



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Present: Smt. Preetha P. Menon, Member

**Complaint No. 253/2022  
Dated 11<sup>th</sup> September, 2023**

**Complainants**

Mrs. P Bhagavathy Lekshmy,  
Flat No. 2A, Hi Life Capitol Apartments,  
Near Outpost Junction, Laoor Road,  
Ayyanthole, Thrissur 680003

[Adv. Prasannakumar T S]

**Respondents**

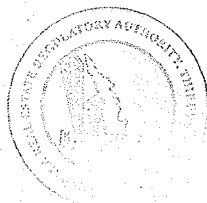
1. Mr. F M Shamier Marickar  
The CEO and Whole Time Director of Nest Realities India Pvt. Ltd. &  
Marickar Plantations Pvt. Ltd,  
XIX/346, Stone House,  
Market Road, Alwaye,  
Cochin – 683101  
Presently residing at A10,  
Kent Paradise, Palarivattom,  
Cochin 682032 (DIN 01237042)
2. Nest Realities India Pvt Ltd,  
XIX/346, Stone House,  
Market Road, Alwaye,  
Ernakulam - 683101



Represented by its CEO and Whole Time Director Mr. F.M Shamier Marickar (CIN U70101KL2006PTC019929 & DIN 01237042)

3. Marickar Plantations Pvt Ltd., having its Registered Office, Opp. Milma, Edapally, Ernakulam 682024  
Represented by its Director Mr. F.M Shamier Marickar (CIN U 01132KL2007PTC020445 & DIN 01237042)
4. Nagoor Jehangir Rawther,  
The Managing Director of Nest Realities India Pvt. Ltd.,  
Residing at Macker Manzil, XX/125 Thynothil Lane,  
Alwaye 683101  
(CIN U70101KL2006PTC019929 & DIN 00002790)
5. Javad Kuttikaran Hassan,  
Director, Nest Realities India Pvt. Ltd,  
Residing at Macker Manzil, XX/125 Thynothil Lane,  
Alwaye 683101 and having foreign address: 1900,  
Yorkshire Drive, Blue Bell, 19422,  
United States of America (DIN 00004483)
6. Althaf Jehangir,  
Director of Nest Realities India Pvt Ltd,  
Residing at Macker Manzil,  
XX/125 Thynothil Lane,  
Alwaye 683101 (DIN 00006080)
7. Mrs. Premin Shamier Marickar,  
Director of Marickar Plantations Ltd,  
Residing at A10 Kent Paradise,  
Palarivattom, Cochin 682032 (DIN 01238701)

The above Complaint came up for final hearing on 21-06-2023 for which the Counsel for the Complainant attended online. Service of notice was completed on Respondents. The Respondent No.1 attended the hearing on 09-12-2022, 24-01-2023 & 13-03-2023, thereafter, he failed to attend the hearings conducted on 18-04-2023 & 21-06-2023 despite notices from the Authority. Other Respondents did not attend any of the hearings.



**ORDER**

1. The case of the Complainant is as follows: The Complainant is an officer of State Bank of India who was approached by a marketing personnel of the 2<sup>nd</sup> Respondent, Nest Realities India Pvt. Ltd claiming to be a real estate developer cum builder company, floated by Nest Group, a "Multi-Billion Dollar Global Conglomerate", with a special offer, assuring prospective buyers, 'arrangement of instantaneous housing loan and payment of pre-EMIs out of their pocket', if a 3 BHK apartment offered at "dirt cheap price" was booked in their "world class" apartment project, "Nest Orchid Park", which was to come up at Kalathipady, Kottayam, by paying just Rs. 3,00,000/-. The Complainant relying upon the offers conveyed her interest in the project. On 08/10/2011, an advance of Rs. 50,000/- was collected from the complainant by the representatives of the 2<sup>nd</sup> Respondent/Promoter and apartment numbered 15-TB 3 was allotted to her. They urged the complainant to pay the balance amount of Rs. 2,50,000/- within a week. The Complainant paid a further sum of Rs. 9,29,260/- on 14.10.2011, raising total payment to Rs. 9,79,000/- After accepting the aforesaid amount, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents executed 2 agreements with the Complainant. The first agreement was for the sale of an undivided share of 0.648 cents, being Complainant's proportionate share in the 102.695 cents of land vested with the 3<sup>rd</sup> Respondent/Land owner, together with the right to construct a 3 BHK apartment facing East, having a super built-up area of 1354 sq.ft, on the 15<sup>th</sup> floor of "NEST ORCHID PARK" and proportionate share in the common facilities and one covered car parking area, for a total sale consideration of Rs. 1,94,300/- forming part of the overall cost of the apartment. The sale agreement provided for payment of interest @12% p.a, if the sale could not be completed due to default of the land owner. The second agreement was for the construction and sale of the above said 3BHK apartment for the overall cost of Rs. 32,64,200/-.The



