



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Present: Smt.Dr.B Sandhya, Member**

**Complaint No.61 of 2024**

Dated 15<sup>th</sup> day of March 2025

**Complainant**

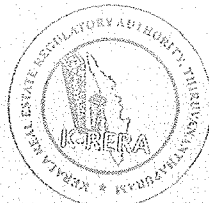
K C Appukuttan Menon,  
Flat No.101, 3<sup>rd</sup> Floor,  
Jai DibaMaa (JDM) Apartment,Plot No.11  
Sector 5, Near Madhu Vihar Bus Stop,  
New Delhi -110075.

(By Adv.Saji Varghese)

**Respondents**

1. NBCC India Ltd.,  
Formerly National Buildings Construction Corporation Ltd.,  
Represented by its Managing Director,  
NBCC Bhawan, Lodhi Road, New Delhi- 110003.
2. General Manager,  
NBCC India Ltd.,  
NBCC Bhawan, Lodhi Road,  
New Delhi- 110003.

(By Adv. Linu R Babu)



The above Complaint came up for final hearing on 01/01/2025. Counsel for the Complainant Adv. Saji Vargheese and Counsel for the Respondents Adv. Linu R Babu attended the virtual hearing.

### ORDER

1. The Complainant is an allottee of the project named 'NBCC Valley View Apartments' located at Puthencruz, Ernakulam District developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016') vide Registration No. K-RERA/PRJ/ERN/138/2022.

2. The factual matrix of the Complaint are as follows: The 1<sup>st</sup> respondent is a Public Limited Company. The respondents undertook construction of multi-storied apartment in various parts of the country. In the year 2014, the Respondents announced the said project and offered various features such as gated complex with 24 hours security ample covered/open parking space, convenient shopping, swimming pool, and modular kitchen and built in cupboards, transparency in sale rates/saleable area, reliability of a government undertaking easy instalment plan etc. Taking note of the fact that the Respondent is a Government of India undertaking, the Complainant approached the Respondents



for buying a flat in their proposed project namely, "NBCC VALLEY VIEW APARTMENTS". Complainant paid an amount of Rs. 2 Lakhs as application money on 31.10.2013. On receipt of the application money, the Respondents issued a letter allotting a flat as Type-V Apartment in the 2<sup>nd</sup> floor of the project bearing No. A-201. The total cost of the Apartment as per the allotment letter is Rs.53,45,309/-. Complainant on 27.11.2014 paid Rs.3,04,106/- to the Respondents towards allotment money.

3. The Complainant further submitted that the 1<sup>st</sup> instalment Rs.4,50,769/- was paid on 04.04.2016. The 2<sup>nd</sup> instalment ought to have been paid on 15.05.2016. The Complainant paid 2<sup>nd</sup> instalment of Rs.9,00,501/- on 11.05.2016. There was a balance amount of 2<sup>nd</sup> instalment of Rs. 9,501/- which was paid only on 27.07.2016. The Respondents charged interest of Rs.285/- from the Complainant for the delayed balance payment. The 3<sup>rd</sup> instalment of Rs.13,19,345/- was paid on 27.07.2016. The 4<sup>th</sup> instalment to the tune of Rs.6,81,131/- was paid on 14.09.2016. The 5<sup>th</sup> instalment Rs.4,50,251/- was paid on 27.01.2017 and balance payment of Rs.3,802/- on 04.02.2017. The 6<sup>th</sup> instalment of Rs.4,54,053/- was paid on 28.06.2017. The Complainant altogether paid Rs.47,73,744/- to the Respondents.

4. It was further submitted that the Complainant paid the instalments promptly and correctly. The project was expected to complete in the year 2016. But the same was lagged



for the reasons that no environment clearance certificate was obtained from MOEF. The Complainant on many occasions approached the Respondents for completing the flat and to hand over the same to the Complainant. Though the Respondents completed the structural works, they have not completed the finishing works so far. On 05.05.2022, the Respondents issued a letter to the complainant stating that since few statutory approvals are still in progress, Respondents are unable to handover the possession of the flat. It is stated in the said letter that by invoking clause 20 of the terms and conditions of the application, NBCC may cancel the allotment and will refund the amount received from the Complainant without any interest. Invoking the said clause, the Respondents issued this letter to the complainant asking him to convey the consent for the same within 15 days. On receipt of the said letter, Complainant on 11.05.2022, issued a letter narrating the details. It was stated in the said letter that Complainant paid the instalments after availing loan from Employees Co-operative Societies for which the Complainant has paid interest. But the Respondents insisted for filing an affidavit stating that the Complainant is ready to settle the dispute once for all. During the peak time of Covid, the same affected the whole family of the Complainant and complainant's wife Smt.Vijayalekshmi Menon (Co-owner of the flat) passed away due to Covid on 06.05.2021. Complainant spent so much money for her treatment and he was in a financial crisis and dire need of money that added to his mental



