



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 06/2023

Present: Sri. P.H Kurian, Chairman
Smt. Preetha P Menon, Member

Dated 26th June, 2024

Complainant

Pisharikovil Manoj,
Instrument Engineer, Residing at
“Sangeetha”, Govindapuram P.O,
Kozhikode, Pin – 673016
[By Adv. Kaveri S Thampi]

Respondents

- 1 M/s Tiknar Homes Private Limited,
Registered Office at 2nd Floor, G- 164, Panampilly Nagar,
Kochi, Ernakulam, Kerala Pin : 682036,
Represented by its Director Mr Narayanan Kutty,
S/o Mr. T Krishnan Nair, aged 56, Residing at
‘Rajas, KSN Menon Road, Karithala Desom, Ernakulam
Pin: 682016
- 2 M/s Tiknar Realtors and Developers Private Limited,
Building No. 56/3380A (Ground Floor of G-164), Panampilly
Nagar, Ernakulam, Pin : 682036,
Represented by its Managing Director Mr Rahul Narayan,



S/o Mr Narayanan Kutty, Residing at 'Rajas, KSN Menon Road,
Karithala Desom, Ernakulam Pin: 682016

(Respondents 1&2 – set-exparte)

- 3 M/s Seawood Developers Private Limited,
Having its Principal Office at Ramachandran Niwas,
Sector 12-A, Koparkhairne, Navi Mumbai,
Maharastra Pin 400705, and Current address at 223,
Shiv Centre, Vashi Navi Mumbai, Maharastra Pin: 400703,
Represented by its Director Thomas Jacob Oommen
[By Adv. Karthika Maria]

- 4 Mr. M K Narayanan Kutty, S/o Mr. T Krishnan Nair,
Aged 56, Residing at 'Rajas, KSN Menon Road,
Karithala Desom, Ernakulam Pin: 682016

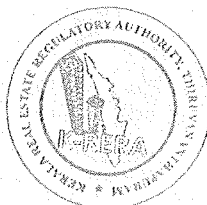
- 5 Mr. Rahul Narayan, S/o Mr Narayanan Kutty,
Residing at 'Rajas, KSN Menon Road, Karithala Desom,
Ernakulam Pin: 682016

(Respondents 4&5 – set-exparte)

The above Complaint came up for final hearing. The counsel for the 3rd Respondent Adv Karthika Maria attended the hearing. The complainant did not attend the hearing nor was represented by the counsel.

ORDER

1. The facts of the case are as follows:- The Complainant is the allottee in the project "TIKNAR Seawood VOYAGE" envisaged by 3rd Respondent and 1st Respondent wherein they had entered into a joint venture agreement to construct a twenty-two



storied building in the property having a total extent of 40.33 ares equivalent to 99.655 cents in Thengode in Kakkanad Village. The 1st Respondent is the duly constituted Attorney of the 3rd Respondent. The 2nd Respondent herein is a made a party in the above Complaint as the Complainant had come across the resolution dated 01.02.2017 passed by 1st Respondent to change the name of 1st Respondent Company as “Tiknar Realtors and Developers Private Limited” pursuant to the provisions of Section 13 of the Companies Act. The 1st Respondent received approval from the Registrar of Companies, Kerala for the name change. Accordingly, the 1st Respondent amended the Memorandum of Association by incorporating the company's name change as “Tiknar Realtors and Developers Private Limited”. The copy of the resolution dated 01.02.2017 and the copy of the Memorandum of Association is produced. However, the Complainant on enquiry has come to understand that company “Tiknar Homes Private Limited” is still in existence and that they are filing financial statement and other documents with the Registrar of Companies. Hence for the proper disposal of the above Complaint both the Companies are arrayed as 1st and 2nd Respondent. The 1st Respondent was the power of Attorney holder of 3rd Respondent duly represented by the 4th Respondent through Power of Attorney registered as No. 124/IV/08 of Thripunithura Sub Registry. The 4th and 5th Respondents are the directors of the 1st Respondent and the

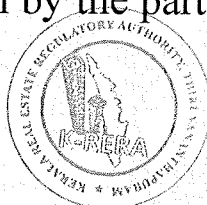


5th Respondent is the Managing Director of 2nd Respondent Company.

