

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19<sup>TH</sup> DAY OF SEPTEMBER 2023 / 28TH BHADRA, 1945

MSA NO. 13 OF 2023

AGAINST THE ORDER DATED 28.02.2023 OF THE KERALA REAL ESTATE  
APPELLATE TRIBUNAL, ERNAKULAM IN REFA NO.74 OF 2022 ARISING FROM  
THE ORDER DATED 26.07.2022 OF THE KERALA REAL ESTATE REGULATORY  
AUTHORITY, THIRUVANANTHAPURAM IN COMPLAINT NO.90/2022

APPELLANTS/APPELLANTS/RESPONDENTS:

- 1 NBCC (INDIA) LIMITED  
FORMERLY NATIONAL BUILDING CONSTRUCTION  
CORPORATION LTD., NBCC BHAWAN,  
LODHI ROAD, NEW DELHI - 110003  
REPRESENTED BY ITS CHAIRMAN/MANAGING DIRECTOR
- 2 THE GENERAL MANAGER,  
NBCC (INDIA) LTD., NBCC BHAWAN,  
LODHI ROAD, NEW DELHI, PIN - 110003  
BY ADVS.  
ANEESH JAMES  
JIJO THOMAS  
M.D.BEENA  
G.SHRIKUMAR (SR.) (S-580)

RESPONDENTS/RESPONDENTS/COMPLAINANT:

JOSHY VARGHESE  
S/O. GEORGE, AGED 47 YEARS,  
RESIDING AT VALLOORAN HOUSE, KOOVAPPADY,  
PERUMBAVUR, ERNAKULAM DISTRICT, PIN - 683544  
BY ADV SAJI VARGHESE

THIS MISC. SECOND APPEAL HAVING COME UP FOR ORDERS ON  
19.09.2023 ALONG WITH M.S.A. NO.14 OF 2023, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19<sup>TH</sup> DAY OF SEPTEMBER 2023 / 28<sup>TH</sup> BHADRA, 1945

MSA NO. 14 OF 2023

AGAINST THE ORDER DATED 28.02.2023 OF THE KERALA REAL ESTATE  
APPELLATE TRIBUNAL, ERNAKULAM IN REFA NO.75 OF 2022 ARISING FROM  
THE ORDER DATED 26.07.2022 OF THE KERALA REAL ESTATE REGULATORY  
AUTHORITY, THIRUVANANTHAPURAM IN COMPLAINT NO.120/2022

APPELLANTS/APPELLANTS/RESPONDENTS:

- 1 NBCC (INDIA) LIMITED  
FORMERLY NATIONAL BUILDING CONSTRUCTION  
CORPORATION LTD.,  
REPRESENTED BY ITS CHAIRMAN/MANAGING DIRECTOR  
NBCC BHAWAN, LODHI ROAD, NEW DELHI, PIN - 110003
- 2 NBCC (INDIA) LIMITED  
FORMERLY NATIONAL BUILDING CONSTRUCTION  
CORPORATION LTD.,  
REPRESENTED BY ITS GENERAL MANAGER  
NBCC BHAWAN, BHISMA PITAMA MARG,  
PRAGATI VIHAR, NEW DELHI, PIN - 110003
- 3 THE MANAGING DIRECTOR  
NBCC (INDIA) LIMITED, NBCC BHAWAN, LODHI ROAD,  
NEW DELHI, PIN - 110003
- 4 THE GENERAL MANAGER,  
NBCC (INDIA) LTD., NBCC BHAWAN, BHISMA PITAMA MARG,  
PRAGATI VIHAR, NEW DELHI, PIN - 110003
- 5 NBCC (INDIA) LIMITED  
REPRESENTED BY ITS MANAGER  
VALLEY VIEW APARTMENTS, KENDRIYA VIHAR, KARIMUGAL,  
AMBALAMEDU, KOCHI, KERALA  
BY ADVS.  
ANEESH JAMES  
JIJO THOMAS  
M.D.BEENA  
G.SHRIKUMAR (SR.) (S-580)

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

- 1 R. SATHISH  
S/O. LATE C. RAMAN PILLAI,  
RESIDING AT 242, SUPREME ENCLAVE,  
MAYUR VIHAR PHASE-I, DELHI, PIN - 110091
- 2 SUJATHA M  
W/O. R. SATHISH, RESIDING AT 242,  
SUPREME ENCLAVE, MAYUR VIHAR PHASE-I,  
DELHI, PIN - 110091  
BY ADV SHERRY GEORGE CHERIAN

THIS MISC. SECOND APPEAL HAVING COME UP FOR ORDERS ON  
19.09.2023 ALONG WITH M.S.A. NO.13 OF 2023, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:



**LEGALERA**  
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

**“C.R.”**

## **COMMON JUDGMENT**

**Dated this the 19<sup>th</sup> day of September, 2023**

These miscellaneous second appeals have been filed under Section 58(1) of the Real Estate (Regulation and Development) Act, 2016.