trauma. Hence, the Complainant was compelled to file an affidavit on 20.10.2022 as insisted by the Respondents. But the affidavit did not contain the amount. The space for amount was kept blank in the agreement. The Complainant was in a bonafide belief that the Respondents will pay interest to the Complainant from the date of respective payments till the date of payment accepting the request of the complainant dated 11.05.2022.

5. The Complainant further submitted that the Respondents have charged interest for the delayed payment from the Complainant. The Pollution Control Board has renewed the consent letter for construction to the Respondents by order dated 05.09.2014. It was specifically stated in the said order that clearance from MOES has to be obtained for the project by the Respondents. The Respondents did not have the said consent even at the date of payment of first instalment. The Respondents wilfully and deliberately suppressed the said facts from the Complainant and similarly placed other purchasers. If such information was given to the Complainant, he would not have remitted the further instalment. Complainant paid interest @ 12% to the Employees Co-operative Societies for the loan availed by the Complainant in order to pay to the Respondents and more over the Complainant had loss of interest on the funds withdrawn from PF account for the payment of instalments. The Respondents being a public sector undertaking should not have cheated the



public. The Respondents unilaterally decided the amount and complainant was compelled to sign the affidavit in order to get the principal amount. The complainant is entitled for interest as stated in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 from the respective dates of payment till the date of repayment. The said amount will come to the tune of Rs.50 lakhs. Complainant is entitled for the said amount towards compensation. After the death of complainant's wife, the Respondents changed the allotment to the complainant by separate proceedings.

6. The reliefs sought by the Complainant are as follows:- (1) Grant a decree directing the Respondents to pay an amount of Rs. 60,00,000/- (Sixty Lakhs) towards interest for the amount paid by the Complainant as provided in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018. (2) Award cost of the proceedings from the Respondent. (3) Grant such other reliefs which in the circumstances of this case this honourable authority deems just and proper.

7. The Respondents have filed objection by denying the contentions and allegations in the Complaint and submitted that the complaint pertains to application made by the Complainant for purchase of Residential Apartments in NBCC's Project with the name 'NBCC VALLEY VIEW APARTMENTS' situated in Ernakulam district of Kerala. The Respondents received a duly signed application form along with terms and

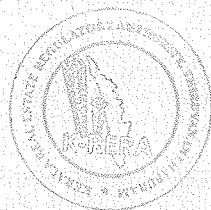


conditions dated 23.06.2014 from the Complainant towards allotment of a unit in the said Project and subsequently the Complainant was issued with an allotment letter dated 28.10.2014 pursuant to which Flat bearing No. A201 Type-V Apartment in the 2<sup>nd</sup> Floor of the Project was allotted to the Complainant by the Respondents. The total cost of the flat was Rs.53,45,309/- against which the Complainant deposited a total amount of Rs.47,73,744/- with the Respondents. That, since certain statutory approvals from the concerned authorities were yet to be received, the Respondents showing their bona fide issued a letter dated 05.05.2022 to the Complainant apprising them of the aforesaid difficulties due to which possession could not be offered to the complainant and offered to refund the full amount deposited by the complainant without interest in terms of Clause 20 of the agreed terms and conditions of the application form. In response to Respondent's letter dated 05.05.2022, the Complainant wrote a letter dated 11.05.2022 wherein Complainant primarily asked for a reasonable refund amount. The Respondents vide letter 08.06.2022 replied to Complainant's letter dated 11.05.2022 while explaining Clause 20 of the terms and conditions of allotment and asked the Complainant to reconsider Respondent's offer and also provided a list of documents to be required in refund process. That in revert to the said letter dated 08.06.2022, the Complainant submitted an affidavit cum undertaking dated 20.10.2022 to the Respondents wherein the Complainant clearly provided his consent to the Offer



Letter of the Respondents to accept the full and final settlement of all claims arising of the allotment of the said Unit.

