



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 278/2022

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

Dated 11th December 2024

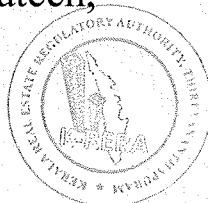
Complainant

Ajish Aslam Kottathara Nalakath
'Ayshas Rock Bunker', Near High School,
Morayur P O, Malappuram- 673 649,
Now residing at Mina Zayed, PO Box- 54477,
Abu Dhabi, UAE represented by Power of Attorney Holder
his father Mr. Mohamed Aslam Kottathara Nalakath.

[Adv. P O Thomas Puthussery]

Respondents

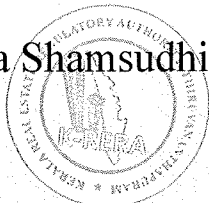
1. Nest Infratech (M/s Nest Realities India Pvt Ltd),
Having its corporate office at COMPASS,
5th Floor, NH-47 By-pass,
Near Vysali Bus Stop,
Chakkaraparambu, Cochin – 682032
Rep. by its Managing Director, Recently
Corporate Office shifted to Stone House,
Market Road, Alwaye- 683 101
2. Mr. F M Shamier Marickar,
Director, Nest Infratech,



(M/s Nest Realities India Pvt Ltd),
Residing at A-6, Nalukettu,
Chakkaraparambu, Vennala,
Edapally South Village, Kochi – 682028

3. T G Geevarghese Samuel
Vattakuzhiyil House, Cherumatto Puzha Desom,
Vazhakala Village, Kanayannoor Taluk
4. Siji Tono alias Siji Jos
Vattakuzhiyil House, Cherumatto Puzha Desom,
Vazhakala Village, Kanayannoor Taluk
5. Javad K Hassan,
Director, Nest Infratech
(M/s Nest Realities India Pvt Ltd),
COMPASS, 5th Floor, NH – 47 By-pass,
Near Vysali Bus Stop, Chakkaraparambu,
Cochin – 6820232. Recently Corporate Office
Shifted to Stone House, Market Road,
Alwaye – 683101
6. Jehangir Rowther,
Director (M/s Nest Realities
India Pvt Ltd) Compass 5th Floor, NH – 47 By-pass,
Near Vysali Bus Stop, Chakkaraparambu,
Cochin – 6820232. Recently Corporate Office
Shifted to Stone House, Market Road,
Alwaye – 683101
7. Althaf Jehangir,
Makar Manzil, Thynothil Lane,
Aluva, Ernakulam District – 683101.
Recently Corporate Office Shifted to Stone House,
Market Road, Alwaye – 683101

8. Kuttymoosa Shamsudhin,



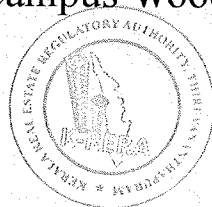
Nest Infratech Director ((M/s Nest Realities India Pvt Ltd) Compass 5th Floor, NH – 47 By-pass, Near Vysali Bus Stop, Chakkaraparambu, Cochin – 6820232. Recently Corporate Office Shifted to Stone House, Market Road, Alwaye – 683101

[R4 by Adv. C R Syamkumar & R5 to R8 By Adv. Asif Ali]

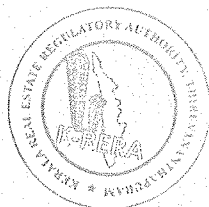
The above Complaint along with some other complaints of the same project came up for a virtual hearing on 01/08/2024. The counsel for the Complainant Adv P O Thomas Puthusserry and the counsel for Respondents No. 5 to 8 Adv. Asif Ali attended the hearing. The notices to the Respondent No.3 were returned unserved as “not known”. The Respondent No.2 was absent. No one represented the Respondent No. 1/Promoter Company.

ORDER

1. The facts of the above Complaint are as follows:- The Complainant is an allottee in the project developed by the Respondents. The first Respondent herein is a Company incorporated and registered under the provisions of the Indian Companies Act, 1956. The Respondents herein are promoters under the Real Estate (Regulation and Development) Act, 2016 and Respondents No. 2,5,6,7 and 8 are directors of the 1st Respondent Company. In January 2012, the Respondents advertised that they were proposing to construct a multi-storied building in a flat system on the property of Njalakom Desom, Thrikkakara North Village, ‘Campus Woods at Kalamassery by name.