2. M.S.A. No.13 of 2023 arises out of order in REFA No.74/2022 dated 28.02.2023 on the files of the Kerala Real Estate Appellate Tribunal, Ernakulam and the order in Complaint No.90/2022 dated 26.07.2022 on the files of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram. The appellants are the appellants in REFA No.74/2022 and the respondent is the original complainant in Complaint No.90/2022.

3. M.S.A. No.14 of 2023 arises out of order in REFA No.75/2022 dated 28.02.2023 on the files of the Kerala Real Estate Appellate Tribunal, Ernakulam and the order in Complaint No.120/2022 dated 26.07.2022 on the files of the Kerala Real Estate Regulatory Authority,

Thiruvananthapuram. The appellants are the appellants in REFA No.75/2022 and the respondents are the original complainants in Complaint No.120/2022.

4. Heard the learned Senior counsel for the appellants as well as the learned counsel appearing for the respondents.

5. Both these appeals admitted on 08.06.2023, raising the following question of law:

*Whether the Kerala Real Estate Authority is bound by the provisions in Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 with regard to the rate of interest payable in case an allottee wishes to withdraw from the project and take back the amounts which he has paid?*

6. Precisely spelt, the dispute herein is that, when the promoter could not complete the construction as agreed, the allottees herein filed separate complaints before the Kerala Real Estate Regulatory Authority, Thiruvananthapuram seeking return of money they had given along with interest. The Regulatory Authority

adjudicated the respective claims and granted the reliefs. While granting the interest, the Regulatory Authority followed Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 and granted interest at the rate of 14.75% (12.75 + 2%). In the respective appeals filed against the orders by the appellants herein, the Appellate Authority also confirmed the orders. Even though the promoter deposited the principal amount, the promoter disputes entitlement of interest at the rate of 14.75% and the same is the prime question to be addressed herein.

7. The learned Senior counsel appearing for the appellants submitted that as per Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 the annual interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, is the State Bank of India's Benchmark Prime Lending Rate plus 2% interest and shall be computed as simple interest.

8. In M.S.A. No.13 of 2023, the learned senior counsel for the appellants pointed out that the interest claimed by the respondent is only 12% and the Authority

granted 14.75% in excess of the claim. However, it is conceded by the learned senior counsel for the appellants further that in M.S.A. No.14 of 2023, 15% is the interest canvased where 14.75% of the interest was granted. Even though the learned Senior counsel appearing for the appellants given emphasis to Section 19 of the Act with particular reference to sub sections (5) and (6) to contend that every allottee who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any, the allottee also shall be liable to pay interest as provided under sub section (7) of Section 19 of the Act, and the same shall be subject to sub section (8) of Section 19.

9. Insofar as payment of interest, the same shall be in accordance with Rule 18 of the Kerala Real Estate

(Regulation and Development) Rules, 2018 in tune with Section 18 of the Kerala Real Estate (Regulation and Development) Act, 2016, is the submission of the learned counsel for the respondents. In this connection, the learned counsel for the respondents placed a decision of the Apex Court reported in **[2021 (6) KLT SN 33 (C.No.27) SC : 2021 (6) KLT OnLine 1001 (SC)] Newtech Promoters and Developers Pvt. Ltd v. State of U.P.** and contended that in paragraph No.77 of the said judgment, the Apex Court considered the question regarding payment of interest and held that the statute leave no discretion to the Authority in the matter of grant of interest. The observation of the Apex Court in paragraph No.77 is as under:

*"77. The further submission made by the learned counsel for the appellants is that the return of the amount adversely impacts the promotor and such a question can be looked into by the adjudicating officer in the better prospective. The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return*



*of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promotor wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the regulatory authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR + 1% leaving no discretion to the authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act.”*

10. The learned Senior counsel for the appellants read out paragraph 80 of the above judgment wherein the Apex Court considered a submission made by the appellants in the said case raising contention that if the allottee has defaulted the terms of the agreement and still refund is

claimed which can be possible, to be determined by the adjudicating officer. Then, the Apex Court held that the submission though appears to be attractive, the said submission is not supported by a legislative intent for the reason that if the allottee has made default either in making installments or made any breach of the agreement, promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to subsection (5) of Section 11 enables the allottee to approach the Regulatory Authority to question the termination or cancellation of the agreement by the promoter and thus the interest of the promoter is equally safeguarded.