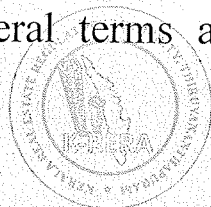
8. The Respondents further submitted that as per the contents of Para 3 of the said Affidavit, the Complainant had sworn on record that upon refund of Rs.47,73,744/- i.e. the principal amount deposited by him with Respondents, the issue shall be fully and finally settled and that he shall not be entitled to claim any compensation at present or in future with regard to the cancellation of said unit. Accordingly, within 30 days as per the agreement between the parties, the Respondents issued the full and final settlement in favour of the Complainant on 04.11.2022 vide UTR No.CNRBR52022110492932547 and credited the agreed amount of Rs.47,73,744/-. Pursuant to the said credit, the Respondents also issued a Refund and Cancellation Letter dated 09.11.2022 apprising the Complainant that the refund has been processed from the end of the Respondents. To the utter shock of the Respondents, the Complainant has now come before this Authority with the intention to usurp illegal and undue monies out of the Respondents in the name of interest, whereas, the Complainant himself had agreed for a settlement amount owing to which the said amount was credited within the stipulated time. Therefore any demand of an additional amount beyond submission of the said Affidavit cum Undertaking is against the principles of law wherein the Complainant has back tracked on his own words





and has approached this Authority with unclean hands and suppression of facts.

9. It was further submitted that the Complainant had filed CCP No.63/2023 before the Adjudicating Officer, of the Authority, praying for similar reliefs as stated above. Earlier, the Adjudicating Officer, of the Authority, vide final order dated 06.02.2024 in CCP No. 63/2023 had considered the contentions of the Complainant and dismissed the CCP No. 63/2023 on merits. The Complainant in the present Complaint had only stated that the fact that, interest of the deposited amount is to be considered by this Hon'ble Regulatory Authority and not by the Hon'ble Adjudicating Officer. The Respondents state that the Complainant has not filed any Appeal against the said order dated 06.02.2024 in CCP Mo.63/2023 and has now approached this Hon'ble Authority with exactly the same prayers as in CCP No.63/2023. The Complainant ought not have filed CCP No.63/2023 before the Hon'ble Adjudicating Officer. The Adjudicating Officer had not returned or transferred to the appropriate forum having jurisdiction. Thus, the above Complaint filed by the Complainant with same cause of action and similar prayer as in CCP No. 63/2023 is hit by Res Judicata and has to be dismissed in limine. Hence the Complainant is to be estopped from raising a claim for interest against the remittances made by the Complainant. The Respondents state that the Complainant had earlier accepted the Clause 20 of the general terms and conditions whereby, the



Complainant had accepted to receive only the remitted amount in case the 1<sup>st</sup> Respondent cancel the allotment of the dwelling unit. Thus, the Complainant has no right to file the present Complaint claiming interest after receiving the entire amount of Rs.47,73,744/- which was earlier remitted by the Complainant. Moreover, the Complainant had also filed an Affidavit cum undertaking, dated 22.10.2022 and provided the Complainant's consent to the offer of the Respondents and accepted it in full and final settlement of the entire due amounts, if any. Hence, the present Complaint is to be dismissed on the above ground as well.

10. It was further submitted by the Respondents that the Complainant had altogether remitted an amount of Rs. 47,73,744/-. The Complainant had made defaults in payment of various instalments and did not pay the full instalment on time. The project could not be completed due to long pending statutory approvals and there is no wilful default from the part of the Respondents. The Respondents had never insisted the Complainant to file the Affidavit of settlement cum undertaking. It was the Complainant out of Complainant's free will and volition executed the Affidavit cum undertaking which did not contain any amount and that the amount column was kept blank is incorrect and hence denied by the Respondents. It is stated that the Respondents had issued letters dated 05.05.2022 and 08.06.2022 and apprised all the allottees in the above project that few statutory approvals



(Environment Clearance, completion certificate) from the concerned authority are still in progress and it is due to the said fact the Respondents, despite all sincere efforts have been unable to hand over the possession of the subject flat to allottees till date. In view of the aforementioned facts, the 1<sup>st</sup> Respondent extended an opportunity to all the allottees for full and final refund in line with Clause No.20 of Terms and conditions of the Application. Those allottees who has given their consent for full refund for amount paid by the respective allottee to the 1<sup>st</sup> Respondent (including tax and delay instalment interest) without any compensation or interest. The Complainant has given his consent for the said cancellation along with relevant documents. Further, as per letter dated 05.05.2022 and 08.06.2022 the 1<sup>st</sup> Respondent had clearly stated that the 1<sup>st</sup> Respondent will refund the full amount as full and final settlement. The Complainant agrees that he/she shall not be entitled to neither claim any compensation present or future with regards to cancellation of the unit. It was the Complainant out of Complainant's free will and volition executed the Affidavit cum undertaking dated 22.10.2022 settling the entire claim of the Complainant with the Respondents. The Complainant is not entitled to claim any interest against the Respondents and has made a vague and blind claim of Rs. 60,00,000/- There is no calculation or explanation as to how the Complainant is entitled to claim an amount of Rs. 60,00,000/- as interest from the Respondents when the Complainant has already settled the entire

