



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 26/2021

Present: Sri. P H Kurian, Chairman

Smt. Preetha P Menon, Member

Dated 11th December 2024

Complainant

Mr. Arjun A,
Aged 34 years, S/o C Asok residing at Thundil Lekshmi,
Pallickal P.O, Kattanam Village,
Mavelikkara, Alappuzha – 690503
[By Adv. P O Thomas Puthussery]

Respondents

1. Nest Infratech (M/s Nest Realities India Pvt Ltd),
Having its corporate office at COMPASS,
5th Floor, NH-47 By-pass,
Near Vysali Bus Stop,
Chakkaraparambu, Cochin – 682032
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



3. Siji Tono Alias Siji Jos,
W/o Tono Jose, Residing at Vattakuzhiyil House,
Cherumattapuzha Desom Vazhakala Village,
Kanayannoor Taluk
4. 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
5. 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
6. 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
7. Kuttymoosa Shamsudhin,
Nest Infratech Director Nest Infratech,
(M/s Nest Realities India Pvt Ltd) Compass 5th Floor,
NH – 47 By-pass, Near Vysali Bus Stop,
Chakkaraparambu, Cochin – 682032
[R3 by Adv. C R Syamkumar &
R4 to R7 by Adv. Asif Ali]

The above Complaint along with some other complaints of the same project came up for a virtual hearing on 01/08/2024. The counsel for the Complainant Adv P O Thomas Puthusserry and



the counsel for Respondents No. 4 to 7 Adv. Asif Ali attended the hearing. The Respondent No. 3 was removed from the party array.

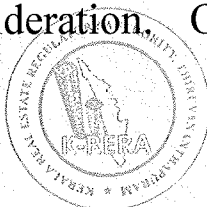
ORDER

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 third Respondent is the owner in possession of the landed property over which the construction is to be made. Respondent 2,4,5,6 and 7 are the directors of the 1st Respondent Company. An understanding was reached between the Respondents 1 and 2 on the one hand and the Respondent 3 on the other hand whereby the Respondent 3 agreed to permit the Respondents 1 and 2 to make construction of a multi-storied building in the flat system in the aforesaid property of the third Respondent. Thereupon the possession of the aforesaid property of the third Respondent was handed over to the Respondents 1 and 2 to enable them to make the construction. Accordingly, the Respondents 1 and 2 started construction activities in the aforesaid property of the third Respondent. Before starting construction of the multi-storied building the Respondents 1 and 2 offered a flat for sale to the Complainant. The flat agreed to be sold was having a built up area of 961 square feet. It was submitted that, an agreement was executed between the Respondents 1 and 2 and the Complainant on 25.07.2014. Another agreement was executed between the Complainant and the 3rd Respondent. By the agreement executed between the Complainant and



the Respondents, the Respondents agreed to sell 961/43000 undivided share of the aforesaid property of the 3rd Respondent to the Complainant. Towards the undivided share agreed to be sold as per the agreement entered into between the Complainant and the 3rd Respondent, the 3rd Respondent agreed to sell the property having an extent of 0.893 cents undivided share in the aforesaid property. The Respondents also agreed to sell the building to be constructed as Flat No. III-G(Pine) having a super built up area of 961 square feet in the 3rd floor of the multi-storied building in flat system to be constructed in the name and style 'NEST – CAMPUS WOODS – PINE' along with the other amenities as stated in the agreement. Similar agreements were executed between the 3rd Respondent and other purchasers of the flats to be constructed on the property belonging to the 3rd Respondent. Respondents 1 and 2 undertook to complete the construction by the month of January 2016 and to handover possession of the building with all facilities and amenities including car parking. It was orally and mutually agreed that the Respondents would complete the construction by the month of January 2016 and handover possession of the apartment with all facilities and amenities including car parking. Even though the agreement for construction was executed on 25.07.2014 the work of the this multi storied building was started only in the year 2015.

