



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Complaint No. 90/2022

Present: Sri. M. P Mathews, Member

Dated 26<sup>th</sup> July, 2022

**Complainants**

Joshy Varghese  
Vallooran House, Koovappady, Complaint 90/2022  
Perumbavur- 683544

(By Adv. Saji Vargheese)

**Respondents**

1. National Buildings Construction Corporation(NBCC)  
Represented by its Chairman/Managing Director,  
NBCC Bhawan, Lodhi Road, New Delhi- 110003
2. General Manager  
NBCC Bhawan, Lodhi Road,  
New Delhi- 110003.

(By Adv. Aneesh James)

The above Complaint was finally heard on 26/07/2022 along with other complaints. The Counsel for the Complainant and counsel for the Respondents attended the hearing.



## ORDER

1. The case of the Complainant is as follows:- the Complainant is an allottee of project named 'NBCC VALLEY VIEW APARTMENTS' at Karimukul Near Ambalamedu, Ernakulam developed by the Respondents. Taking note of the fact that the 1<sup>st</sup> Respondent is a Government of India undertaking, the Complainant had booked a flat in the said project conceived by the Respondents and thereby he had paid an amount of Rs.2,00,000/- as application money. On receipt of the application money, the Respondent issued a letter allotting a flat as Type -V Apartment in the 5<sup>th</sup> floor of the said project bearing No. A-701. The total cost of the apartment as per the allotment letter is Rs.54,57,669/-. On 04/10/2014, the Complainant had paid Rs.3,56,683/- to the Respondent towards allotment money.

2. The Complainant further submitted that as per the allotment letter, the Respondent assured that the project will be completed on 28/10/2016. Believing the assurance given by the Respondent the Complainant has paid a total amount of Rs.42,93,844/- to the respondent towards the cost of the said flat in the above project. The details of the payment made to the respondent is as follows:-

<u>Date</u>	<u>Amount</u>
Application money	Rs.2,00,000.00
04/10/2014	Rs.3,56,683.00
05/04/2014	Rs.4,43,956.00
17/05/2016	Rs.8,86,986.00
28/07/2016	Rs.12,84,675.00
15/09/2016	Rs.6,74,320.00
30/01/2017	Rs.4,43,447.00



Service tax

Rs.3805.00

**Total**

-

**Rs.42,93,872.00**

3. The Complainant has paid the instalments promptly and correctly. The project was expected to be completed in the year 2016. The Complainant on many occasions approached the Respondent for completing the flat and to hand over the same to the Complainant. Though the Respondent completed the structural works, they have not completed the finishing works so far. Now the Complainant understood that the Respondent has abandoned the project and the buildings are not attended by anybody and the building is deteriorating day by day. Since the Respondent has no plan to complete the project Complainant has no option other than to ask for return of the amount paid by the Complainant with its interest. The Respondent is bound to return the entire amount together with interest collected from the Complainant. Copies of allotment letter and payment receipts are the documents produced from the part of the Complainant.

4. The reliefs sought by the Complainant is refund of Rs.42,93,844/- together with 12% interest from the date of payment.

5. The Respondents have filed written statement and denied the averments in the Complaint and stated that the Respondents had obtained building permit No.BA-103/09-10 dated 12/4/2010 as well as the consent to establish dated 28/07/2010 from the Kerala State Pollution Control Board for the said project. The Complainant had submitted application dated 19/06/2014 seeking allotment of apartment and had given his consent to the terms and conditions set out by NBCC (INDIA) Ltd. It was further submitted that the Complainant has applied for allotment of an apartment in the project 'NBCC Valley View Apartments' by paying application money of



Rs.2,00,000/-. The said application was accepted and the Complainant was allotted Apartment No.A701 vide allotment letter dated 28/10/2014. The total cost of the apartment allotted to the Complainant was Rs.54,57,669/- excluding VAT. The allotment to the Complainant was subject to the Complainant paying the allotment money of Rs.3,60,286/- on or before 12/12/2014. But the Complainant failed to pay the entire allotment money within the stipulated time and paid only an amount of R.3,56,683/-. Apart from the said amounts, the Complainant had paid an amount of Rs.4,43,958/- on 05/04/2016, Rs.8,86,893/- on 17/05/2016, Rs.12,84,675/- on 28/07/2016, Rs.6,74,320/- on 15/9/2016, Rs.4,43,447/- on 30/01/2017 and Rs.3802/- on 04/02/2017. Thus the Respondents have received a total amount of Rs.42,93,778/- from the Complainant. The Complainant was a defaulter and the instalments were not paid timely by the Complainant.