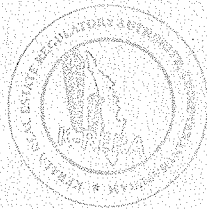


claim with the Respondents. The Complainant is not entitled to any amounts as averred.

11. Heard both parties in detail. The documents produced from the part of the Complainant is marked as Exbt.A1 to A8. The documents submitted by the Respondents are marked as Ext.B1 to B7. After hearing both parties and examining carefully, the pleadings and documents placed on record, following points came up for consideration: -

1. Whether the complaint is barred by Res Judicata?.
2. Whether the Complainant/allottee herein is entitled to get interest, on the amount refunded by the Respondents/Promoters, as prescribed under Section 18 (1) of the Act 2016?
3. What order as to costs?

12. **Point No.1:** One of the main contention raised by the Respondents is that the Complainant had filed CCP No.63/2023 before the Adjudicating Officer, of the Authority, praying for similar reliefs as stated above. Earlier, the Adjudicating Officer, of the Authority, vide final order dated 06.02.2024 in CCP No. 63/2023 had considered the contentions of the Complainant and dismissed the CCP No. 63/2023 on merits. The Complainant has not filed any Appeal against the said order



dated 06.02.2024 in CCP Mo.63/2023 and has now approached this Authority with the exact same prayers as in CCP No.63/2023. Thus, the above Complaint filed by the Complainant with same cause of action and similar prayer as in CCP No. 63/2023 is hit by Res Judicata and has to be dismissed in limine. The Complainant has produced the said order dated 06/02/2024 passed by the Adjudicating officer of the Authority and the same has been marked as Ext.A7. It has been clearly stated in Para 10 of the said order that *In Newtech case reported in 2021 KHC 6692, the Hon'ble Supreme Court, it has been pointed out that interest of the deposited amount is to be considered by RERA and not by the Adjudicating officer. Here, claiming interest for the deposited amount and this Forum doesn't have jurisdiction to entertain the said claim.* Since the Adjudicating Officer has no jurisdiction to entertain claim for interest for the amount paid by the Complainant, the Complaint herein is not barred by Res judicata and Hence Point No.1 is decided in favour of the Complainant.

13. **Point No.2:** The documents produced from the part of the Complainant is marked as Ext.A1 to A8. **Exbt.A1** is the copy of General terms and conditions issued by the Respondents. **Ext.A2** is the copy of allotment letter dated 28/10/2014 regarding allotment of Type V Apartment No.A201 on the second floor having an area of 1788 along with one parking slot. **Ext.A3** is the copy of letter dated 05/05/2022 issued by the Respondents to the



Complainant stating that few statutory approvals from the concerned authority are still in progress due to which they are unable to handover possession of the flat to the Complainant. Due to the same by invoking Clause 20 of terms and conditions of the allotment, the Respondents offered full and final refund of the amount paid by the Complainant and requested him to give consent for the same within 15 days of receipt of this letter. **Ext.A4** is the copy of reply letter dated 11/05/2022 issued by the Complainant requesting the Respondents to refund all the amounts paid by him along with interest as per existing RERA regulations and to settle the issues amicably. **Ext.A5** is the copy of Affidavit of settlement cum undertaking dated 21/10/2022 signed by the Complainant, submitting his consent to the offer of the Respondents and undertaken to accept full and final settlement of all claims in respect of Flat No.A-201 of the project and further stated that he has no objection in complying with terms of Clause No.20 of the General terms and conditions for cancellation of booking and full and final settlement towards the said cancellation and further agreed that he shall not be entitled to nor claim any compensation present or future with regard to cancellation of Flat No.A-201. **Ext.A6** is the copy of ledger account issued by the Respondents. **Ext.A7** is the copy of order dated 06/02/2024 in CCP No.63/2023 passed by the Adjudicating officer of the Authority. **Ext.A8 Series** is the copies of payment receipts issued by the Respondents.