11. In this connection, it is relevant to refer Section 18 of the Kerala Real Estate (Regulation and Development) Act, 2016 and Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Section 18 of the Act is extracted hereunder:

**18. Return of amount and compensation.-** (1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) 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 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 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.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not*

*be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

12. Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 is extracted hereunder:

**18. Rate of interest payable by the promoter and the allottee.**-(1) *The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the **State Bank of India's Benchmark Prime Lending Rate plus two percent** and shall be computed as simple interest.*

*(2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the*

*agreement of construction or sale.*

*(3) In case of payment from the allottee to the promoter, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agreed date of payment of such amount from the allottee to the promoter as per the agreed payment schedule a part of the agreement of construction or sale.*

13. Reading the above provisions along with the judgment of the Apex Court reported in ***Newtech Promoters and Developers Pvt.Ltd***'s case (supra), the legal position is no more *res-integra* and payment of interest by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India's Benchmark Prime Lending Rate plus two percent interest and shall be computed as simple interest as provided under Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018. However, payment of interest by the allottee to the promoter as provided under Section 19(7) of the Kerala Real Estate (Regulation and Development) Act, 2016, can be one in deviation from the Rule 18 and the interest can be reduced when mutually

agreed to between the promoter and the allottee and not in any other manner. Thus the substantial question of law involved in these appeals is answered.

14. The second question of law raised by the learned Senior counsel for the appellants in M.S.A. No.13 of 2023, with the leave of this Court is: *whether grant of interest by the Authority in excess of the amount claimed is legal?*

15. According to the learned Senior counsel for the appellants, the respondent (original complainant) in M.S.A. No.13 of 2023 claimed interest at the rate of 12% only. It is argued that when the complainant confines grant of interest to a lesser amount than the statutory interest, then Regulatory Authority shall confine the same to the rate of interest claimed and in such cases statutory interest as such is not either entitled or to be granted.

16. Repelling the said contention, the learned counsel for the respondent in M.S.A. No.13 of 2023 brought the attention of this Court to Rule 36 of the Kerala Real Estate (Regulation and Development) Rules 2018, where the manner of filing a complaint with the Authority and the

manner of holding an inquiry by the authority have been described to assert his point that the Regulatory Authority has given wide powers to pass any orders including imposition of penalty, in accordance with law and Rules. Therefore, the Authority has power to grant the statutory interest as per Rule 18, in a case where the claimed interest is less than the statutory interest. In Rule 36(h)(i) and (ii) it has been provided as under:

**36. Manner of filing a complaint with the Authority and the manner of holding an inquiry by the Authority.**-(1) *Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules or regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of "rupees one Thousand" in the form of a demand draft drawn on a nationalized bank in favour of Authority or as specified by the regulations or orders of the Authority from time to time and payable at the main branch of that bank at the station where the seat of the said Authority is situated or as specified by the regulations or orders of the authority from time to time.*

*(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner.*

*(h) On the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that-*

*(i) The respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;*

*(ii) The respondent is not in contravention of the provisions of the Act or the rules or regulations made thereunder the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.*

17. When evaluating the intent behind the legislation, it has to be held that, when a party if fails to claim the statutory interest entitled, the same shall not be a ground to hold that the party who claimed lesser interest than the



statutory interest is not entitled to get the statutory interest. In view of the matter, it is held that the statutory interest is liable to be granted by the Authority and claim for a lesser amount as interest shall not bar the allottee from getting the statutory interest.

Answering the questions as above, it could be gathered that the grant of interest in these matters by the Authority at the rate of 14.75% as confirmed by the Appellate Authority (though not in specific words) does not require any interference at the hands of this court. Therefore, both these Miscellaneous Second Appeals must fail and are accordingly dismissed.

sd/-

**A. BADHARUDEEN  
JUDGE**

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APPENDIX OF MSA 13/2023

PETITIONER ANNEXURES :