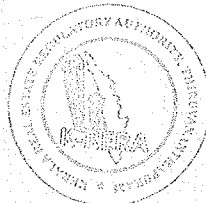
agreement also provided for payment of interest @ 10% if construction could not be completed by 31.12.2012. In the meantime, the Complainant came to know that the 3<sup>rd</sup> Respondent, Marickar Plantations had taken a huge loan from Union Bank of India and KTDFC Ltd and was facing liquidity crunch to service the loans. The Respondents suppressed the fact that the landed property covered by the Sale Agreement was mortgaged with KTDFC Ltd. In the agreement for sale, the Respondents stated unequivocally that the landed property "Nest Orchid Park" was "free from mortgage, charge, lease, lien etc." This was an intentional misrepresentation to cheat the complainant which makes the respondents criminally liable for cheating u/s 415 of IPC 1860. Had the fact of mortgage/lien been known or disclosed, the Complainant would not have invested in "Nest Orchid Park". Obviously, the offer of instantaneous loan and the promise to pay pre- EMIs was a ploy made malafide, to lure the Complainant and tempt her to part her funds to the Respondents. Therefore, the Complainant demanded the 1<sup>st</sup> Respondent to provide the Complainant, a NOC of KTDFC Ltd, the mortgagee of "Nest Orchid Park", for the purpose of availing a Housing Loan from the Complainant's employer, the State Bank of India. The completion of the project by the deadline of 31/12/2012 as agreed in the Sale/Construction Agreements was impossible and the Respondents failed to arrange any loan or procure NOC by that date, the Complainant, against her will, was constrained to agree to the extension of the sale agreement(1<sup>st</sup> extension) by another 12 months till 31.12.2013 as demanded and insisted by the Respondents, so as to keep the agreement alive to avoid litigation. Therefore, the Complainant requested the Respondents to refund the money paid. But the Respondents ignored the request for refund as well as the request for NOC. The Complainant had to concede and agree to a 2<sup>nd</sup> extension of the Sale Agreement by another 6 months till 30.06.2014 as demanded by the Respondents. After 30 months of repeated requests and



reminders, the Respondents could obtain NOC from KTDFC Ltd and upon its production, the Complainant's bank sanctioned her a Housing Loan. The bank released an amount of Rs. 16,00,000/- to 2<sup>nd</sup> Respondent on 17.03.2014 and due to repeated requests from 2<sup>nd</sup> Respondent, the Complainant paid a further sum of Rs. 5,00,000/- on 23.04.2014. Again, another sum of Rs. 3,00,000 was released by Complainant's banker and transferred to 2<sup>nd</sup> Respondent on 26.04.2014. Therefore, a total sum of Rs. 33,79,260/- was paid by the Complainant to the 2<sup>nd</sup> Respondent as against the contracted cost of apartment which was only Rs. 32,64,200/- But even by the 2<sup>nd</sup> extended deadline, there were no visible signs of completion of the project. The Complainant was again constrained against her will to agree for a 3<sup>rd</sup> extension of the Sale Agreement by another 6 months till 31/12/2014 and the bank started recovery of loan from the Complainant from April 2014 onwards. The 2<sup>nd</sup> Respondent failed to complete and handover the apartment to Complainant even by the third extended deadline of 31/12/2014. On 11.04.2015, the Complainant sent a Notice under Registered Post with A/D calling up on to pay the Complainants Rs. 9,93,586/- towards cost and compensation due to the Complainant, as obtaining on 01.04.2015 within 20 days and failure thereof, would constrain the Complainant to move the Consumer Forum for legal remedies. Though Complainant's notice was acknowledged on 17.04.2015 and no positive response was forthcoming from the Respondents. The Respondents foisted 4 more extensions of the Sale Agreement and exploiting the helpless condition of the Complainant. The deadlines for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> extensions were respectively on 31.03.2016, 31.12.2016 and 31.10.2017. Finally, with the promise to complete the construction and delivery of the flat without fail, the Respondents imposed on the Complainants, the 7<sup>th</sup> extension, fixing 31/03/2018 as the deadline. The Respondent failed to complete and deliver the flat on or before 31.03.2018 as promised in the 7<sup>th</sup> extension agreement.