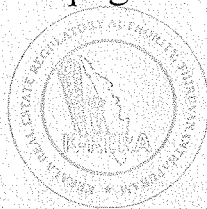


14. The documents submitted by the Respondents are marked as Ext.B1 to B7. **Ext.B1** is the copy of application form submitted by the Complainant and his wife along with general terms and conditions. **Ext.B2** is the copy of payment details and ledger account maintained by the Respondents. it is clear from Exbt.B2 that the Complainant has paid total amount of Rs.45,73,744/- to the Respondents. **Ext.B3** is the copy of letter dated 05/05/2022 issued by the Respondents to the Complainant stating that few statutory approvals from the concerned authority are still in progress due to which they are unable to handover possession of the flat to the Complainant. Due to the same by invoking Clause 20 of terms and conditions of the allotment, the Respondents offered full and final refund of the amount paid by the Complainant and requested him to give consent for the same within 15 days of receipt of this letter. **Ext.B4** is the copy of reply letter dated 11/05/2022 issued by the Complainant to the Respondents requesting the Respondents to refund all the amounts paid by him along with interest as per existing RERA regulations and to settle the issues amicably. **Ext.B5** is the copy of letter dated 08/06/2022 issued to the Complainant, informing him to reconsider the offer for full and final refund in the line with Clause 20 of Terms and conditions of the application and also requested him to submit the documents such as a) Duly filled and signed affidavit of settlement cum undertaking (as per format enclosed) on Rs.100 stamp per duly notarised, b) NOC from the bank if



property is mortgaged with any bank with clearly mentioning A/c details for the refund c) one cancelled cheque d) all documents in original issued by NBCC - Allotment letter, demand letters, receipts etc. e) copy of Aadhar card & PAN Card and the bank account details in which the refund is to be made. **Ext.B6** is the copy of Affidavit of settlement cum Undertaking dated 21/10/2022 signed by the Complainant, submitting his consent to the offer of the Respondents and undertaken to accept full and final settlement of all claims in respect of Flat No.A-201 of the project and further stated that he has no objection in complying with terms of Clause No.20 of the General terms and conditions for cancellation of booking and full and final settlement towards the said cancellation and further agreed that he shall not be entitled to nor claim any compensation present or future with regard to cancellation of Flat No.A-201. **Exbt.B7** is the copy of letter dated 09/11/2022 issued by the Respondents to the Complainant stating that as per the terms of Clause 20 of General terms and conditions of the application form, the Respondents have credited Rs.47,73,744/- on 04/11/2022 in the Complainants bank account and the Apartment allotted to the Complainant stands cancelled.

15. As mentioned above the project in question is a registered project under Section 3 of the Real Estate (Regulation & Development) Act 2016 before this Authority. On verification of the registration webpage of the project maintained by the





Authority, it is seen that out of 319 building units, only 8 building units are sold and status is still shown as “in progress”. The proposed date of completion as provided under Section 4(2) (I) (D) of the Act, 2016 is uploaded by the Respondent as 30.12.2024, and the Occupancy Certificate and Form 6 are not seen uploaded as on date in the web page. The registration web portal before this Authority reveals that the project in question is not completed even now and majority of works remain with zero progress.

16. The learned counsel for the Complainant contented that based on the assurances given by the Respondents, the Complainant had booked apartment No. A-201 on the 2<sup>nd</sup> floor of the project. The total cost of the Apartment as per the allotment letter is Rs.53,45,309/-. The Complainant altogether paid Rs.47,73,744/- to the Respondents till 28/06/2017. It was further submitted that the Complainant paid the instalments promptly and correctly. The project was expected to be completed in the year 2016. But the same was lagged for the reasons that no environment clearance certificate was obtained from MOEF. The Complainant on many occasions approached the Respondents for completing the flat and to hand over the same to the Complainant. Though the Respondents completed the structural works, they have not completed the finishing works so far. On 05.05.2022, the Respondents issued Exbt.A3 letter to the complainant stating that since few statutory approvals are still in progress, Respondents are