6. The Respondents further submitted that the tentative date of handing over of possession of the apartment conveyed to the Complainant was three years from the date of allotment. The works in the project had progressed more or less as per the schedule and 95% of the work in 5 blocks under phase I of the project has been completed by January 2018. The Respondents could not further proceed with the work as when the Respondents had applied for renewal of the consent to establish to the Kerala Pollution Control Board, the Respondents were informed that consent to establish can be renewed only if the Respondents obtain environmental clearance for the project. The Respondents already submitted the requisite application for obtaining environmental clearance and the same is under process. The work on the project came to a stand still since February 2018 for want of the requisite statutory approvals. The only works that is remaining is the external services like STP, Sewer connections, water supply connections, painting, external electrification works etc., in addition to the testing and



commissioning of lifts, transformers and DG sets. The Respondents are unable to proceed further and complete the remaining 5% of the work on the project on account of the delay in obtaining environmental clearance from the MOEF. The building already constructed is well attended to and protected by the employees of the 1<sup>st</sup> Respondent.

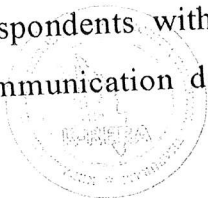
7. The Respondents further submitted that the Respondent has already intimated the Complainant vide communication dated 05/05/2022 that they are unable to handover possession of the allotted flat to the Complainant on account of non-availability of statutory approvals and had offered full refund to the Complainant in terms of the agreement. A further communication dated 06/08/2022 was also issued to the Complainant requesting to provide the necessary documents, so that the refund of the amounts paid by the Complainant can be processed. However the documents sought for by the Respondents for processing the refund has not been provided by the Complainant till date. The Complainant was a defaulter and had committed defaults in the timely payment of all instalments, which has severely affected the cash flow of the Respondents and adversely affected the progress of the work. Hence the Complainant is not entitled to any interest on the amounts paid to the Respondents. True copies of application for allotment submitted by the Complainant, allotment letter dated 28/10/2014, copy of communication dated 25/04/2016, copy of communication dated 05/05/2016, copy of communication dated 29/08/2016, copy of communication dated 16/12/2016, copy of payment details, copy of payment ledger maintained by the Respondents, copy of communication dated 05/05/2022, copy of communication dated 08/06/2022, copy of building permit dated 12/04/2010, renewal application dated 14/12/2020, copy of consent to establish dated 28/07/2010 issued by Kerala Pollution Control Board, copy of communication dated 20/07/2018 sent to Kerala State Pollution Control



Board & copy of communication dated 15/03/2021 sent to State Environment Impact Assessment Authority.

8. The Authority heard the learned counsels on either side, gave careful consideration to their submissions, and perused the material documents available on record. The documents produced from the part of Complainant is marked as Exbt.A1 & A2. The Complainant has not produced any agreement for sale or construction executed between the Complainant and the Respondent. Exbt.A1 is the payment schedule issued by the Respondents showing the instalment payment plan for type V, Flat No.A701 having an area of 1788 in the seventh floor. Exbt.A2 series are the payment receipts issued by the Respondents to the Complainant.

9. The documents produced by the Respondents are marked as Exbt.B1 to B16. Exbt.B1 is the copy of the application for allotment submitted by the Complainant with general terms and conditions of allotment agreed by the Complainant. Exbt.B2 is the allotment letter dated 28/10/2014 issued by the Respondents to the Complainant regarding allotment of apartment No.A701 in the seventh floor of the project. Exbt.B3 is the copy of communication dated 25/04/2016 issued to the Complainants intimating the payment date of 2<sup>nd</sup> instalment. Exbt.B4 is the copy of communication dated 05/05/2016 issued to the Complainants intimating the payment date of 3<sup>rd</sup> instalment. Exbt.B5 is the copy of communication dated 29/08/2016 issued to the Complainants intimating the payment date of 4<sup>th</sup> instalment. Exbt.B6 is the copy of communication dated 16/12/2016 issued to the Complainants intimating the payment date of 5<sup>th</sup> instalment. Exbt.B7 is the copy of payment details maintained by the Respondents of the payments received from the Complainant. Exbt.B8 is the copy of payment ledger maintained by the Respondents with respect to the Complainant. Exbt.B9 is the copy of communication dated 05/05/2022 issued to the



Complainant intimating that few statutory approvals from the concerned authority are still in progress, due to which the Respondents have been unable to hand over the possession of the flat and thereby given an opportunity to the Complainant of full and final refund of the amount paid by him without any interest and requested him to convey his consent within 15 days from the date of this notice. Exbt.B10 is the copy of communication dated 08/06/2022 issued to the Complainant reminding him to submit necessary documents at the earliest in order to issue the refund. Exbt.B11 is the building permit dated 12/04/2010 issued by Vadavukadu Puthencruze Panchayat, Exbt.B12 is the copy of renewal application dated 14/12/2020 submitted to Vadavucode-Puthencruz Grama Panchayath. Exbt.B13 is the copy of consent to establish dated 28/07/2010 issued by the Kerala State Pollution Control Board. Exbt.B14 is the copy of consent to establish renewal order dated 05/09/2014 issued by the Kerala State Pollution Control Board. Exbt.B15 is the copy of communication dated 20/07/2018 issued to Kerala State Pollution Control Board. Exbt.B16 is the letter dated 15/03/2021 issued to the State Environment Impact Assessment Authority regarding the submission of challan as processing fee for the said project.