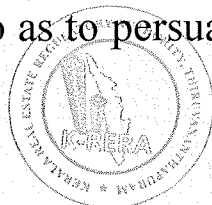
The Complainant was looking forward to purchase a residential flat for himself and his family and based on the advertisements, the Complainant approached the Respondents intending to purchase a residential flat. The Complainant booked an apartment No. III C on the 3rd floor with a super built-up area of 961 square feet in the multi-storied building in a flat system to be constructed in the name and style 'Nest Campus Woods – Maple-Block' along with the other amenities. Since the Respondents could not start the work of the Maple Tower the Respondents offered another flat in OAK Tower. Thereafter the apartment booked by the Complainant in MAPLE tower was cancelled. The possession of the abovementioned property was handed over to the 1st Respondent Company by the 3rd and 4th Respondents, who were land owners enabling them to make the construction. When the Complainant approached the Respondents, the Respondents have represented to the Complainant that they were making residential flats in the above property. The Respondents have represented that the construction will be completed at the most in 1 year. Thereafter an agreement was executed between the Complainant and the Respondents on 09.01.2014. The Respondents 1 and 2 undertook to complete the construction within 2 years and to handover possession of the building with all facilities and amenities including car parking. It was then orally and mutually agreed that the Respondents would complete the construction by January 2016 and hand over possession of the apartment with all facilities and amenities including car parking.



2. It was submitted further that as per the allotment letter dated 07.08.2013, an agreement was executed between the Complainant and the first Respondent and the Complainant was to pay a total amount of Rs. 28,50,000/- as consideration. Out of the said amount, the Complainant paid a sum of Rs. 5,00,000/- on 09.08.2013. Thereafter the Complainant paid a sum of Rs. 10,00,000/- on 05.09.2013. The Respondents did not obtain land or start construction of MAPLE Block until the end of year 2013 which was admitted by the Respondents that, they could not proceed with the proposed MAPLE project. The Respondents suggested and offered a substitution apartment in OAK Block in the year 2014 and hence the Complainant agreed to adjust the total amount of Rs. 15,00,000/- to the new allotment of 4-D OAK. The flat agreed to be sold 4-D OAK was having a built up area of 1472 square feet. Then a new agreement was executed between the Complainants and the Respondents on 09.01.2024, the Respondents agreed to sell the building to be constructed as Flat No. IV D (OAK) having a super built up area of 1472 square feet in the 4th floor of the multi-storied building in flat system to be constructed in the name and style 'NEST – CAMPUS WOODS – OAK' along with the other amenities as stated in the agreement. Thus the amount of Rs. 15,00,000/- made as advance payment towards the III C apartment in Maple Block was adjusted towards the sale consideration of Flat No. 4-D OAK to be constructed by the Respondents in the property above mentioned at 'NEST CAMPUS WOODS (OAK).



3. As per the terms of the agreement dated 09.01.2014, the Complainant agreed to pay a total amount of Rs. 42,32,518/- in different installments depending on the progress in the construction of the apartment. The amount agreed to be paid as above is the total sale consideration payable for the landed property and also the apartment to be delivered to the Complainant in a ready-to-occupy condition after executing and registering the same in the name of the Complainant. It also includes the registration charges and other incidental expenses including statutory charges. As per the terms of the agreement dated 09.01.2014, the Complainants agreed to pay a total amount of Rs. 42,32,518/- in different instalments depending on the progress in construction of the apartment. The amount agreed to be paid as above is the total sale consideration payable for the landed property and also the apartment to be delivered to the Complainant in a ready to occupy condition after executing and registering the same in the name of the Complainant. As per the agreement dated 09.01.2014, it was agreed to complete the construction within 2 years. Therefore, the Respondents were bound to complete the construction on or before 31.01.2016. The Respondents did not complete the construction within the agreed time. It was submitted that even though the Complainant and other purchasers approached the Respondents and requested them to resume the construction activities, the Respondents did not resume the construction activity saying that they are not having requisite money with them. Therefore, an unregistered Association was formed by the intending purchasers so as to persuade the Respondents to resume the



