heard the learned counsel for the Complainant and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as **Exbt.A1 to A6**.

8. **Exbt.A1** is the copy of allotment letter dated 07/05/2013 with respect to the allotment of Apartment No.II-D in the 'Maple' Block having super built up area of 625 sq.ft. **Exbt.A2** is the copy of agreement dated 16/05/2013 executed between the Complainant and 1st Respondent represented by the 5th Respondent. As per the said agreement the Respondents agreed to construct an apartment No.11-D in the 'Maple' block of the project having an area of 625 sq.ft and 625/40000% of undivided interest equivalent to 0.629 cents in the property for a total consideration of Rs.19,37,500/-.

9. **Exbt.A3** is the copy of revised agreement dated 16/05/2014 executed between the Complainant and 1st Respondent represented by the 5th Respondent. As per the said agreement the Respondents agreed to construct an apartment No.1-D in the 'PINE' block of the project having an area of 625 sq.ft and 625/40000% of undivided interest equivalent to 0.629 cents in the property along with one car park for a total consideration of Rs.21,87,500/-. It was also stated in the agreement that the Builder shall complete the construction by March 31, 2016 and handover possession of the apartment within 30 days after completion.



10. **Exbt.A4** is the copy of revised allotment letter dated 09/04/2015 with respect to the allotment of Apartment No.I-D in the 'Pine' Block of the project having super built up area of 625 sq.ft. for a total consideration of Rs.21,87,500/-.

11. **Exbt.A5 series** is the copy of payment receipts issued by the Respondents. **Exbt.A6** is the copy of booking cancellation form dated 28/12/2018 issued to the Respondents due to delay in project completion and claimed refund of Refund of Rs.8,30,227/-.

12. **Exbt.A5** is the copy of payment receipts issued by the Respondents. As per Exbt.A5 the Respondents have received an amount of Rs.8,30,227/- from the Complainant. The details of the payment made to the respondents is as follows:-

<u>Date</u>	<u>Amount</u>
07/05/2013	Rs.1,00,000.00
22/05/2013	Rs.2,00,000.00
23/05/2013	Rs.1,18,283.00
08/06/2015	Rs.54,471.00
16/06/2015	Rs.1,50,000.00
01/07/2015	Rs.70,000.00
01/08/2015	Rs.60,000.00
01/09/2015	Rs.77,473.00

Total

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Rs.8,30,227.00



13. From the website maintained by the Authority it is clear that the Respondent have not completed the construction of the project till 2018 even though the promised date of completion was 31/03/2016 as per Ext.A3. The said project is registered with the Authority under section 3 of the Act, 2016 and a registration certificate was also issued and is valid up to 30/09/2022. It is clear from the website of the Authority that the project is not completed and no occupancy certificate was issued to the said project till date. Hence the Complainant is entitled to withdraw from the project and to claim refund of the amount paid by him with interest as per section 18 of the Act, 2016.

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 (a), 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 not 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"*. Here, in this case the Allottee is entitled to claim refund of the amount paid with interest, as the promoter failed to complete and is unable to give possession of the apartment as per the agreement.

15. 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 not 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”.

On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under Section 18 of the Act, 2016.

16. As per the master data available on the website of the ministry of corporate affairs the 2nd 3rd 5th & 6th Respondents are the directors of the 1st Respondent company Hence, all the Respondents except 4th Respondent are jointly and severally liable to refund the amount received from the complainant along with interest according to section 18(1) of the Act, 2016. As per Rule 18



of Kerala Real Estate (Regulation & Development) Rules 2018, (herein after referred as 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. The present SBI PLR rate is 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. Hence it is found that the all the Respondent's except 4th Respondent is liable to refund an amount of Rs.8,30,227/- to the Complainants along with 16.15 % simple interest from the date of receipt of payment.

17. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issues the following directions :-


1. The Respondents 1 to 3, 5 & 6 shall refund the amount of **Rs.8,30,227/-** to the Complainant with simple interest @ 16.15% per annum from the date of each payment, as per the above payment schedule till the date of realization.

2. If the Respondents 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 above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Sri M.P Mathews
Member

/True Copy/Forwarded By/Order

Secretary (legal)

Exhibits**Exhibits marked from the Side of Complainants**

Ext.A1- Copy of allotment letter dated 07/05/2013.

Ext.A2- Copy of first agreement dated 16/05/2013.

Ext.A3- Copy of revised agreement dated 06/05/2014.

Ext.A4 - Copy of revised allotment letter dated 09/04/2015.

Ext.A5 series- Copy of payment receipts.

Exbt.A6- Copy of booking cancellation form dated 28/12/2018.

