



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 61/2023

Present: Sri. P H Kurian, Chairman

Smt. Preetha P Menon, Member

Dated 11th December 2024

Complainants

Viswanathan Nair,
Residing at Mamparambil House,
Kuttoor P.O, Thiruvalla,
Pathanamthitta – 689106

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
2. Mr. F M Shamier Marickar,
Son of Dr Y M Fazil Marickar,
Aged 49 years, Director Nest Infratech,
(M/s Nest Realities India Pvt Ltd),
COMPASS, 5th Floor, NH-47 By-pass,
Near Vysali Bus Stop,
Residing at Kent Naalukettu,
Chakkaraparambu, Cochin – 682028
3. Javad K Hassan, S/o Nagoor Rawther,
Aged 78 years, Director Nest Infratech
(M/s Nest Realities India Pvt Ltd),
COMPASS, 5th Floor, NH – 47 By-pass,
Near Vysali Bus Stop, Chakkaraparambu,

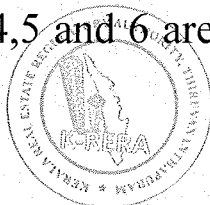


- Cochin – 682032, Recently Corporate Office shifted to Stone House, Market Road, Alwaye - 683101
4. Jehangir Rowther, S/o Nagoor Rawther,
Aged 62 years, Director (M/s Nest Realities India Pvt Ltd) Compass 5th Floor, NH – 47 By-pass, Near Vysali Bus Stop, Chakkaraparambu, Cochin – 682032, Recently Corporate Office shifted to Stone House, Market Road, Alwaye - 683101
 5. Althaf Jehangir, S/o Jehangir Rowther,
Aged 37 years, Director (M/s Nest Realities India Pvt Ltd) Compass 5th Floor, NH – 47 By-pass, Near Vysali Bus Stop, Chakkaraparambu, Cochin – 682032, Recently Corporate Office shifted to Stone House, Market Road, Alwaye - 683101
 6. 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 – 682032, Recently Corporate Office shifted to Stone House, Market Road, Alwaye - 683101

The above Complaint along with same 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. 3 to 6 Adv. Asif Ali attended the hearing. The Respondents No.1 &2 did not appear.

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 No. 2,3,4,5 and 6 are the directors of the 1st Respondent



Company. The Respondents herein are promoters under the Real Estate (Regulation and Development) Act, 2016. The Complainant was looking forward to purchase a residential flat for himself and his family. The Complainant approached the Respondent intending to buy a residential flat. The Respondents said that the construction would be completed within 2 years. After negotiations, the Respondents agreed to sell, and the Complainant decided to purchase a residential flat with a built-up area of 1245 sq. ft in the residential flat project by name 'Nest Campus Woods Maple-Block' to be constructed by the Respondents. The residential flat after construction will be numbered III-G Maple with other amenities and facilities and an undivided share in the common area like road, clubhouse, play area etc. The residential flat land with other amenities and facilities as above was agreed to be sold along with a proportionate undivided share in the aforesaid landed property to the Complainant on paying an amount of Rs. 36,11,500/- in instalments. Accordingly, an allotment letter was issued to the Complainant showing the allotment of Flat III-G (Maple). Thereafter an agreement was executed between the Complainant and the Respondents. As per the agreement, the first and second Respondents have agreed to construct the flat in the aforesaid property of the Campus Woods project at Kalamassery with definite boundaries on all sides and to give delivery of the Flat and property in a ready-to-occupy condition on or before 31.06.2015. The project was started in the year 2013 and the Complainant booked 3 BHK Apartment comprising 1245 sq. ft in MAPLE Block, for a total cost of Rs. 36,11,500/-. The Complainant



has made advance payments of Rs. 11,00,000/- towards purchase price of the Flat III-G (Maple). On enquiry by the Complainant, it was found that the Respondents did not obtain land or start construction of MAPLE Tower. Since the Respondents expressed their inability to commence the work of the project, they offered the Complainant a new flat (1-B Pine) in another tower in the same project (Campus Wood – Pine). Hence the Complainant agreed to adjust the total amount of Rs. 11,00,000/- paid by the Complainant to the allotment of new flat in the 1st floor of (1B) Pine Tower (Campus Wood – Pine) in the Campus Wood project. Accordingly, an agreement was executed on 04.06.2013 and thereafter a new allotment letter was issued to the Complainant. As per the agreement the Respondents were bound to complete the construction within 24 months. As per the agreement dated 04.06.2013, the amount of Rs. 36,11,500/- was to be paid by the Complainant as the cost of the apartment, the Complainant has already paid a sum of Rs. 27,92,398/-. Even before the execution of the agreement the Complainants started making the payment to the Respondents. The advance payment of Rs. 11,00,000/- paid towards Flat III G in MAPLE Tower was adjusted towards the sale consideration of the Flat 1-B(Pine) project. The Complainant paid Rs. 6,75,000/- on 10.11.2016 towards the purchase price of Flat 1-B Pine Tower. The Complainant was making the payment as and when demanded by the Respondents. The Complainant came to know that the Respondents diverted the funds collected from the Complainant and other purchasers and they could not undertake or complete the work within the stipulated time.