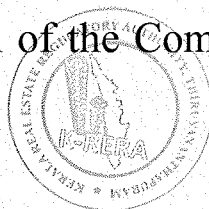
construction and it was after much persuasion and requests that the Respondents resumed construction activities by the end of the year 2018. Even before resuming the construction activity, the building permit which was issued for 3 years expired. No steps are taken by the Respondents to get the validity of the permit extended for further periods. Therefore, out of the total amount of Rs. 42,32,518/- agreed to be paid by the Complainant to the Respondents. The Complainant had paid only a sum of Rs. 15,00,000/-. It was submitted that the Complainant has paid the said amount on the following dates.

Date	Amount
09.08.2013	Rs. 5,00,000
05.09.2013	Rs. 10,00,000
TOTAL	Rs. 15,00,000/-

4. The Complainant submits that now the structural work of the building up to the 4th floor is almost completed. The plastering and plumping works have not been so far started and the Respondents have completely stopped the construction work at the end of 2019. As per the agreement dated 09.01.2014, they have agreed to carry out the entire plumping, electrical wiring, plastering, painting, fixation of fixtures etc. by the agreed time. They failed to discharge their obligations under the agreement for the reason that they diverted the money obtained from the intending purchasers of the building agreed to be constructed on the said property to other projects. Had the funds

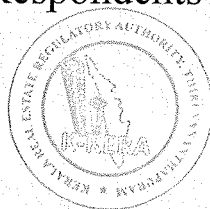


obtained from the intending purchasers been utilized for the project in hand, the Respondents could have very well completed the construction within the agreement time and handed over the key of the flat to the Complainant. The Complainant intended to occupy the building by January 2016. Even after the elapse of around 5 years from the stipulated time, the Respondents did not complete the construction nor did they handover possession of the building to the Complainant. The action/inaction as above on the part of the Respondents is in clear violation of terms and conditions of the agreement dated 09.01.2014 entered into between the Complainant and the Respondents and also in clear violation of the provisions contained under the Real Estate (Regulation and Development) Act, 2016. It was submitted that the Real Estate (Regulation and Development) Act came into force with effect from 26.03.2016. As per Section 4 of the above Act, it is the bounden duty of the builder to get the ongoing project registered under the provisions of the above Act. The Respondents till date did not take any steps to get the project registered which is clear violation of the provisions of the above Act. The Complainant has always been ready to perform his part as per the agreement at all point of time whereas Respondents were not all ready and willing to perform their part at any point of time. The Complainant has issued a legal notice on 01.11.2022 to the Respondents. They have not sent any reply to the legal notice issued by the Complainant. As per the agreement dated 09.01.2014, the Respondents agreed to complete the construction and to handover the building for occupation of the Complainant on or before 31.01.2016,



there are absolutely no justification on the part of the Respondents for delaying the handing over of the possession of the building for the occupation of the Complainant. Therefore, the Respondents be directed to complete the construction as expeditiously as possible and within a time frame fixed by the Authority and to handover possession of the building to the Complainant. Since the construction activities are delayed solely due to the negligence on the part of the Respondents, the Complainant is entitled to the compensation prescribed under Section 19(4) of the Act and the Respondents are jointly and severally liable.

5. It was also submitted that the representations of the Respondents are tainted with malafides and fraud from the very beginning itself. At the time of negotiation between the Complainant and the Respondents which ultimately resulted in the agreement dated 09.01.2014 and at the time of execution of the agreement and at all times thereafter till the last payment made by the Complainant to the Respondents, the Respondents in an unequivocal terms represented to the Complainant that the Respondents are having all statutory clearances and licenses to make the construction. To the surprise of the Complainant, on an enquiry it was revealed to Complainant that no objection certificate issued by the Kerala State Pollution Control Board has been expired and no objection Certificate to be obtained from the Fire and Rescue Department of the Government of Kerala is not applied for or obtained by the Respondents. The building permit issued by the Kalamassery Municipality expired long before and absolutely no efforts are made by the Respondents to get the period of the building

