



**KERALA REAL ESTATE REGULATORY AUTHORITY**  
**THIRUVANANTHAPURAM**

**Complaint No. 314/2021**

Dated – 23<sup>rd</sup> September 2022

Present: Sri. M. P Mathews, Member

**Complainant**

T.I Abraham,  
Thekkekara House, Ganga Nagar,  
Changampuzha Nagar P.O,  
Cochin-682033.

(By.Adv.Thomas T Varghese)

**Respondents**

1. Nest Infratech  
(M/s Nest Realities India Pvt. Ltd.)  
COMPASS, 5<sup>th</sup> Floor, NH-47 By-pass,  
Near Vysali Bus Stop, Chakkaraparambu, Cochin- 682 032.
2. F.M Shamier Marickar,  
Managing Director,  
A-6, Nalukettu, Chakkaraparambu,  
Vennala P.O, Edappally South, Ernakulam- 682 028

The above Complaint came up for virtual hearing today. Only the counsel for the Complainant attended the hearing.



## ORDER

1. The Complainant is an allottee of project named 'Nest Campus Woods' located at Kanayannur Taluk, Ernakulam district, developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, 2016 (Registration No.K-RERA/PRJ/002/2022). The said project consists of apartment complex with three blocks, namely 'Maple' 'Pine' & 'Oak'.

2. The Complainants submitted that being attracted by the advertisements given by the Respondents and offers of timely construction of good quality, the Complainant on 29/10/2013 had entered into an agreement with the Respondents of purchase of three bedroom Apartment No.III A in Maple block in the Nest Campus woods project for a total sale consideration of Rs.52,50,000/-, which includes construction cost and value of undivided share of land amounting to Rs.8,60,400/-. As per the terms of agreement, the Respondents had promised to deliver the said apartment having a super built up area 1765 sq.ft in the third floor and a covered car park.

3. It was further submitted by the Complainant that the Respondents had collected an amount Rs.10,97,664/- from the Complainant as advance sale consideration as per the following dates.

<u>Date</u>	<u>Amount</u>
20/05/2013	Rs.1,00,000/-
29/10/2013	Rs.5,47,664/-
29/10/2013	Rs.4,50,000/-
<b>Total</b>	<b>Rs.10,97,664/-.</b>



4. The Complainants further submitted that, as per the terms of the agreement the Respondents were bound to deliver the possession on 29/10/2015. The Respondents committed gross default in the construction of the apartments project. The construction of Maple block has not even commenced. The Respondents did not carry out construction of the project as promised by them. Though the project was envisaged as three residential blocks, the Respondent commenced construction of only two blocks. Even those blocks were not constructed completely. The Respondent did not even commence the construction of Maple block though the Complainant was repeatedly requesting the Respondents to start the construction, there was no positive response from the side of the Respondents. Due to the same the Complainant had lost faith in the capacity of Respondents to complete the project and though the email dated 29/10/2018, informed them that he is not interested in proceeding further with the project. The Complainant had requested the Respondent to repay the amount of Rs.10,97,664/- collected from him with interest.

5. The Complainant further submitted that the Respondents agreed to cancel the agreement and refund the amount collected by them from the Complainant. The Complainants accordingly paid back Rs.2,00,000/-in two instalments to the Complainants but failed to pay the balance amounts due. The cheques issued by the 2<sup>nd</sup> Respondent for the balance amounts was dishonored due to insufficiency of funds. The Respondents did not commence construction of the block where the apartment allotted to the Complainant was to be constructed. They have illegally retained the amounts collected from Complainant in spite of the fact that the booking of the Complainant was cancelled. Copies of agreement for sale, payment receipts, copy of e mail dated 29/10/2018 cancelling the agreement are the documents produced from the part of the Complainant.





6. The reliefs sought by the Complainant is direct the Respondents to pay sum of Rs.8,97,654/- to the Complainants with future interest thereon @ 15% per annum from 29/10/2013 till realization.

7. The Respondent has neither filed any counter nor produced any documents. The Authority vide interim order dated 04/08/2022 directed the Respondents to produce the third permit if any, obtained for the 'Maple' block as stated in the agreement within 15 days, after serving copy to the Complainant, as the Respondents have produced only 2 permits along with the application for registration under section 3 of the Act. The Respondents have miserably failed to comply with the said order dated 04/08/2022.