2. It was submitted that as per the agreement dated 25.07.2014, entered into between the Complainant and the first Respondent, the Complainant agreed to pay a total amount of Rs. 31,33,000/- as consideration. Out of the above amount, the

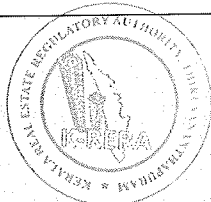


Complainant paid a sum of Rs. 2,00,000/- on 16.06.2014 and Rs. 5,00,000/- on 30.07.2014. It appears that the construction of the building is yet to commence. The foundation work was almost completed in the year 2015 and thereafter they stopped the work and work was going in snail's pace. While so on enquiry it is found 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. Thereafter they proceeded with the construction only during the year 2016. On resuming the construction, the Respondents insisted the Complainant make substantial further payments disregarding the payment schedule by saying that they were unable to proceed with the construction due to paucity of funds. Believing the words of the Respondents as above, the Complainant made a payment of Rs. 4,93,322/- on 31.12.2016. But by the end of the year 2016 Respondents had completely withdrawn from the construction work. The construction activities were started in the year 2015. Now around 7 years have elapsed since then. The construction was abandoned by the Respondents at its various stages. Even then the Complainant paid an amount of Rs. 5,54,541/- on 31.10.2017. Because of this, substantial damage is already caused to the structure because of corrosion and other natural process. It is submitted that even if the construction is completed it will not have a life as expected because of the poor quality of the construction and the delay in carrying out appropriate activities to protect the building at different stages.

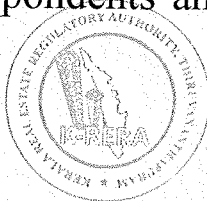


3. The Complainant further submitted that even though the Complainant and other purchasers approached the Respondent and requested them to resume the construction activities, the Respondent did not resume the construction activity saying that they did not have the requisite money with them. Therefore, an unregistered Association was formed by the intending purchasers 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 2018. Even before resuming the construction activity, the building permit which was issued for 3 years expired. No steps are taken by the Respondents to get the validity of the permit extended for further periods. When the Respondents resumed construction activities the Complainant paid a sum of Rs. 5,54,541/- on 05.09.2018. Therefore, out of the total amount of Rs. 31,33,000/- agreed to be paid by the Complainant to the Respondents, the Complainant have already paid a sum of Rs. 23,02,404/-. The Complainant has paid the following amounts on the following dates.

Date	Amount
16.06.2014	2,00,000
30.07.2014	5,00,000
31.12.2016	4,93,322
31.10.2017	5,54,541
05.09.2018	5,54,541
TOTAL	23,02,404



4. The Complainant also submitted further that now the structural work of the building up to the 4th floor is almost completed. The plastering and plumping works have not been so far started and they have completely stopped the construction work at the end of 2019. As per the agreement dated 25.07.2014 executed between the Complainant and the Respondents, the Respondents agreed to complete the construction and to handover the building for occupation by the month of January 2016. By the above agreement, the Respondents agreed to obtain the requisite statutory clearances like the occupancy certificate from the local authorities by the month of January 2016. They have agreed to carry out the entire plumping, electrical wiring, plastering, painting, fixation of fixtures etc. by the time. They failed to discharge their obligations under the agreement only for the reason that they diverted the money obtained from the intending purchasers of the building agreed to be constructed on the property belonging to the 3rd Respondent to other projects. Had the funds obtained from the intending purchasers were utilized for the project in hand the Respondents could have very well completed the construction within the agreement and handed over the key of the flat to the Complainant. Even after the elapse of around 5 years from the stipulated time, the Respondents did not complete the construction nor did handover possession of the building to the Complainant. The action/inaction as above on the part of the Respondents is in clear violation of terms and conditions of the agreement dated 25.07.2014 entered into between the Complainant and the Respondents and also in clear violation of the



provisions contained under the Real Estate (Regulation and Development) Act, 2016.

5. It was submitted that the Real Estate (Regulation and Development) Act came into force with effect from 26.03.2016. As per Section 4 of the above Act, it is the bounden duty of the builder to get the ongoing project registered under the provisions of the above Act. The Respondents till date did not take any steps to get the 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 in time whereas Respondents were not all ready and willing to perform their part at any point in time. The Complainant issued a legal notice on 15.12.2020 to the Respondents. There are 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 handover possession of the building to the Complainant. Since the construction activities are delayed solely due to the negligence on the part of the Respondents, the Complainant is entitled to the compensation prescribed under Section 19(4) of the Act. The representations made by the Respondents to the Complainant is tainted with malafides and fraud from the very beginning itself. At the time of negotiation between the Complainant and the Respondents which ultimately resulted in the agreement dated 25.07.2014 and at the time of execution of the agreement and at all times thereafter till the



last payment made by the Complainant to the Respondents, the Respondents in an unequivocal terms represented to the Complainant that the Respondents are having all statutory clearances and licenses to make the construction. To the surprise of the Complainant, on enquiry it was revealed to Complainant 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. 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. 15,34,645/- as interest for the delayed completion of the construction. (4) Direct the Respondents to pay a compensation of Rs. 12,00,000/- towards the loss sustained by the Complainant by the loss of monthly rent that would have been accrued to the Complainant had the construction of the apartment been completed on or before January 2016 and handed over the possession thereof to the Complainant within



the time stipulated in the agreement. (5) Direct the Respondents to pay a compensation of Rs. 3,00,000/- towards the mental agony and tension undergone by the Complainant because of the delay in completion of the project. The Complainant produced the copies of the agreement, account details, payment receipts and legal notice.