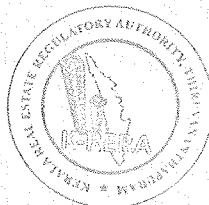


permit extended to enable them to complete the construction. On the other hand, the Respondents abandoned the entire project after obtaining substantial amounts from the Complainant and others. In the agreement dated 09.01.2014, the Respondents 1 and 2 stated and made the Complainant believe that the Respondents 1 and 2 have obtained permit from the Kalamassery Municipality for construction of multi-storied building. Therefore, the money obtained by the Respondents from the intending purchasers agreeing to sell the residential flats is a fraud on them and they have taken undue advantage. The reliefs sought by the Complainant are as follows: -(i) Issue a direction to the Respondents to apply for and obtain the requisite registration contemplated under Section 4 of the Real Estate (Regulation and Development) Act, 2016. (ii) Direct the Respondents to complete the construction of the building in the property by name 'NEST – CAMPUS WOOD – OAK' after obtaining the requisite occupancy certificate from the local authority in terms of the agreement.(iii) Direct the Respondents to pay a sum of Rs. 15,57,240/- as interest for the delayed completion of the construction. The Complainants have produced the copies of the agreements, receipts of payment, legal notice and general power of Attorney.

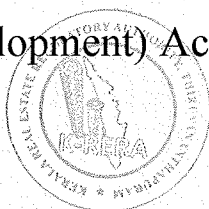
6. The Respondent No.4 filed statement of objection and submitted as follows:- The Complainant is not at all known to this Respondent and he has never met this Respondent nor has the Complainant ever contacted this Respondent prior to execution of the agreement by him with the 1st Respondent. There is no privity of



contract between the Complainant and the 4th Respondent and there is no contract entered into by the Complainant with the 4th Respondent. The Complainant has not produced copy of the agreement if any with the 4th Respondent and has not mentioned even the date of the said alleged agreement in the Complaint and since there is no privity of contract with the 4th Respondent, the Complaint as against this Respondent is not maintainable. The specific statement in paragraph 1 and 5 of the Complianant that an agreement had been entered into by the Complainant with the 4th Respondent is absolutely false and is specifically denied. As stated earlier, there is no agreement or contract entered into by this Respondent with the Complainant and that is the reason why the Complainant has not been able to produce the copy of the said alleged agreement. This Respondent had entered into an agreement for sale of the property with the 2nd Respondent and it is based on the said agreement for sale that the 2nd Respondent has entered into agreements with the prospective purchasers. As substantial amount was paid by the 2nd Respondent as advance sale consideration, the possession of the property was given to the 2nd Respondent, who was permitted by this Respondent to apply for building permit so as construct a multi storied building upon the said property. At no point of time whatsoever has this Respondent contacted any of the prospective purchasers of the flat and none of the prospective purchasers including the Complainant herein had ever contacted this Respondent. It may also be pointed out that no amount had ever been given or transferred by any of the prospective purchasers including the



Complainant to this Respondent and this Respondent has not received any amount from them. Though the agreement for sale provided for executing the sale deed within one year, the 2nd Respondent had been postponing the same and ultimately the sale deed was executed in respect of the entire property by this Respondent in favour of the 2nd Respondent on 24.11.2018 as document number 3506/2018 of Edappally SRO. A perusal of the said document would evidence that the entire sale consideration has been paid by the 2nd Respondent and not by any prospective purchaser and therefore it is quite preposterous to contend that an agreement had been entered into by this Respondent with the complainant agreeing to sell portions of the property to him. The Complaint is conspicuously silent as to the point whether any amount is paid by him to this Respondent either at the time of entering into the alleged agreement for the sale of the undivided portion or any time thereafter. Thus it is very evident that the Complaint as against this Respondent is totally unjustified and unfounded and is to be rejected with compensatory costs to this Respondent. This Respondent is not aware of the other factual aspects narrated in the Complaint. This Respondent is not acquainted with either the facts stated therein or even with the Complainant at all. This Respondent was the land owner who has assigned the land to the 2nd Respondent for valid consideration and is in no way connected either with the development of the land or the sale of the flats to the prospective purchasers. This Respondent is not a "Promoter" as defined under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 and no orders can be passed