8. The Authority heard the learned counsel for the Complainant and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of Complainant is marked as Exbt.A1 to A3. Exbt.A1 is copy of sale agreement executed between the Complainant and the 1<sup>st</sup> Respondent Company represented by the 2<sup>nd</sup> Respondent, Managing Director of the Company. The agreement is for sale of Apartment No.III-A having an area of 1765 sq.ft. along with one covered car park in the said project. It is clearly stated in the agreement that the said project named 'Nest Campus Woods Woods' consists of three blocks ie., 'Maple' 'Pine' & 'Oak' and the land owners have obtained building permit and approved plan from the Kalamassery Municipality for construction of the said three blocks. It was stated in the agreement that the builder proposed to develop the said land and construct residential apartments in three blocks thereon consisting of apartments for persons intending to purchase undivided share with right to construct



specified flats at their expense after leaving provisions for roads, common passage, staircase, lift toilet etc.

9. Exbt.A2 is the copy of payment receipts issued by the Respondents and Exbt.A3 is the copy of E-mail dated 29/10/2018 regarding cancellation of the said agreement issued by the Complainant to the Respondent.

10. On perusal of the documents produced by the Complainant, it is found that the said project consists of apartment complex with three blocks, namely 'Maple' 'Pine' & 'Oak'. The Construction of two blocks named 'Pine' & 'Oak' was commenced by the Respondents. The Authority vide order dated 05/10/2021 issued in Complaint Nos.191/2020,196/2020,302/2020,26/2021,27/2021,112/2021,115/2021,117/2021,119/2021 directed the Respondents to complete the Construction of the towers named 'Oak' & 'Pine' on or before 30/04/2022. Thereafter the Authority vide order dated 13/03/2022 extended the date of completion of the said two blocks up to 30/04/2022. The Respondent has only submitted two permits along with the application for registration, which makes it clear that the permit for Maple' block was not obtained by the Respondents from the local body. As per Exbt.A1, money was collected from the Complainant claiming that permit was obtained for all the three blocks. The Authority had directed the Respondents to produce the third permit if any, obtained for the project from the local body and till date they have not produced the same.

11. From the Exbt.A3 series of documents which is the copy of payment receipts issued by the Respondents it is clear that the Complainants have paid an amount of Rs.10,97,664/- to the Respondents as cost of apartment No.III A in the Maple block of the said project. The Respondents have not raised any objection on the said documents. The Complainants also



submitted that an amount of Rs.2,00,000/- was refunded by the Respondents. Since the Respondent has not commenced construction of the 'Maple' block in the said project, the Complainant is eligible to get refund of the amount paid by him under section 18.

12. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that "*if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed*". The Section 19(4) of the Act also specifies that "*The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder*". Here, in this case the Allottee is entitled to claim refund of the amount paid with





interest, as the promoter failed to complete and is unable to give possession of the apartment as per the agreement.

13. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below "*The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*". On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under the Act, 2016.

14. Hence, the Complainant herein is entitled to get the refund of the above-mentioned amount along with interest and the Respondent is liable to refund the amount to the complainant along with the interest according to



section 18(1) of the Act, 2016. 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 PLR rate is 12.65% with effect from 15/06/2022. The Complainant is entitled to get 14.65% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. However the Complainant herein prayed for refund of the amount of Rs.8,97,664/- paid by him along with interest Hence it is found that the Respondent's 1 and 2 are liable to pay Rs.8,97,664/- along with 14.65 % (12.75 (current BPLR rate) +2%) simple interest from the date of receipt of payment by the Respondents.

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

1. The Respondents 1& 2 shall return the amount of **Rs.8,97,664/-** to the Complainant with simple interest @ 14.75% per annum from 29/10/2013, till the date of realization.

2. If the Respondents fail to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondent No.1 and its assets & Respondents No.2 and his assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

This order is issued without prejudice to the right of the Complainant to approach the Adjudicating officer with claims for






compensation in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Sd/-  
Sri.M.P. Mathews  
Member

~~AS/-~~

/True Copy/Forwarded By/Order  
  
Secretary (legal)

**Exhibits**

**Exhibits marked from the Side of Complainants**

Ext.A1 - Copy of agreement for sale dated 29/10/2013.

Ext.A2 series - Copy of payment receipts

Exbt.A3 - Copy of E-mail dated 29/10/2018, cancelling the agreement.