On 18.07.2018, the Complainant filed a Consumer Complaint against the Respondents with the Hon'ble Kerala State Consumer Disputes Redressal Commission (KSCDRC) alleging Deficiency in Service, Restrictive Trade Practices and Unfair Trade Practices. The said case was withdrawn by the Complainant on 17.06.2022 due to inordinate delay in adjudicating the case and for that matter they approached Honourable Kerala Real Estate Regulatory Authority. The Complainant had been paying pre-EMIs on the housing loan and her right and opportunity to claim deduction of tax in respect of interest paid on Housing Loan, and the Repayment of Principal u/s 24 and 80C respectively of the Income Tax Act, 1961 for the Assessment years 2014-15 onwards which result in financial loss to the tune of Rs. 5,22,485/-. On 01.01.2014, the complainant had been incurring an opportunity cost of around Rs. 15,000/- per month towards cost of her rental accommodation which is a direct consequence of the Respondent's failure. The Complainant as per IA No 33/2023 had filed application to amend the Complaint for claiming interest at the rate of 16.15 % instead of 12% claimed in the original Complaint and the same was allowed. The reliefs sought by the Complainant are:-(i) Order the Respondents to refund the complainant forthwith, Rs. 33,79,260/- paid towards sale consideration (ii) Order the Respondents to pay the complainant a sum of Rs. 66,30,223/- towards interest accumulated till 30.08.2022 and thereafter till fully settled, @16.15% per annum. The interim relief prayed for was to restrain the Respondents from creating any lien, charge or mortgage or selling any part of "Nest Orchid Park" until the claims of the complainants are fully settled. The Complainant has produced copies of e-mail communication dated 20<sup>th</sup> August, 2011 of the 2<sup>nd</sup> Respondent, allotment letter dated 8<sup>th</sup> October, 2011 of the 2<sup>nd</sup> Respondent, payment receipt of Rs. 9,79,260/- dated 14<sup>th</sup> October, 2011 issued by the 2<sup>nd</sup> Respondent, Agreement for Sale of Land dated 14<sup>th</sup> October, 2011, Agreement for Construction dated 14<sup>th</sup> October, 2011, e-mail



communication of the Complainant dated 2<sup>nd</sup> September, 2012, First Extension of Sale Agreement, Second Extension of Sale Agreement, e-mail sent to the 1<sup>st</sup> Respondent on 1<sup>st</sup> August, 2012 requesting NOC from their financiers, e-mail from the 2<sup>nd</sup> Respondent dated 17<sup>th</sup> March, 2014 acknowledging receipt of Rs. 16,00,000/-, e-mail dated 3-7-2014 to the 1<sup>st</sup> Respondent, payment Receipt for Rs. 5,00,000/- dated 23<sup>rd</sup> April, 2014 issued by the 2<sup>nd</sup> Respondent, Third Extension of sale agreement, Complainant's Registered Notice to the 1<sup>st</sup> Respondent, dated 10<sup>th</sup> April, 2015 requesting to return money, postal acknowledgement of registered letter sent to the 1<sup>st</sup> Respondent, Fourth Extension of Sale Agreement, Fifth Extension of Sale Agreement, Sixth Extension of Sale Agreement, Seventh Extension of Sale Agreement, order in CC 91 of 2018 before the State CDRC, statement showing Tax Savings Lost on Housing Loan Interest and Repayments as on 31-07-2022, statement showing opportunity cost of Rental Accommodation as on 31 Aug 2022.