as against this Respondent by the Authority. This Respondent, as on the date of the Complaint, does not even have any right over the property as the entire property has been assigned for valid consideration in favour of the 2nd Respondent. The agreement for development entered into by the Complainant with the 1st Respondent dated 09.01.2014, which has been produced by the Complainant, itself would point out that the agreement for sale of the undivided interest on the land was also executed by the Complainant with the 1st Respondent and not with this Respondent. Clause 8 of the "Terms Accepted by the Client" in page 11 of the said agreement provides as follows:- "The Client doth hereby agrees that this agreement and the agreement executed by the client with the Builder for the purchase of undivided interest in land described in Schedule A hereto, though distinct and separate, are interdependent and the non-performance of one shall result in the breach of the other." Thus it is evident from the said clause that the agreement for sale of the undivided interest over the land is also executed by the Complainant with the builder alone and not with this Respondent. This Respondent has been unnecessarily harassed and dragged into this proceeding and has to be compensated by the Complainant. None of the grounds urged by the Complainant are sustainable as against this Respondent. There is no cause of action as against this Respondent and no relief can be granted against this Respondent. This Respondent has been unnecessarily made a party to the proceedings and there is no privity of contract between the Complainant and this Respondent. A similar Complaint was filed by



another purchaser against the very same builder in which this Respondent was arrayed as a party and the Authority, after consideration of all aspects had deleted this Respondent saying that the Respondent is in no way connected to the Complaint. The photocopy of the order dated 07.09.2021 passed by the Authority is produced. There are no bonafides in the Complaint against this Respondent and the attempt of the Complainant is only to somehow rope in this Respondent into the dispute to coerce the 1st and 2nd Respondent to settle the matter. This Respondent is unconcerned with the developmental activities being carried out by the 1st and 2nd Respondents and the sale of any of the flats they constructed in the property to prospective purchasers. There is no reason at all to invoke the jurisdiction of this Authority as against this Respondent and it was prayed to dismiss the Complaint as against this Respondent with compensatory costs to this Respondent.

7. The Respondents 5 to 8 filed counter statements and submitted as follows:- The Respondents 5,6 & 8 herein are Directors of the 1st Respondent company whereas the 7th Respondent is no longer a Director. This counter affidavit is filed in the individual capacity of Respondents 5 to 8 since these Respondents have been individually made parties to the proceedings and may not be treated as the reply/counter affidavit of the 1st Respondent company. It was submitted that, the above proceedings as against the Respondents 5 to 8 in their individual capacity is not maintainable since these Respondents do not come within the definition of the term 'promoter' under Section 2(zk)



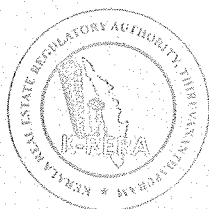
of the RERA Act. They are only directors and ex-directors of the promoter company. As per the Certificate issued by RERA in Form C under Rule 7(1) of the Kerala Real Estate (Regulation and Development) Rules, 2018, the 1st Respondent company alone is the promoter. Further, the 2nd Respondent who is the registered owner of the land wherein the project in question is being developed may also be treated as the promoter of the project in question. Therefore, the Complaint is not maintainable against us in our capacity. Further, the promoter company being a corporate entity, these Respondents cannot be made personally liable for the claims of the Complainants. Therefore, they are unnecessarily made party to the above proceedings. However, they are fully cognizant of the fact that, any order passed by the Authority shall be binding upon the company and its assets. All averments and allegations contrary to the same are stoutly denied. It was submitted that, these Respondents and other authorized personals of the 1st Respondent Company including the 2nd Respondent herein held a Board Meeting on 26.08.2017 and decided that Nest World Villa, Apartment & JKH Signature Projects are to be separated out from other 2 projects of the company and these projects shall be carried out and completed by a Special Purpose Vehicle to be formed. The completion of the other 2 projects, namely Orchid Park & Campus Wood would be the responsibility of the 2nd Respondent. These projects were under the sole responsibility of the 2nd Respondent and Nest Campus Woods, the project in question, was one among the projects which was handed over to the 2nd Respondent. It was prayed to dismiss the above Complaint as



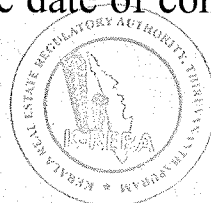
against these Respondents and no orders be passed against these Respondents in their individual capacity. No documents have been produced from the part of these Respondents No. 5 to 8.