unable to handover the possession of the flat. It is stated in the said letter that by invoking clause 20 of the terms and conditions of the application, NBCC may cancel the allotment and will refund the amount received from the Complainant without any interest. Invoking the said clause, the Respondents issued the said letter to the complainant asking him to convey the consent for the same within 15 days. On receipt of the said letter, Complainant on 11.05.2022, issued Exbt.A4 letter to the Respondents narrating that Complainant paid the instalments after availing loan from Employees Co-operative Societies for which the Complainant has paid interest. But the Respondents insisted for filing an affidavit stating that the Complainant is ready to settle the dispute once for all and the Complainant was compelled to file Exbt.A5 affidavit on 20.10.2022 as insisted by the Respondents. But the affidavit did not contain the amount. The space for amount was kept blank in the agreement. The Complainant was in a bonafide belief that the Respondents will pay interest to the Complainant from the date of respective payments till the date of payment accepting the request of the complainant dated 11.05.2022. The Respondents have charged interest for the delayed payment from the Complainant. The Pollution Control Board has renewed the consent letter for construction to the Respondents by order dated 05.09.2014. It was specifically stated in the said order that clearance from MOES has to be obtained for the project by the Respondents. The Respondents did not have the said consent even



at the date of payment of first instalment. The Respondents wilfully and deliberately suppressed the said facts from the Complainant and similarly placed other purchasers. If such information was given to the Complainant, he would not have remitted the further instalment. Complainant paid interest @ 12% to the Employees Co-operative Societies for the loan availed by the Complainant in order to pay to the Respondents and more over the Complainant had loss of interest on the funds withdrawn from PF account for the payment of instalments. The Respondents being a public sector undertaking should not have cheated the public. The Respondents unilaterally decided the amount and complainant was compelled to sign the affidavit in order to get the principal amount. The complainant is entitled for interest as stated in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 from the respective dates of payment till the date of repayment.

17. The Counsel for the Respondents contented that the total cost of the flat was Rs.53,45,309/- against which the Complainant deposited a total amount of Rs.47,73,744/- with the Respondents. That, since certain statutory approvals from the concerned authorities were yet to be received, the Respondents showing their bona fide issued Exbt.B3 letter dated 05.05.2022 to the Complainant apprising them of the aforesaid difficulties due to which possession could not be offered to the complainant and offered to refund the full amount deposited by the complainant



without interest in terms of Clause 20 of the agreed terms and conditions of the application form. In response to Respondent's letter dated 05.05.2022, the Complainant wrote Exbt.B4 letter dated 11.05.2022 wherein Complainant primarily asked for a reasonable refund amount. The Respondents vide Exbt.B5 letter 08.06.2022 replied to Complainant's letter dated 11.05.2022 while explaining Clause 20 of the terms and conditions of allotment asked the Complainant to reconsider Respondent's offer and also provided a list of documents to be required in refund process. That in revert to the said letter dated 08.06.2022, the Complainant submitted an affidavit cum undertaking dated 20.10.2022 to the Respondents wherein the Complainant clearly provided his consent to the Offer Letter of the Respondents to accept the full and final settlement of all claims arising of the allotment of the said Unit. As per the contents of Para 3 of the Ext.B6 Affidavit, the Complainant had sworn on record that upon refund of Rs.47,73,744/- i.e. the principal amount deposited by him with Respondents, the issue shall be fully and finally settled and that he shall not be entitled to claim any compensation at present or in future with regard to the cancellation of the said unit. Accordingly, within 30 days as per the agreement between the parties, the Respondents issued the full and final settlement in favour of the Complainant on 04.11.2022 vide UTR No. CNRBR52022110492932547 and credited the agreed amount of Rs.47,73,744/-. Pursuant to the said credit, the Respondents also



issued Exbt.B7 ie., Refund and Cancellation Letter dated 09.11.2022 apprising the Complainant that the refund has been processed from the end of the Respondents. Therefore any demand of an additional amount beyond submission of the said Affidavit cum Undertaking is against the principles of law.

18. One of the main contention raised by the Counsel for the Respondents is that the Respondents had never insisted the Complainant to file the Affidavit of settlement cum undertaking. It was the Complainant out of Complainant's free will and volition executed the Affidavit cum undertaking which did not contain any amount and that the amount was kept blank is incorrect and hence denied by the Respondents. It is stated that the Respondents had issued Exbt.B3 & B5 letters dated 05.05.2022 and 08.06.2022 and apprised all the allottees in the above project that few statutory approvals (Environment Clearance, completion certificate) from the concerned authority are still in progress and it is due to the said fact the Respondents, despite all sincere efforts have been unable to hand over the possession of the subject flat to allottees till date. In view of the aforementioned facts, the 1<sup>st</sup> Respondent extended an opportunity to all the allottees for full and final refund in line with Clause No.20 of Terms and conditions of the Application. Those allottees who have given their consent for full refund for amount paid by the respective allottee to the 1<sup>st</sup> Respondent (including tax and delay instalment interest) without



any compensation or interest. The Complainant has given his consent for the said cancellation along with relevant documents. As per Exbt.B3 & B5 the 1<sup>st</sup> Respondent had clearly stated that the 1<sup>st</sup> Respondent will refund the full amount as full and final settlement. The Complainant agrees that he shall not be entitled to neither claim any compensation present or future with regards to cancellation of the unit. It was the Complainant out of Complainant's free will and volition executed the Affidavit cum undertaking dated 22.10.2022 settling the entire claim of the Complainant with the Respondents. Hence the Complainant is not entitled to get any interest.