After that they proceeded with the construction only during December 2016. On resuming the construction, the Respondents insisted the Complainant make substantial further payments disregarding the payment schedule by saying that they could not proceed with the construction due to paucity of funds. Believing the words, the Complainant paid a sum of Rs. 3,77,398/- on 29.12.2017, Rs. 3,00,000/- on 14.08.2018, and Rs. 3,40,000/- on 30.10.2018 to the Respondents. But by the end of the year 2018, Respondents had completely withdrawn from the construction work. The construction activities were started in the year 2012. Now around 11 years have elapsed since then. The construction was abandoned by the Respondents at its various stages. It was submitted that even though the Complainant and other purchasers approached the Respondent and requested them to resume the construction activities, the Respondents did not resume the construction activity saying that they did not have the requisite money with them. Therefore, an unregistered Association was formed by the intending purchasers in the year 2018 to persuade the Respondents to resume the construction. It was after much persuasion and requests that the Respondents resumed construction activities by the end of the year 2020. Therefore, out of the total amount of Rs. 36,11,500/- agreed to be paid by the Complainant to the Respondents, the Complainant has already paid a sum of Rs. 27,92,398/-. The Complainant has paid the following amounts on the following dates.



Date	Amount
02.02.2013	1,00,000
15.04.2013	4,00,000
06.05.2013	5,00,000
13.05.2013	1,00,000
10.11.2016	6,75,000
29.12.2017	3,77,398
14.08.2018	3,00,000
30.10.2018	3,40,000
TOTAL	27,92,398/-

2. It was submitted that now the structural work of the building is not fully completed. The plastering and plumbing works which were going on at a snail's pace stopped and the construction work has come to a standstill. At present, no work is being carried out. The Respondents agreed to obtain the requisite statutory clearances like the occupancy certificate from the local authorities by June 2015. The Respondents failed to discharge their obligations under the agreement. 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 agreed to purchase the building for their residential occupation. They intended to occupy the building by June 2015. Even after the elapse of around 8 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 the terms and conditions of the agreement dated 04.06.2013 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 to date did not take any steps to get the above project registered. This is in 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 points of time whereas the Respondents were not all ready and willing to perform their part at any point of time. The Complainant issued a legal notice on 20.02.2023 to the Respondents but the Respondents have not send any reply notice so far. There is 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 may be directed to complete the construction as expeditiously as possible and within a time frame fixed by the authority and to hand over possession of the building to the Complainant. Since the construction activities are delayed solely due to negligence on the part of the Respondents, the Complainant is entitled to the compensation prescribed under Section 19(4) of the Act. To the



surprise of the Complainant, on enquiry made by them, it was revealed to them that no objection certificate issued by the Kerala State Pollution Control Board expired already. 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. 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. 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 cause of action of the above Complaint arose on 04.06.2013 when the Complainant entered into separate agreements with the owner. The reliefs sought by the Complainant are as follows: (1) 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 (2) Direct the Respondents to complete the construction of the building in the property. (3) Direct the Respondents to pay a sum of Rs. 27,27,834.92/- as interest for the delayed completion of the construction.

3. The Respondents 3 to 6 filed counter statement and submitted as follows:- The Respondents 3 to 6 herein are Directors of the 1st Respondent company whereas the 5th Respondent is no longer a



Director. This counter affidavit is filed in the individual capacity of Respondents 3 to 6 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 3 to 6 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 the 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



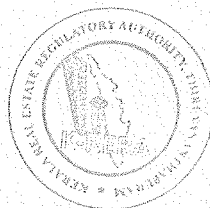
2 projects of the company and these projects shall be carried out and completed by a Special Purpose Vehicle to be formed. The completion of the other 2 projects, namely Orchid Park & Campus Wood would be the responsibility of the 2nd Respondent. These projects were under the sole responsibility of the 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 to be passed against these Respondents in their individual capacity.

4. 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.

5. Here, the reliefs sought by the Complainant are 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.

6. Heard both parties 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?

7. **Points No. 1&2:** The documents produced from the part of the Complainant are marked as Exbts.A1 and A3. **Exhibit A1** is the deed of agreement dated 04.06.2013 executed between the Complainant and the Respondent No. 1 represented by Respondent No. 2. **Exhibit A2 series** are the receipts of payments made by the Complainant to the Respondent. **Exhibit A3** is the lawyer's notice dated 20.02.2023.