8. The project in question is a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the "Act 2016"] in which the proposed date of completion was shown as 30/09/2022. On perusal of the web page concerned, it is seen that the Respondents have not yet uploaded the occupancy certificate or the final fire NOC in respect of the project in question. It is also noted that the Respondents have neither uploaded Form-6 showing completion of the project nor taken any steps for extension of registration, as provided under the provisions of the Act 2016 despite notice from the Authority which is sheer violation of provisions of the Act 2016.

9. The Respondent No. 4 was deleted from the party array as per proceedings dated 13/09/2023, after hearing and perusing the copy of interim order passed by us in Complaint No. 191/2020, 196/2020, 302/2020 & 26/2021, 27/2021, 112/2021, 115/2021, 117/2021, 119/ 2021 marked as Exbt B1 in the present Complaint as per which he is only the previous owner of the land from whom the land was purchased by the Respondent No.1/Promoter company which was admitted by the Respondents during the proceedings of other Complaints with respect to the project in question. The Respondent No. 3 who said to be one of the previous land owners did not appear or represented by anybody.



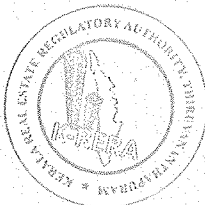
10. Here, the reliefs sought by the Complainant is registration of the project, completion, handing over possession and interest for delay. As far as the prayer for completion and handing over is concerned, the Authority earlier issued a common order dated 05/10/2021 regarding the Completion of the 2 residential Towers Campus Woods OAK & Campus Woods PINE of the project in question named 'Nest Campus Woods' developed by the Respondents herein in Complaints No. 191/2020, 196/2020, 302/2020 & 26/2021, 27/2021, 112/2021, 115/2021, 117/2021, 119/ 2021 filed by the allottees of the Project through which the Authority had directed the Respondents/Promoters *(1) to complete the entire works of the residential Tower named 'Nest Campus Woods Oak' on or before 30/12/2021 and that of residential Tower named 'Nest Campus Woods Pine' on or before 30.04.2022 with all the common amenities and facilities offered to the Complainants in accordance with the agreements executed with them, (2) to complete the execution of sale deeds to all the complainants within the above said time periods and as per the terms of the agreements entered with them and (3) to hand over the maintenance of the common areas to the Association formally after completion of the projects.* As per the said order, the Complainants who sought interest for delay were directed to file their claims with detailed interest calculation statement in separate applications. It was also specified in the said order that in the event of non-compliance of the order by the Respondents/promoters, they shall be liable to pay Rs.5000/- per day from the date of compliance of the above order, till



completion under Section 63 of the Real estate (Regulation & Development) Act, 2016. The above said order dated 05/10/2021 for completion and handing over shall be applicable to all the allottees of the Project in question including the Complainant herein. The secretary (Legal) of this Authority was also directed to send a demand notice to the Respondent/Promoter to remit the penalty till date.

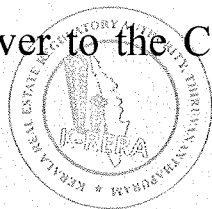
11. Heard the parties appeared before is in detail on the claim of interest for delay in handing over the apartment to the Complainant as per the terms of the agreements. After hearing the counsels on either side and perusing the pleadings and documents submitted with respect to the claim of the Complainant, the points arose for consideration are as follows:

- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) Whether the Complainant herein is entitled to get interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?
- 3) What order as to costs?



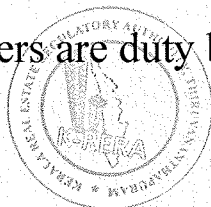
12. **Points 1&2:-** The documents produced from the part of the Complainants are marked as Exbts.A1 and A4. The Respondent No. 1&2 have not filed any counter statement or produced any documents. The Respondents No. 5 to 8 did not produce any documents along with their counter statement. **Exhibit A1** is the deed of agreement dated 09.01.2014 executed between the Complainant and the Respondent No.1 represented by Respondent No.2. **Exhibit A2** series is the receipts of payments made by the Complainant to the Respondent No.1. **Exhibit A3** is the lawyer notice dated 01.11.2022 issued by the Complainant counsel. **Exhibit A4** is the General Power of Attorney given by the Complainant in favour of his father. The Respondent No.4 produced an interim order dated 07/09/2021 issued by the Authority is marked as **Exhibit B1**.