19. From Exbt.A3 and B3 it has been clear that the 1<sup>st</sup> Respondent extended an opportunity to the Complainant for full and final refund in line with Clause No.20 of Terms and conditions of the Application and requested the Complainant to convey his consent within 15 days of receipt of the letter. Clause No.20 of the General terms and conditions states as follows:

*The applicant agrees that in case NBCC, is unable to deliver the Dwelling Unit to the Applicant for his occupation and use due to :*

- *Any legislation, order or rule or regulation made or issued by the Government or any other Authority or;*



- *If any competent authority (ies) refuses, delays, withholds, denies the grant of necessary approvals for the dwelling unit/ said building or*
- *If any matters. Issues relating to such approvals, permissions, notices, notifications by the Competent Authority become subject matter of any suit / writ before a competent court or;*
- *Due to force majeure conditions,*

*Then NBCC may cancel the allotment of the dwelling unit in which case the only liability of NBCC shall be to refund the amounts received from the Applicant without any interest or compensation whatsoever.*

20. Thereafter the Complainant had issued Exbt.A4, which is the reply letter to the Respondents requesting them to refund all the amounts paid by him along with interest as per existing RERA regulations and to settle the issues amicably. After which the Respondents issued Exbt.B5 which is the copy of letter dated 08/06/2022 issued to the Complainant, informing him to reconsider the offer for full and final refund in the line with Clause 20 of Terms and conditions of the application and also requested him to submit the documents such as a) Duly filled and signed affidavit of settlement cum undertaking (as per format enclosed) on Rs.100 stamp per duly notarised, b) NOC from the bank if property is mortgaged with any bank with clearly mentioning A/c



details for the refund c) one cancelled cheque d) all documents in original issued by NBCC - Allotment letter, demand letters, receipts etc. e) copy of Aadhar card & PAN Card and the bank account details in which the refund is to be made. During the hearing the Counsel for the Complainant submitted that the Complainant was compelled to file an affidavit as insisted by the Respondents, but the affidavit did not contain the amount. The space for amount was kept blank in the affidavit. The Complainant was in a Bonafide belief that the Respondents will pay interest to the Complainant from the date of respective payments till the date of payment. The counsel for the Respondents argued that the Complainant has given his consent for the said cancellation along with relevant documents and agreed that he shall not be entitled to neither claim any compensation present or future with regards to cancellation of the unit.

21. Admittedly the Complainant had paid total amount of Rs.47,73,744/- to the Respondents. The Complainant and his wife applied for allotment of a flat by paying Rs.2 Lakhs as application money on 31/10/2013 which was prior to the Act, 2016. Since the project has been registered with the Authority under section 3 of the Act, 2016 the provisions of the Act are applicable in this case. The Respondents returned the amount without interest to the Complainants only on 04/11/2022. The Respondents utilized the amount paid by the Complainant for a





period of more than 5 years. Thus when that amount is returned, the Respondents are legally bound to pay reasonable interest on the same for the said period, this is not done by the Respondents. Therefore the Complainant is entitled to get interest on the same as the Respondents have utilized the amount for the purpose of their commercial venture. This is the general law of contract. This being the situation, it is appropriate to seek guidance of the mandates of the RERA Act 2016 and the Rules 2018 made thereunder in this regard. The provisions under Sections 18(1) and 19(4) of the Act 2016 give entitlement to the allottees to withdraw from the project and obtain refund of the amount paid by them in the circumstances prescribed therein. Both these provisions are reproduced herein below:

Section 18(1): *“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 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”.*

Section 19(4): *“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”.*

22. With respect to the above provisions of law, the Hon’ble Supreme Court of India made some remarkable observations in its judgement M/S Newtech Promoters & Developers Pvt. Ltd. Vs State of U. P. & Ors., which are suitable to be replicated herein 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 not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act”.*

