



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 251/2021

Dated - 06th August 2022

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

Complainant

Kuldeep Dahiya
House No. 3622,
Ground Floor,
Housing Board Colony,
Pocket-2, Sector-3,
Faridabad-121004, Haryana

Respondents

1. Nishad N P
Managing Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24
2. Abdul Nazer N P
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24



3. Nashid N P
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24
4. Noushad Ali Akbarkhan N P
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24
5. Way One Resorts LLP
Represented by its Designated Partner
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24
6. Nucleus Premium Properties Pvt. Ltd
Managing Director
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24
7. Nucleus Hotels and Resorts LLP
Represented by its Designated Partner
Director- Nucleus Premium Properties Pvt Ltd.
3rd Floor, "Ventura", Anchumana, NH-47 Bypass,
Edapally, Kochi-24

The above Complaint came up for virtual hearing on 18/07/2022. The Complainant attended the hearing. The Respondents did not attend the hearing.



ORDER

1. The Complainant is a resident of Faridabad and according to him, the Respondent No. 5- Way One Resorts LLP was formed by Nucleus Premium Properties Pvt Ltd, a builder in Kochi who is the Respondent No. 6 herein. After the formation of Respondent 5 firm, the Respondent 7- Nucleus Hotels and Resorts LLP Registration was done at Ernakulam for operating the business. The Respondent No. 6 & its directors floated 250 shares of Respondent 5, each valuing Rs. 15 Lakhs. The Respondent No. 6 and its Directors claimed to have purchased 50 shares, investing Rs 7.5 Crores. An investment of Rs. 30 crore was sought from 200 other partners. On 28th April 2018, for seeking an investment of Rs. 15 Lakhs from the Complainant, Mr. Anish Kumar on behalf of the Respondents 1 to 7 approached the Complainant with “Nucleus Hotels and Resorts-Smart Investment Plan” to make an investment of Rs. 15 Lakhs in their firm for good returns which is as follows: i) A shareholder investing a sum of Rs. 15 Lakhs will own a Five-Star Category Resort for a lifetime i.e 0.4% of the Company and undivided share equivalent approx. to 1% (40.47 sq. meter of land & 200 sq. ft (8.5 sq. meter) of the built-up area, ii) Monthly Rental Income-monthly average return of Rs. 14,726*12 months= Rs. 1,76,712/-, iii)7 nights @ Rs. 7500/- =Rs. 52,500/- Lifetime 7 nights yearly free stay in – Way One Resorts LLP. Total



for the year= return on the initial investment= Rs. 2,29,212/-
(15.3%).

2. The Complainant submitted that he had given an amount of Rs. 15 Lakhs from 11th May 2018 to 15th December 2018 and the payment schedule is also shown in the complaint and the Complainant alleges that from January 2019, instead of promised returns, Respondents started excuses for not fulfilling the promised Returns and for non-payment. The relief sought by the complainant is to refund the invested amount along with interest, conveyance deed in respect of promised area of land and building with affidavits and indemnity bonds showing the real values and indemnity bonds showing the loss or damage to be suffered by the Complainant, in case the Respondent No. 5 to 7 and its Directors are opting for the alternative relief of granting Conveyance Deed to the Complainant on the terms as detailed above, in that case also order to pay the arrears of monthly Returns from Jan 2019 till Dec 2021 amounting to Rs. 5,41,136/- to the Complainant with an undertaking that the monthly rent of Rs. 14,726/- would be continued to be paid by the Respondent No. 5 to 7 & its Directors to the Complainant throughout his life as promised. The Complainant had also asked for an interim relief to reserve the area of land and building for the Complainant and not to sell, alienate or create any third-party interest. The Complainant produced copies of the offers made by the Respondents, the Photographs, the



Payment Structure, the payment receipts, the Investment Agreement, and the email communications.

3. The Respondents No. 1 & 2 filed written statement and submitted that the Complainant is the partner of M/s Way One Resorts LLP, 5th Respondent which is a limited liability partnership. By virtue of the Agreement dated 12.06.2018 he was inducted as a partner in the 5th Respondent firm as per the terms of the Agreement. As the complainant invested in the firm as a partner, the Complainant is entitled to share the profits and losses of the firm in proportion to the shares taken by him in the firm. That being so, Complainant is not entitled to file a Complaint before the Authority and no relief as sought can be granted in these proceedings. Way One Resorts LLP had promoted a proposal to build and operate an eco-friendly resort in 99.68 Ares (246.30 cents) in Wayanad and had entered into an agreement with Respondent No.7 to manage the Resort. As per the agreement, the Complainant has invested in the Resort project. The net profits and losses of the firm were to be shared by the partners in the proportion of the shares held by the partners. The sharing of profit will be initiated only once the resort is operational and functional. The Complainant had joined in and invested in the project fully understanding the nature of business. The Respondents further submitted that delay issue was discussed with the Complainant and he agreed to transfer his investment to another project promoted by