13. On perusal of the documents placed on record, it could be seen as per Exbt A1 agreement dated 09/01/2014, entered into with the Complainant herein, the Respondents/builder had assured that the construction would be completed and handed over within 24 months from the date of agreement i.e by 08/01/2016. The learned counsel appeared for the Complainant submitted that the Respondents/promoters have not yet completed or handed over the apartment and thereby violated the terms of the agreements. It is noticed that as per the terms of Exbt. A1 agreement, the Respondents/Promoter had promised to give the Complainant several common amenities in the project, but none of the said amenities are not completed or handed over to the Complainant according to the



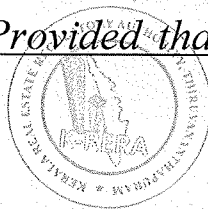
counsel for the Complainant. It is to be noted in this regard that the Respondents/Promoters herein have not denied these contentions or never raised any such case that the Project has completed by them on time as per the agreement and handed over to the Complainant or any of their allottees. Moreover, this Authority had considered several complaints from allottees of the same project as mentioned above and passed the abovementioned common order dated 05/10/2021 for completion and handing over the project in question to the Complainants therein within the time frame prescribed in the said order. After receiving several Complaints subsequently including the above Complaint, it could be ascertained that the Respondents/Promoters could not so far comply with the above order dated 05/10/2021 and hence they are liable to remit the penalty of Rs. 5000/- per day from 31/12/2021 in case of Tower 'Nest Campus wood-OAK' and from 01/05/2022 in case of Tower 'Nest Campuswood- PINE' till date of filing an affidavit of compliance before this Authority.

14. Even after issuing the above said common order on 05/10/2021, several Complaints seeking the same relief, are being received by this Authority which shows that the Respondents/Promoters herein have gravely failed to give possession of the apartment and complete the project along with common amenities, as promised as per the Exbt. A1 agreement, as alleged by the Complainant herein and revealed from the web portal of the Authority. The promoters are duty bound to complete the Project as a



whole as promised to the allottees and while passing judgement in Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., the Hon'ble Supreme Court had done certain important observations on the same aspect as follows: *"The Developers sell dreams to home buyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other amenities which are available in the area. The developer must be held accountable for its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff"*.

15. While considering the claim of the Complainant for the interest for delay in handing over possession, we have to revisit the provisions concerned of the Act 2016, in which Section 18(1) of the Act 2016 lays down 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.” It is apparent that Section 18(1) of the Act, 2016 applies only 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, 2016 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. Here, the Complainant has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to her.

16. As per the Exbt. A1 agreement, Clause No. 16 states that *“The Builder undertakes to ensure that the construction is completed within 24 months(January 08,2016) from this day, subject to the purchaser fulfilling his obligation as the agreement and also subject to the situation arising out of factors beyond the control of the builder and force majeure.”* Exhibit. A1 agreement is seen executed by the Complainant and the Respondent No 1/Promoter company represented by Respondent No. 2 on 09.01.2014 as per which the promised date of completion and handing over was on 08.01.2016. According to the Complainant, the apartment is not yet handed over which is admitted by the Respondents during the hearing. As it is



evident from the records that the Respondents could not hand over possession as per the terms of the agreement, the Complainant herein is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. We would reproduce herein below, certain remarkable observations made in this regard by the Hon'ble Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others:
“ 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”.

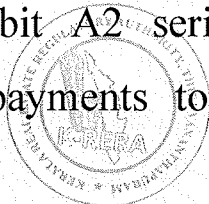
17. During the hearing, the learned counsel appeared for the Respondents No. 5 to 8 mainly raised arguments that they were not to be made party to the Complaint as the Project in question is under the sole responsibility of Respondent No.2 on the basis of an internal partition done among the directors of the company. But, the Respondents 5 to 8 have not produced any document to prove these contentions. Anyhow, the allottees including the Complainant herein are not supposed to be/shall not be affected by the so-called



partition/arrangement, done among the directors of the Respondent No.1/Promoter company without the consent or knowledge of the allottees/Complainant herein or else it was the duty of the Respondents 5 to 8 to prove the contrary but they have not succeeded in it. In this aspect, Sec 69 of the Act,2016 attracts attention which specifies that

“(1) 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.”