23. With respect to the right of the allottees to get refund of their amounts in case of delay in completion and handing over the project not for their own fault, the Hon’ble Supreme Court of India made certain remarkable observations, in its Judgement dated 11/11/2021 of *M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others*, as follows: “*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”.*

24. It was observed by the Hon’ble Supreme Court in another judgement in *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.” It is to be noted that the Promoters / Respondents are undoubtedly making use of the hard-earned money of the allottees for several years without completing the work and handing over possession of the apartments as per the promises given to the allottees. The Respondents, despite registering their project with the Authority under Section 3 of the Act, 2016, insisted the Complainant file an affidavit waiving his right to claim interest or compensation and accepting the refund (without any interest) as a full and final settlement, which is contrary to the principles of law. In this case, the learned counsel appeared for the Complainant submitted that the Complainant paid the instalments after availing loan from the Employees Co-operative Society for which the Complainant had paid interest, and the same was utilized by the Respondents for their business and gained profit out of it. Hence, I am of the view that the Complainant herein shall not be denied the protection embodied under the Act 2016 to the allottees of such real estate projects who

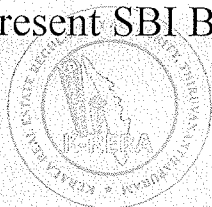


are left in lurch as a result of the failure of the Promoters and the Complainant is eligible to get interest for the amount paid by him. Hence point No.2 is answered accordingly in favour of the Complainant.

25. Admittedly, the payments have been made by the Complainants as per the table below:

<b>Date</b>	<b>Amount</b>
31.10.2013	Rs.2,00,000/-
27.11.2014	Rs.3,04,106/-
04.04.2016	Rs.4,50,769/-
11.05.2016	Rs.9,00,501/-
27.07.2016	Rs.9,501/-
27.07.2016	Rs.13,19,345/-
14.09.2016	Rs.6,81,131/-
27.01.2017	Rs.4,50,251/-
04.02.2017	Rs.3,802/-
28.06.2017	Rs.4,54,053/-
<b>Total</b>	<b>Rs.47,73,744/-</b>

26. 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 15/12/2024. The Complainants are entitled to get 17.15% simple interest on the amount paid, from the respective dates of payments as detailed in the above table, till 04/11/2022, the date of refund as provided under the above Rule.

27. On the basis of the above facts and findings, and invoking Section 37 of the Act, this Authority hereby directs as follows: -

1) The Respondents/Promoters shall pay simple interest @ 17.15% on the amounts paid, from the respective dates of payments as shown in the table above till 04/11/2022 the date of refund of the amount.

2) If the Respondents / Promoters fail to pay the aforesaid sum with interest as directed above, **within a period of 60 days** from the date of receipt of this order, the Complainants are at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

The parties shall bear their respective costs

Sd/-

Smt.Dr.B Sandhya.

Member

LJI

True Copy/Forwarded By/Order



Secretary (legal)

## Exhibits

### Exhibits marked from the Side of Complainant

Ext.A1 - Copy of General terms and conditions issued by the Respondents.

Ext.A2 - Copy of allotment letter dated 28/10/2014.

Ext.A3 - Copy of refund offer letter dated 05/05/2022 issued by the Respondents.

Ext.A4 - Copy of letter issued to the Respondents dated 11/05/2022.

Ext.A5 - Copy of Affidavit of settlement cum undertaking dated 21/10/2022.

Ext.A6 - Copy of ledger account issued by the Respondents.

Ext.A7 - Copy of order dated 06/02/2024 in CCP No.63/2023 passed by the Adjudication officer of the Authority.

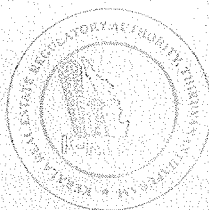
Ext.A8 Series - Copies of payment receipts issued by the Respondents.

### Exhibits marked from the Side of Respondents

Ext.B1 - Copy of application form along with allotment letter and terms and conditions.

Ext.B2 - Copy of payment details and ledger account maintained by the Respondents.

Ext.B3 - Copy of letter dated 05/05/2022 issued to the Complainant.



Ext.B4 - Copy of reply letter dated 11/05/2022 issued to the Respondents.

Ext.B5 - Copy of letter dated 08/06/2022 issued to the Complainant.

Ext.B6 - Copy of Affidavit of settlement cum Undertaking dated 21/10/2022.

Ext.B7 - Copy of letter dated 09/11/2022 issued to the Complainant.