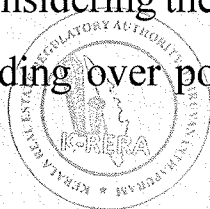
8. On perusal of the documents placed on record, it could be seen as per Exbt A1 agreement dated 04/06/2013, executed with the Complainant herein, the Respondents/builder had assured that the construction would be completed and handed over within 24 months from the date of agreement i.e by 04/06/2015. The learned counsel appeared for the Complainant submitted that the Respondents/promoters have not yet completed or handed over the apartment and violated the terms of the agreements. It is noticed that as per the terms of Exbt. A1 agreement, the Respondents/Promoter had also a promised to give the Complainant several common amenities in the project. But such amenities are still distant dreams according to the Complainant as submitted by the counsel for the Complainant. The Respondents/Promoters herein have not denied these contentions and they 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 common order dated 05/10/2021 for completion and handing over the project in question to the Complainants therein within the time frame prescribed therein 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



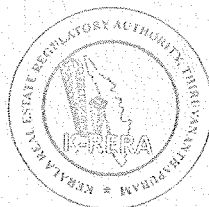
wood-OAK' and from 01/05/2022 in case of Tower 'Nest Campuswood- PINE' till date of filing an affidavit of compliance before this Authority.

9. Even after issuing such 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"*.

10. 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 him.



11. As per the Exbt. A1 agreement, Clause No. 16 states that *“The Builder undertakes to ensure that the construction is completed within 24 month 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 04.06.2013 as per which the promised date of completion and handing over was on 04.06.2015. 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”.

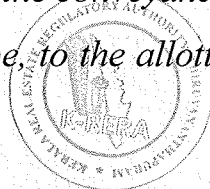
12. During the hearing, the learned counsel for the Respondents 3 to 6 mainly raised arguments that they are not to be made party to the Complaint as the Project in question is under the sole responsibility of Respondent No.2 on the basis of an internal partition done among the directors of the company. But, the Respondents 3 to 6 have not produced any document to prove these contentions. Anyhow, the allottees including the Complainant 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 consent or knowledge of the allottees/Complainant herein or else it was the duty of the Respondents 3 to 6 to prove the contrary but they have not succeeded in it. Moreover, Sec 69 of the Act,2016 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.

13. 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 also. 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. Sec. 11(4) of the Act, 2016 deal with the obligations of the Promoters and the said provision 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



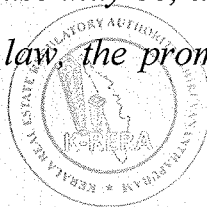
to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (c) 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.

Moreover Section 17 stipulates as follows:

“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 of 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, it can be found that the Promoters herein have clearly violated sec.11(4) and sec 17 of the Act,2016.

14. Here, in the case of the Complainant, the promised date of completion and handing over was 04-05-2015. 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.”

15. 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

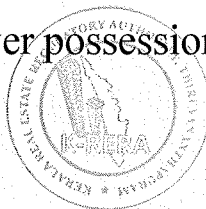


2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

16. In the instant case, the Complainant had remitted Rs. **27,92,398/-** to the Respondents which is supported by Exbt 2 series documents. The said documents reveal that the Complainant has paid an amount of Rs.11,00,000/- before the promised date of completion, i.e. on 04.06.2015. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
02.02.2013	1,00,000/-
15.04.2013	4,00,000/-
06.05.2013	5,00,000/-
13.05.2013	1,00,000/-
10.11.2016	6,75,000/-
29.12.2017	3,77,398/-
14.08.2018	3,00,000/-
30.10.2018	3,40,000/-
Total	27,92,398/-

17. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the Complainant as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainant is entitled to get interest for the period from 05/06/2015, the promised date for handing over till the actual date of handing over possession, on Rs. 11,00,000/- which is the



amount paid by him before the promised date of completion and also, he is entitled to get interest from the dates of payment of each amount, as shown in the table inserted above, paid after the promised date of handing over till the actual date of handing over possession of the apartment. 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%].

18. On the basis of the above detailed facts and circumstances of the case and documents produced, this Authority by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, directs the Respondents in the following manner:

- 1) The Respondents shall pay to the Complainant, simple interest @ 17.15% per annum, (a)for Rs. 11,00,000/-, the amount paid before 04/06/2015,the promised date of completion and handing over, for every month from 05/06/2015 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 04/06/2015, from the date of each payment as mentioned in the table inserted above in para 16 till the actual date of handing over possession of the apartment to the complainant.



2) If the Respondents 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.

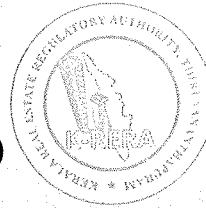
Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)



APPENDIX**Documents produced by the Complainant**

Exhibit A1: copy of the deed of Agreement dated 04.06.2013.

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

Exhibit A3: copy of the legal notice dated 20.02.2023.

Documents produced by the Respondents

NIL