2. Though Respondent No 1 appeared on 09-12-2022, 24-01-2023 & 13-03-2023 and sought time for filing counter statement, even after getting ample time, none of the Respondents filed objection/statement to the Complaint. The Respondent No 2 is the promoter and the Respondent No. 3 is the Land Owner according to the Complainant and 1<sup>st</sup> Respondent is the whole time Director of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Private Limited Companies. The Respondents No. 4 to 6 are Directors of 2<sup>nd</sup> Respondent Company and the 7<sup>th</sup> Respondent is the Director of the 3<sup>rd</sup> Respondent Company and the wife of Respondent No.1 The Respondent No 1, the Director of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Companies, who attended the hearings on 09-12-2022, 24-01-2022 and 13-03-2022 failed to attend multiple hearings thereafter or to file any reply statement. Hence, all the



Respondents set ex-parte and the Authority decided to pass ex-parte order as follows:

3. The project in question here is registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016, [herein after referred to as 'the Act, 2016'] before this Authority vide No K-RERA/PRJ/008/2022 on 03-02-2022 with proposed date of completion as 30-09-2022 and still an on-going project with 165 units. The registration expired on 30-09-2022 but the Promoter has not taken any steps to extend the registration or to file Form 6, if the project is completed in all respects and handed over to the Association of allottees. It is also noticed seriously that the Respondent/Promoter has not uploaded the quarterly updates of the projects, as mandated under this law. Hence the authority has initiated actions against the promoter to revoke the registration given to the said project.

4. Heard the Counsel for the Complainant and examined all the documents submitted by him carefully. The copies of documents produced by the Complainant are marked as **Exhibit A1 to A22**. The copy of e-mail communication dated 20<sup>th</sup> August, 2011 by the representative of the 2<sup>nd</sup> Respondent offering to arrange loan and assuring to pay a EMI to the allottee is marked as **Exhibit A1**. The copy of allotment letter dated 8<sup>th</sup> October, 2011 issued by the 2<sup>nd</sup> Respondent allotting apartment No 15-TB-3 to the Complainant is marked as **Exhibit A2**. The copy of payment receipt of Rs. 9,79,260/- dated 14<sup>th</sup> October, 2011 issued by the authorised signatory of the 2<sup>nd</sup> Respondent as advance consideration is marked as **Exhibit A3**. The copy of Agreement for Sale of Land dated 14<sup>th</sup> October, 2011 entered in to between the 3<sup>rd</sup> Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A4**. In Exhibit A4, it was stated that the 3<sup>rd</sup> Respondent is vested with the property





and entrusted the 2<sup>nd</sup> Respondent to develop 98.051 cents of land and construct a seven storied Residential Apartment building thereon consisting of flats for persons intending to purchase undivided right to construct specified flats at their expense after leaving provision for common passage etc As per the agreement, the 3<sup>rd</sup> Respondent agreed to sell 1354/205000 undivided share equivalent to 0.648 cents in 98.051 cents of land together with right to construct 3 bed room apartment No 15-TB-3 having super built up area of 1354 sq.ft.in Nest Orchid Park Apartment with sale consideration of Rs.1,94,300/-. The copy of Agreement for Construction dated 14<sup>th</sup> October, 2011 between the 2<sup>nd</sup> Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A5**. As per the said agreement, the 2<sup>nd</sup> Respondent/Builder agreed to undertake to construct apartment with car parking space for a consideration of Rs. 30,69,900/- and the Purchaser/Complainant agreed to pay a total of Rs. 32,64,200/- for land and construction cost. It was undertaken by the 2<sup>nd</sup> Respondent/Builder to complete construction before 30-09-2012, with a further grace period of 3 months to provide for unforeseen contingencies. It was also specified in the agreement that in the event of the 2<sup>nd</sup> Respondent/builder failing to do so the Complainant/purchaser should be entitled to receive interest for the amount paid by the purchaser to the builder, at the rate of 10% per annum and such interest should be chargeable cumulatively with monthly rests. The copy of e-mail sent by the Complainant to the 1<sup>st</sup> Respondent on 01-08-2012 requesting NOC from their financiers is marked as **Exhibit A6**. The copy of agreement for the First Extension of Sale Agreement entered in to between 3<sup>rd</sup> Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A7**. The copy of agreement for the Second Extension of Sale Agreement entered in to between 3<sup>rd</sup> Respondent represented by its Director, the 1<sup>st</sup> Respondent