- ANNEXURE A1 A TRUE COPY OF THE BUILDING PERMIT DATED 12.04.2010 ISSUED BY THE VADAVUCODE - PUTHENCRUZE GRAMA PANCHAYAT
- ANNEXURE A2 A TRUE COPY OF THE CONSENT TO ESTABLISH DATED 28.07.2010 ISSUED BY THE KERALA STATE POLLUTION BOARD
- ANNEXURE A3 A TRUE COPY OF THE CONSENT TO ESTABLISH RENEWAL ORDER DATED 05.09.2014 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD
- ANNEXURE A4 A TRUE COPY OF THE APPLICATION FOR ALLOTMENT SUBMITTED BY THE RESPONDENT ALONG WITH THE GENERAL TERMS AND CONDITIONS OF ALLOTMENT AGREED TO BY THE RESPONDENT
- ANNEXURE A5 A TRUE COPY OF THE ALLOTMENT LETTER DATED 28.10.2014 ISSUED TO THE RESPONDENT
- ANNEXURE A6 A TRUE COPY OF THE NOTICE DATED 09.02.2016 PUBLISHED BY THE APPELLANTS REGARDING THE CHANGE IN PAYMENT PLAN
- ANNEXURE A7 A TRUE COPY OF THE COMMUNICATION DATED 25.04.2016 ISSUED TO THE RESPONDENT INTIMATING THE PAYMENT DATE OF 2ND INSTALMENT
- ANNEXURE A8 A TRUE COPY OF THE COMMUNICATION DATED 05.05.2016 ISSUED TO THE RESPONDENT INTIMATING THE PAYMENT DATE OF 3RD INSTALMENT
- ANNEXURE A9 A TRUE COPY OF THE COMMUNICATION DATED 29.08.2016 ISSUED TO THE RESPONDENT INTIMATING THE PAYMENT DATE OF 4TH INSTALMENT
- ANNEXURE A10 A TRUE COPY OF THE COMMUNICATION DATED 16.12.2016 ISSUED TO THE RESPONDENT INTIMATING THE PAYMENT DATE OF 5TH INSTALMENT
- ANNEXURE A11 TRUE COPY OF THE COMMUNICATION DATED 20.07.2018 SENT TO THE KERALA STATE POLLUTION CONTROL BOARD BY THE APPELLANTS
- ANNEXURE A12 A TRUE COPY OF THE COMMUNICATION DATED 15.03.2021 SENT TO THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY BY THE APPELLANTS

- ANNEXURE A13 A TRUE COPY OF THE RENEWAL APPLICATION DATED 14.12.2020 SUBMITTED BY THE APPELLANTS TO THE VADAVUCODE - PUNTENCRUZE GRAMA PANCHAYAT
- ANNEXURE A14 A TRUE COPY OF THE COMMUNICATION DATED 05.05.2022 ISSUED TO THE RESPONDENT
- ANNEXURE A15 A TRUE COPY OF THE COMMUNICATION DATED 08.06.2022 ISSUED TO THE RESPONDENT
- ANNEXURE A16 A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE RESPONDENT NUMBERED AS COMPLAINT NO. 90/2022 BEFORE THE KERALA REAL ESTATE REGULATORY AUTHORITY, THIRUVANANTHAPURAM
- ANNEXURE A17 A TRUE COPY OF THE PAYMENT DETAILS MAINTAINED BY THE APPELLANTS WITH RESPECT TO THE PAYMENTS MADE BY THE RESPONDENT
- ANNEXURE A18 A TRUE COPY OF THE PAYMENT LEDGER MAINTAINED BY THE APPELLANTS WITH RESPECT TO THE ALLOTMENT MADE TO THE RESPONDENT
- ANNEXURE A19 A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE APPELLANTS BEFORE THE KERALA REAL ESTATE REGULATORY AUTHORITY IN COMPLAINT NO. 90/2022
- ANNEXURE A20 A TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENT IN COMPLAINT NO. 90/2022 BEFORE THE KERALA REAL ESTATE REGULATORY AUTHORITY
- ANNEXURE A21 A TRUE COPY OF THE ORDER DATED 26.07.2022 OF THE KERALA REAL ESTATE REGULATORY AUTHORITY IN COMPLAINT NO. 90/2022
- ANNEXURE A22 A TRUE COPY OF THE MEMORANDUM OF APPEAL IN REFA NO. 74/2022 ON THE FILES OF THE KERALA REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM
- ANNEXURE A23 THE CERTIFIED COPY OF THE ORDER DATED 28.02.2023 OF THE KERALA REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM IN REFA NO. 74/2022

RESPONDENTS ANNEXURES : NIL

APPENDIX OF MSA 14/2023

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- ANNEXURE A12 A TRUE COPY OF THE RENEWAL APPLICATION

- DATED 14.12.2020 SUBMITTED BY THE APPELLANTS TO THE VADAVUCODE - PUNTENCRUZE GRAMA PANCHAYAT
- ANNEXURE A13 A TRUE COPY OF THE COMMUNICATION DATED 05.05.2022 ISSUED TO THE RESPONDENTS
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- ANNEXURE A16 A TRUE COPY OF THE ORDER DATED 26.07.2022 OF THE KERALA REAL ESTATE REGULATORY AUTHORITY IN COMPLAINT NO. 120/2022
- ANNEXURE A17 A TRUE COPY OF THE MEMORANDUM OF APPEAL IN REFA NO. 75/2022 ON THE FILES OF THE KERALA REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM
- ANNEXURE A18 THE CERTIFIED COPY OF THE ORDER DATED 28.02.2023 OF THE KERALA REAL ESTATE APPELLATE TRIBUNAL, ERNAKULAM IN REFA NO. 75/2022

RESPONDENTS ANNEXURES : NIL