10. During the hearing on 16/05/2022, the Authority found that the said project is ongoing and is liable to be registered under section 3 of the Act. Hence the Authority on the same day vide interim order directed the Respondents to register the project named 'NBCC Valley View Apartments' with the Authority. Thereafter the Respondent has filed four petitions. IA.No.105/2022 in Complaint No.90/2022, IA.No.106/2022 in Complaint No.91/2022, IA.No.107/2022 in Complaint No.92/2022 & IA.No.108/2022 in Complaint No.120/2022 to recall the interim order dated 16/05/2022. Since the said project is ongoing and has not obtained occupancy certificate till date, the said project is registerable under section 3 of the Act.



Hence the said IA's were dismissed by the Authority. During the hearing on 01/06/2022, the counsel for the Respondents sought 30 days time to complete the registration process and the same was granted by the Authority. In compliance of the said order the Respondents have filed application for registration on 01/07/2022 and the same is under scrutiny. It is found that the permit issued by the local body was valid only up to 31/12/2020.

11. As far as the delay in settlement of payment by the Complainant, the Respondent is at liberty to claim interest at the rate specified in the rules on the delayed payment. Rule 18(3) of the Kerala Real Estate (Regulations and Development) Rules, 2018 states the rate of interest payable by the allottee to the Promoter. In this particular case though the Respondent had issued notice to the allottee on delayed payment of instalment as per the payment plan vide Exbt.B3 to B6, no further claim of interest is seen demanded from the Complainants. No counter claim as to the interest payable on delayed payments has been filed before the Authority for consideration. In the light of above facts and delay in completion of the project, the allottee is entitled to claim refund of the amount paid under section 18 and interest on delayed payment of instalment cannot be considered, on a project that is still not complete.

12. The Respondents in their written statement admitted that the said project is not complete and works such as external services like STP, Sewer connections, water supply connections, painting, external electrification works etc., in addition to the testing and commissioning of lifts, transformers and DG sets are still pending. The Respondents also admitted that they are unable to proceed further and complete the remaining 5% of the work on the project on account of the delay in obtaining environmental clearance from the MOEF. Hence it is clear that the Respondents have





miserably failed to complete and handover the project as per the promises made by them and the Complainant is entitled to withdraw from the project and claim refund of the amount paid by him, with interest under section 18 of the Act, 2016.

13. 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 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*".



14. 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".

15. On going through the Exbt.A2 series which is the payment receipts produced by the Complainant it is clear that the Complainant had paid an amount of Rs.13,50,130/- only to the Respondents. But as per Exbt.B7, which is the payment details submitted by the Respondent it is clear that the Complainant had paid an amount of Rs.42,93,778/- to the Respondents as cost of apartment No.A701, of the said project developed by the Respondents. The Respondents also admitted the said payment in their counter.

16. Hence, the Complainant herein is entitled to get the refund of the amount paid to the Respondent 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 12.75% with effect from 15/06/2022. The Complainant is entitled to get 14.75% 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. Hence it is found that the Respondent's are liable to pay Rs.42,93,778/- along with 14.75 % simple interest on each payment as per the statement given above and sought for by the Complainant.

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

1. The Respondents shall return the amount of Rs.42,93,778/- to the Complainant with simple interest @ 14.75 % per annum on each payment from the date as shown in the statement above, till the date of realization.

2. If the Respondents fails 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.

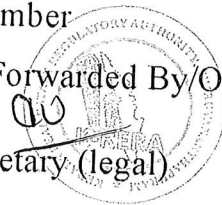
Sd/-

Sri.M.P.Mathews

Member

/True Copy/Forwarded By/Order

Secretary (legal)



**Exhibits**

**Exhibits marked from the Side of Complainants**

- Ext.A1 - Copy of payment schedule issued by the Respondents.  
Ext.A2 series - Copy of payment receipts

**Exhibits marked from the Side of Respondents**

- Ext.B1 - Copy of application for allotment submitted by the Complainant.  
Ext.B2 - Copy of allotment letter dated 28/10/2014.  
Ext.B3 - Copy of communication dated 25/04/2016.  
Ext.B4 - Copy of communication dated 05/05/2016.  
Ext.B5 - Copy of communication dated 29/08/2016.  
Ext.B6 - Copy of communication dated 16/12/2016.  
Ext.B7 - Copy of payment details.  
Ext.B8 - Copy of payment ledger maintained by the Respondents.  
Ext.B9 - Copy of communication dated 05/05/2022.  
Ext.B10 - Copy of communication dated 08/06/2022.  
Ext.B11 - Copy of building permit dated 12/04/2010.  
Ext.B12 - Copy of renewal application dated 14/12/2020.  
Ext.B13 - Copy of consent to establish dated 28/07/2010 issued by Kerala Pollution Control Board.  
Ext.B14 - Copy of consent to establish Renewal order dated 05/09/2014 Issued by the Kerala State Pollution Control Board  
Ext.B15 - Copy of communication dated 20/07/2018 sent to Kerala State Pollution Control Board  
Ext.B16 - Copy of communication dated 15/03/2021 sent to State Environment Impact Assessment Authority.