and the Complainant is marked as **Exhibit A8**. The copy of e-mail sent by the Complainant to the 1<sup>st</sup> Respondent on 02-09-2012 requesting NOC from their financiers is marked as **Exhibit A9**. The copy of e-mail dated 3-7-2014 from the Complainant to the 1<sup>st</sup> Respondent reminding them to complete the promises made is marked as **Exhibit A10**. The copy of e-mail from the 1<sup>st</sup> Respondent dated 17<sup>th</sup> March, 2014 acknowledging receipt of Rs. 16,00,000/- through online transfer is marked as **Exhibit A11**. The copy of Receipt for payment of Rs. 5,00,000/- dated 23<sup>rd</sup> April, 2014 issued by the authorised signatory for 2<sup>nd</sup> Respondent is marked as **Exhibit A12**. The copy of agreement for the Third Extension of sale agreement entered in to between 3rd Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A13**. The copy of registered notice sent by the Complainant to the 1<sup>st</sup> Respondent dated 10<sup>th</sup> April, 2015 requesting to return money is marked as **Exhibit A14**. The copy of postal acknowledgement of registered letter sent to the 1<sup>st</sup> Respondent is marked as **Exhibit A15**. The copy of agreement for the Fourth Extension of Sale Agreement entered in to between 3rd Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A16**. The copy of the Fifth Extension of Sale Agreement entered in to between 3rd Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A17**. The copy of the Sixth Extension of Sale Agreement entered in to between 3rd Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A18**. The copy of the Seventh Extension of Sale Agreement entered in to between 3rd Respondent represented by its Director, the 1<sup>st</sup> Respondent and the Complainant is marked as **Exhibit A19**. The copy of order in CC 91 of 2018 before the State CDRC is marked as **Exhibit 20**. The copy of statement showing Tax Savings Lost on Housing Loan Interest and Repayments as on 31-07-2022



is marked as **Exhibit A21**. The copy of statement showing opportunity cost of Rental Accommodation as on 31 Aug 2022 is marked as **Exhibit A22**. The copy of bank accounts statement of the Complainant transferring Rs.3,00,000/- to the bank account number 31135826375 of the 2<sup>nd</sup> Respondent is marked as **Exhibit A23**. The copy of email dated 03-04-2014 of the 2<sup>nd</sup> Respondent informing the bank account number 31135826375 of the 2<sup>nd</sup> Respondent is marked as **Exhibit A24**. The relief sought is for direction to return the amount paid by the Complainant along with interest from the date of payment till the date of receipt of the amount. Even though the Complainant has arrayed 7 persons as Respondents, all the documents such as agreements, payment receipts, e-mail communications are signed or issued by or in the name of Respondents No. 1, 2 and 3. Moreover, the Respondent No. 1 appeared directly during the initial hearings and admitted that he is the Promoter of the project and sought time for filing written statement to the Complaint. On 24-01-2023, during the hearing, he requested the Complainant to wait for some time and accept the apartment booked by the Complainant which was denied by the Complainant. However, **Section 69(1) of the Act, 2016** stipulates that *“where an offence under the 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.”*

6. Section 18(1) of the 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, as the case may be, duly completed by the date specified therein; 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: Provided that where the 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.”*

As per Section 19(4) of the Act 2016, “*the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, 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 the agreement for sale*”. As per Exhibit A5 agreement the projects had to be completed by the Respondents No. 2 and 3 before 31<sup>st</sup> December, 2012. From the extension agreements as Exhibit A7, A8, A13, A16, A17, A18, A19 it is confirmed that the projects had been badly delayed and the Respondents No. 1,2, and 3 were miserably failed to fulfil their obligation. Section 18(1) of the Act, 2016 is applicable in cases where 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 duly completed by the date specified therein. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. In this case the Complainant selected the second option, to withdraw from the project and to claim refund with interest. It is clear that the Respondents No 1 and 2 /Promoters had grievously failed to perform their part and honour the promises given to the Complainant who trusted him and invested their hard-earned savings and have been waiting for a long period in the dream of a roof over the head. The Hon’ble Supreme Court in its landmark judgment



dated 11.11.2021 in M/s Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows: *“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/home buyer, 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”*. In these circumstances, the Complainant herein 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 Respondent No.2/ Promoter along with interest from the date of receipt of payment by the promotor till refund to the Complainant.