Respondents namely T Dew Resorts at Thekkady, which is ready for business and accordingly, the fund was transferred. The Respondents offered to pay a small compensation as tribute money to the partners till the project was operational. Accordingly, the Complainant was paid sum of Rs. 5000/- per month from February,2019 to August 2020 amounting to Rs. 70,000/- and a sum of Rs. 8,000/- each on 09.11.2020 and 09.02.2021. The Respondents submitted that the pandemic badly affected the industry financially and the tribute payment could not be continued. By order dated 18.11.2021 in CP (1B)/01/KOB/2021 the National Company Law Tribunal, Kochi Bench admitted Corporate Insolvency Resolution Process against the 6th Respondent. A moratorium under sec 14 of I&B code,2016 was passed. The Respondents submitted that the relief sought in the Complaint are not reliefs that can be granted by the Authority and hence prayed that the Complaint may be dismissed. The Respondents produced the copy of the order dated 18.11.2021 of the National Company Law Tribunal.

4. We heard the matter in detail and perused the documents placed on record. The documents submitted by the Complainant are marked as A1 to A6. The document submitted by the Respondents is marked as Exhibit B1. Exhibit. B1 shows that Corporate Insolvency Resolution Process is going on against the 6th Respondent in which a moratorium under Sec. 14 of I&B code,



2016 was passed. Exhibit. A5 agreement produced by the Complainant is an investment agreement executed between the Complainant and the Respondent No 5. The Complainant herein has not produced any agreement for sale executed between him and any of the Respondents. At the same time, the Respondents No. 1 & 2 in their written statement submitted that the Complainant is the partner of M/s Way One Resorts LLP, 5th Respondent which is a limited liability partnership and by virtue of the Agreement dated 12.06.2018, he was inducted as a partner in the 5th Respondent firm as per the terms of the Agreement. The Respondent No. 1&2 also state that as the complainant invested in the firm as a partner, he is entitled to share the profits and losses of the firm in proportion to the shares taken by him in the firm. Section 31(1) specifies that *“Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.”* Hence it is obvious that this Authority has power to entertain complaints only in connection with any violation or contravention of the provisions of the Act, 2016 or the rules and regulations made thereunder against any promoter allottee or real estate agent. The objective of the Act 2016 itself is *“to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real*



estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector". Hence for adjudication of the above complaint, initially it is to be confirmed that it is related to a "real estate project" registerable under Section 3 of the Real Estate (Regulation & Development) Act, 2016. As per Sec 2(zn) of the Act, 2016 "Real Estate Project" defines as "the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights, and appurtenances belonging thereto". But the documents produced by the Complainant show that no such sale of any apartment, plot or building is envisioned in the said Scheme or project of the Respondents where the net profits and losses of the firm were to be shared by the partners in the proportion of the shares held by the partners.

5. Moreover, as per Section 2 (d) of the Act, 2016, the "allottee" means "a person to whom a plot, apartment or building, has been allotted or sold or otherwise transferred by the promoter, and also includes the person who subsequently acquires the said allotment through the sale but does not include a person



to whom the plot or apartment is given on rent". But in this case no such allotment, sale or transfer took place and Exhibit. A5 agreement shows that the Complainant herein is only an investor, not an allottee as per the above provisions of the Act 2016. The Complainant himself alleges that "from January 2019, instead of promised returns, Respondents started excuses for not fulfilling the promised Returns and for non-payment". So, it is to be concluded that the complainant is an investor in the firm as a partner and he is entitled to share the profits and losses of the firm in proportion to the shares taken by him in the firm, as contented by the Respondents. Moreover, the refund of the amount received by a Promoter can be ordered as per the provisions under Section 18(1) of the Act 2016 which stipulates as follows: "*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, as the case may be, 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 allottees, 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". Hence it is clear that Section 18 is also not applicable in this case.

6. In view of the above facts and findings, it is concluded that the above complaint will not come under the purview of the Act 2016 and so this Authority has no jurisdiction to entertain it. Hence the Complaint is hereby dismissed without prejudice to the right of the Complainant to approach the appropriate judicial forum to get the redressal of his grievance.

Sd/-

Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

Thakur

EXHIBITS

Exhibits produced by the Complainant

Exhibit A1- True copy of Offers by the Respondents

Exhibit A2- True copy of the Photographs

Exhibit A3- True copy of the Payment Structure

Exhibit A4 series- True copy of the Receipts

Exhibit A5- True copy of the Investment agreement.

Exhibit A6- True copy of the email communication.

Exhibits produced by the Respondents

Exhibit. B1 – True copy of the order dated 18.11.2021 of National Company Law Tribunal in C.P.(IB)/01/KOB/2021