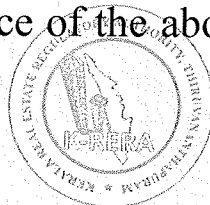
6. The Respondents did not file any counter or submit any documents.

7. 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.

8. The Respondent No. 3 was deleted from the party array as per proceedings dated 13/09/2023, after hearing and perusing the document marked in one of the connected Complainants, Complaint No. 278/22 as Exbt B1 as per which he is only the previous owner of the land from whom the land was purchased by the Builder/Promoter which was admitted by the Respondents during the proceedings of other Complaints with respect to the project in question.



9. Here, the reliefs sought by the Complainants which come under the jurisdiction of this Authority are for registration of the project, completion handing over possession and interest for delay. The claims for compensation shall be filed before the Adjudicating officer of this Authority. 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 same project 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 including the above Complaint in which the Authority 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.* It was also specified on 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. As per the said order, the Complainants including the Complainants herein who sought interest for delay were directed to file their claims with detailed interest calculation statement through separate applications. In compliance of said direction, the Complainant herein also submitted claim for interest for delay along with calculation statement and supporting documents. After hearing both parties on the said interest claim we pass the order hereby as follows:

10. Heard the parties appeared before us on claim of interest for delay in completion of the Project and handing over the apartment. After hearing the counsels on either side and perusing the pleadings and documents submitted with respect to the claim of the Complainant, the following issues have emerged for our consideration:

- 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 are 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?



11. **Points No. 1&2:** The documents produced from the part of the Complainant are marked as Exbts.A1 and A4. **Exhibit A1** is the agreement for sale dated 25.07.2014 executed between the Complainant and the Respondent No. 1 represented by Respondent No. 2. **Exhibit A2 series** are the account statement details. **Exhibit A3** is the legal notice issued by the Complainant to the Respondent. **Exhibit A4 series** are the receipts of payments made by the Complainant to the Respondent.

12. On perusal of the documents placed on record, it could be seen as per the Exbt A1 agreement dated 25/07/2014, entered into with the Complainant herein, the Respondents/builder had assured that “the construction will be completed within 18 months (on 31/01/2016) from the date of agreement. The Complainant has submitted that the Respondents/promoter have not yet completed or handed over the apartment. It is noticed that as per the terms of Exbt. A1 agreement, the Respondents/Promoter had promised to give the Complainant several common amenities in the project, but none of them are completed according to the Complainant and his counsel. We noted that the Respondents/Promoters herein have not denied these contentions at any point of time or never raised a case that the Project has been completed by them on time as per the agreement and handed over to the Complainants or any of their allottees. Moreover, this Authority had received and considered several other complaints from allottees of the same project and passed the above mentioned common order dated 05/10/2021 for completion and handing over the project in question to



the Complainant therein within the time frame prescribed therein the said order. After receiving several Complaints even subsequent to the said order and after expiry of the time line prescribed in the said order, it could be ascertained that the Respondents/Promoters could not 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. The secretary (Legal) of this Authority was directed to send demand notice to the Respondent/Promoter to remit the penalty till date.

13. Even after issuing the above said common order on 05/10/2021, several Complaints seeking the same relief, were being received by this Authority revealing 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, and hence the contentions of the Complainants herein are found to be true. Apart from that the web portal of the Authority discloses that the Project is not yet completed. The promoters are duty bound to complete the Project as a whole as promised to the allottees as per the provisions of the Act, 2016 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*



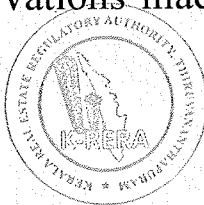
by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the lurch or, as in the present case, be told that 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”.

14. 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.