8. The interest payable by the Respondents No.1 and 2/Promoters to the Complainant/allottee is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.85%. Hence, the allowable interest rate is  $14.85\% + 2\% = 16.85\%$ . The relevant portions of Rule 18 of the said Rules is extracted below: *“(1) The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India’s Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment*



*from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.”*

9. The Exhibits A2 allotment letter and Exhibit A3 payment receipt confirms receipt of Rs. 9,79,260/-, by the Respondent No. 2/ Promoters. Exhibit A11 e-mail communication confirms receipt of Rs.16 lakhs by the Respondent No 2/Promoters. Exhibit A12 payment receipt confirms the receipt of Rs. 5 lakhs and Exhibit A23 bank accounts statement confirms the bank transfer of Rs. 3,00,000/- to the Respondent No.2/ Promoters. Hence, and it is clear that the Respondents No. 2/Promoters had received a total amount of Rs.33,79,260/-. The details of payments made as per the receipts submitted by the Complainant are as follows:

<u>Date</u>	<u>Amount</u>
14-10-2011	Rs. 9,79,260.00
17-03-2014	Rs.16,00,000.00
23-04-2014	Rs. 5,00,000.00
26-04-2014	Rs. 3,00,000.00
<b>Total</b>	<b>Rs.33,79,260.00</b>

10. Hence, the Complainant/allottee is entitled for refund of only Rs.33,79,260/- paid by her along with interest, from the respective dates of payment till date of realization of amount.

11. The Authority, after going through the facts and circumstances of the case and the documents produced and by invoking



Section 37 of the Real Estate (Regulation & Development) Act, 2016 hereby directs as follows: -

- i) The Respondents No 1 and 2 shall return to the Complainant the **total amount of Rs. 33,79,260/- received**, along **with simple interest @ 16.85% per annum**, from the respective dates of payment, till the date of realisation of amount.
- ii) If the Respondents No 1 and 2 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 Complainant is at liberty to recover the aforesaid sum from the Respondents No. 1 and 2 and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder.
- iii) The Respondents are hereby restrained from creating any lien, charge or mortgage or selling any units/part of "Nest Orchid Park" until the claims of the complainant is fully settled, by complying with the above direction.

Sd/-  
Preetha P. Menon  
Member.

True Copy/Forwarded By/Order



Secretary (Legal)

## APPENDIX

### Exhibits marked on the side of the Complainant

- Exhibit A1: Copy of e-mail communication dated 20<sup>th</sup> August, 2011.
- Exhibit A2: Copy of Allotment letter dated 8<sup>th</sup> October, 2011.
- Exhibit A3: Copy of payment receipt of Rs. 9,79,260/- dated 14<sup>th</sup> October, 2011.
- Exhibit A4: Copy of Agreement for Sale of Land dated 14<sup>th</sup> October, 2011.
- Exhibit A5: Copy of Agreement for Construction dated 14<sup>th</sup> October, 2011.
- Exhibit A6: Copy of e-mail sent by the Complainant to the 1<sup>st</sup> Respondent on 01-08-2012
- Exhibit A7: Copy of agreement for the First Extension of Sale Agreement.
- Exhibit A8: Copy of agreement for the Second Extension of Sale Agreement.
- Exhibit A9: Copy of e-mail sent by the Complainant to the 1<sup>st</sup> Respondent on 02-09-2012
- Exhibit A10: Copy of e-mail dated 3-7-2014 from the Complainant to the 1<sup>st</sup> Respondent
- Exhibit A11: Copy of e-mail from the 2nd Respondent dated 17<sup>th</sup> March, 2014.
- Exhibit A12: Copy of Receipt for payment of Rs. 5,00,000/- dated 23<sup>rd</sup> April, 2014.
- Exhibit A13: Copy of agreement for the Third Extension of sale agreement.





- Exhibit A14: Copy of registered notice sent by the Complainant to the 1<sup>st</sup> Respondent dated 10<sup>th</sup> April, 2015.
- Exhibit A15: Copy of postal acknowledgement of the registered letter sent to the 1st Respondent
- Exhibit A16: Copy of agreement for the Fourth Extension of Sale Agreement.
- Exhibit A17: Copy of agreement for the Fifth Extension of Sale Agreement.
- Exhibit A18: Copy of agreement for the Sixth Extension of Sale Agreement
- Exhibit A19: Copy of agreement for the Seventh Extension of Sale Agreement
- Exhibit A20: Copy of order in CC 91 of 2018 before the State CDRC
- Exhibit A21: Copy of statement showing Tax Savings Lost on Housing Loan Interest and Repayments as on 31-07-2022
- Exhibit A22: Copy of statement showing opportunity cost of Rental Accommodation as on 31-08- 2022.
- Exhibit A23: Copy of bank accounts statement of the Complainant transferring Rs.3,00,000/- to the bank account number 31135826375 of the 2<sup>nd</sup> Respondent.
- Exhibit A24: Copy of email dated 03-04-2014 of the 2<sup>nd</sup> Respondent to the Complainant.



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