18. It is found that the Respondent No. 3& 4 are previous land owners from whom the land was purchased by the Respondent No.1/ Promoter Company. The Respondent No.2 attended the hearing before us only once and opted to be absent in all other posting dates despite serving several notices. He did not file any counter statement. On examination of Exhibit A2 series, it is revealed that the Complainant had made payments to 1st Respondent before the



promised date of completion. It is noticed that in Exbt A1 agreement as well as in Exbt A2 series payment receipts, the Respondent No.2 has put signature as director of the Respondent No.1 company. Nevertheless, the Respondents/promoters of the project in question, cannot run away from their obligations with respect to completion of the whole project with all the amenities and facilities because they are accountable to all the allottees who invested their hard-earned savings in the project. As per Sec. 11(4) of the Act, 2016 deals with the obligations of the Promoters and the said provisions is being reproduced herein below:

“ The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make

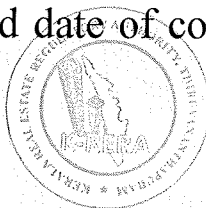


the lease certificate available to the association of allottees; (d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees; (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project; (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act; (g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person; (h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case



may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be.” Similarly, Section 17 stipulates that “The promoter shall (1) execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the 1 [completion] certificate. Hence, in this case, the Promoters of the Project in question have clearly violated Section 11(4) and Section 17 of the Act, 2016.

19. Here, in the case of the Complainant herein, the Promoter of the promised date of completion and handing over was



08-01-2016. But the project is not completed so far as alleged by the Complainant and admitted by the Respondents. It was observed by the Hon'ble Supreme Court in its judgement Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., as follows: "Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession."

20. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete and hand over possession of the apartment as promised to the Complainant herein and hence the Complainant is entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

21. In the instant case, the Complainant had remitted Rs. **15,00,000/-** to the Respondents No.1 which is supported by Exbt A2 series documents. The said documents reveal that the Complainant has paid an amount of Rs.15,00,000/- before the promised date of

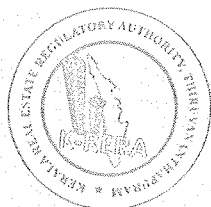


completion, i.e. on 08.01.2016. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
09.08.2013	5,00,000/-
05.09.2013	10,00,000/-
Total	15,00,000/-

22. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents/Promoters are liable to pay interest to the Complainant as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainant herein is entitled to get interest for the period from 09/01/2016, the promised date for handing over till the actual date of handing over possession, on Rs. 15,00,000/- which is the amount paid by him before the promised date of completion. 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. The present SBI BPLR rate is 15.15% with effect from 15/06/2024. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%].

23. On the basis of the above discussed facts and circumstances of the case and documents placed on record, this Authority by invoking Section 37 of the Real Estate (Regulation &



Development) Act, 2016, directs the Respondents/Promoters in the following manner:


- 1) The Respondents 1,2 &5 to 8 shall pay to the Complainant, simple interest @ 17.15% per annum, for Rs. 15,00,000/-, the amount paid before 08/01/2016, the promised date of completion and handing over, for every month from 09/01/2016 till the actual date of handing over possession of the apartment to the Complainant.
- 2) If the Respondents 1,2 &5 to 8 fail to pay the aforesaid amount of 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 amount from the above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

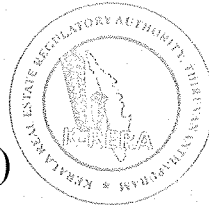
Both parties shall bear their respective costs.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)



APPENDIX

Exhibits produced by the Complainant

Exhibit A1: copy of the deed of Agreement dated 09.01.2014.

Exhibit A2 series: copies of the receipts of payment made by the Complainant to the Respondents.

Exhibit A3: copy of the legal notice dated 01.11.2022.

Exhibit A4: copy of the General Power of Attorney.

Exhibits produced by the Respondents

Exhibit B1: copy of the interim order dated 07/09/2021 issued by the Authority.



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