15. As per the Exbt. A1 agreement, Clause No. 16 states that *"The Builder undertakes to ensure that the construction is completed within 18 months(January 31,2016) from this day, subject to the purchaser fulfilling his obligation as the agreement and also subject to the situation arising out of factors beyond the control of the builder and force majeure."* Exhibit. A1 agreement is seen executed by the Complainant and the Respondent No 1/Promoter company represented by Respondent No. 2 on 25.07.2014 as per which the promised date of completion and handing over was on 31.01.2016. According to the Complainant the apartment is not yet handed over which is admitted by the Respondents during the hearing. As it is evident from the records that the Respondents could not hand over possession as per the terms of the agreement, the Complainant herein is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. We would reproduce herein below, certain remarkable observations made in this regard by the Hon'ble



Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others:

“ If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

16. During the hearing, the learned counsel appeared for the Respondents 4 to 7 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 4 to 7 have not produced any document to prove these contentions and it is to be noted that none of the Respondents submitted any counter statements to this Complaint. 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 the consent or knowledge of the allottees/Complainant herein or else it was the duty of the Respondents 4 to 7 to prove the contrary but unfortunately, they have not succeeded



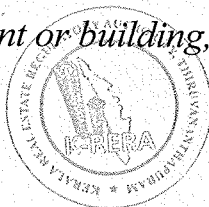
in establishing their contentions. Apart from these facts, it is laid down in Sec 69 of the Act, 2016 specifies that (1) *Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the 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.*

17. 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 to him. He did not file any counter statement in this Complaint. It is seen that the Respondent No.2 had put signatures in all the documents such as agreement, payment receipts etc on behalf of the 1st Respondent Company. On examination of Exhibit A2&A4 series, it is revealed that the Complainant had made payments to 1st Respondent before the promised date of completion. 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-earnings savings in the project. Section. 11(4) of the Act,2016 deals with the obligations of the Promoter and it 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)



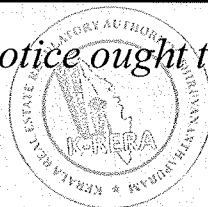
execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act; (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 that *"The promoter shall (1) execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment 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, in this case, the Promoters of the Project in question have clearly violated Section 11(4) and Section 17 of the Act, 2016.

18. Here, in the case of the Complainants, the promised date of completion and handing over was 31-01-2016, but the project is not completed so far as alleged by the Complainant. It is admitted by the Respondents/Promoters also. Apart from these, the registration web portal and the web page concerned is an important piece of evidence before this Authority and in this case the web page clearly reveals that the project is not yet completed as specifically mentioned in para 7 above. 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.”

19. 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.

20. In the instant case, the Complainant had remitted Rs. **23,02,404/-** to the Respondent No.1 which is supported by Exbt A2 & A4 series documents. The said documents reveal that the Complainant has paid an amount of Rs.11,93,322/- before the promised date of completion, i.e. on 31.01.2016. The respective dates of payments and amounts in total are as follows:

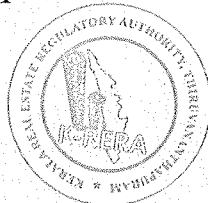
Date	Amount in Rs.
16.06.2014	2,00,000/-
30.07.2014	5,00,000/-
31.12.2016	4,93,322/-
31.10.2017	5,54,541/-



05.09.2018	5,54,541/-
Total	23,02,404/-

21. As the Complainant is found entitled to get interest for the delayed handing over of possession, the Respondents/Promoters are liable to pay interest to the Complainant as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainant herein is entitled to get interest for the period from 01/02/2016, the promised date for handing over till the actual date of handing over possession, on Rs. 11,93,322/- 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%].

22. 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/Promoters in the following manner:



- 1) The Respondents 1&2 and 4 to7 shall pay to the Complainant, simple interest @ 17.15% per annum, (a)for Rs. 11,93,322/-, the amount paid before 31/01/2016, the promised date of completion and handing over, for every month from 1/02/2016 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 31/01/2016, from the date of each payment as mentioned in the table inserted above in para 20 till the actual date of handing over possession of the apartment to the complainant.
- 2) If the Respondents1&2 and 4 to7 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.

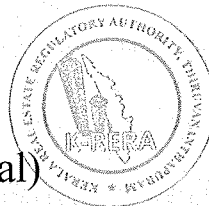
Both parties shall bear their respective costs.

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 agreement dated 25.07.2014.

Exhibit A2 series: copies of the statement of account showing the payments made by the Complainant to the Respondents.

Exhibit A3: copy of the legal notice issued to the Respondents by the Complainant.

Exhibit A4 series: copies of the payment receipts.

Documents produced by the Respondents

Nil