2. It was submitted that the 1st Respondent ensuring the successful completion of the project took the Complainant to confidence and accordingly Complainant agreed to entrust the construction work of the apartment, the share in the common area and common facilities and the car park to the 1st Respondent and thereafter to purchase the same from the 1st Respondent together with the undivided share in the land and appurtenant rights from the 1st and 2nd Respondent. The Complainant thus executed a sale cum construction agreement with the Respondents for the purchase of the undivided right in land and apartment for a total sale consideration of Rs. 6,24,630/- and for the construction of apartment marked as No: J having super built up area of 123.55 sq mt in the 14th floor and the proportionate share in the common area and facilities in the building and premises and the covered car park for a total consideration of Rs. 28,24,450/- [Rs. 27,24,450/- towards construction cost and Rs. 1,50,000/- as value of car park] which was to be paid as per the payment schedule given in the agreement. The copy of the said agreement dated 14.09.2010 is produced. As per the terms of the sale agreement, Clause 8 states that the Complainant shall not demand registration of the sale deed for the undivided share together with right to construct the said apartment, car park and proportionate share in the common areas and facilities and right to use the said common areas and common



facilities or in the alternative together with the said apartment and the said other constructions together with the right to use the said common areas and facilities, both together with the said rights of way, before the payment of the entire sale price and the settlement of the cost and charges of the construction of the said apartment and other constructions together with the Service Tax. Further as per Clause 16 of the agreement Respondents were to complete the construction on or before the 30th day of November 2012 with a grace period of 6 months and was to hand over the possession within 30 days after completion provided the entire amount is paid. However, if construction could not take place due to any natural calamities or resulting from any order of Government or Judicial Authority due to any strike or civil commotion or due to shortage of critical construction materials or water supply or power or due to any other reason beyond the control of the First party for any period of time the said stipulated dates for completion of construction and handing over possession shall be proportionately extended so as to accommodate such period to time during which construction could not take place due to the reasons aforementioned. But if owing to any wilful act or default of the First Party, the completion of construction and handing over possession of the apartment as aforesaid is delayed, then the Complainant is entitled to receive a fixed amount not less than the rent that can be acquired for the said apartment per month as mutually agreed upon by the parties hereto as liquidated damages

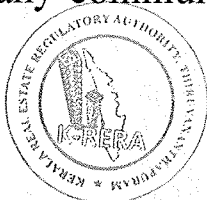


for every month of such delay till completion of construction and handing over of possession of the said apartment. Clause 21 of the agreement further states that the purchaser shall not ask for handing over possession of the said apartment and other constructions before the payment of all the amounts due to the Builder and before the purchase of the undivided share in the land and appurtenant rights. Further, clause 22 states that in case of any failure of the purchaser to pay the aforesaid instalments of the said total consideration on or before the stipulated time the First Party has the discretion to cancel the Agreement and return without the said interest to the Purchaser the instalments paid after deducting 10% out of that as damages suffered by the First Party to the second party, only after the completion of the entire project. Further, clause 28 states that the Purchaser shall not demand registration of the sale deed for the undivided share in land and apartment before the payment of the entire consideration as mentioned in this Agreement. Clause 32 imposes an obligation on the purchaser that the agreement is irrevocable from the part of the purchaser.

3. It was submitted that the Complainant had made payments as per the demand made by the Respondents and has paid a total amount of Rs. 12,87,334/- to the Respondents between the period 19.11.2009 to 11.06.2012 for which receipts were issued by Respondents. To state more specifically: Rs. 143,723.00/- on 19.11.2009 at the time of booking the apartment, Rs. 239,597.00/- on 03/02/2010, Rs. 239,537.00/- on 08/04/2010, Rs. 239,477.00/-

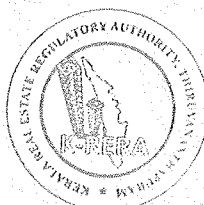


on 13/10/2010, Rs. 200,000.00/- on 22/11/2011, Rs. 75,000.00/- on 05/03/2012, Rs. 1,50,000.00/- on 11/06/2012. The copies of the Receipts issued by the Respondents to the Complainant are produced. It was submitted that each payment was released by the Complainant based on the communication issued by the Respondents as to the completion of the respective floor as stated in the schedule attached to the agreement. As per the terms of the agreement, the apartment was to be handed over by 30th day of November 2012 with a grace period of six months that is on or before 30th May 2013. Since the construction of the apartment got delayed the Respondent themselves issued communication revising the date of completion as July 2013 and a revised payment schedule. The copy of the communication issued by the 1st Respondent to the Complainant dated 21.11.2011 along with the revised payment schedule is produced. However, in November 2012, as per the email communication received from the Respondents, the Respondents had completed the work of the 13th-floor slab alone in the place of the 19th floor as per the schedule to the sale cum construction agreement. To substantiate the above aspect the Complainant has produced the copy of the email communication issued by Respondent/Promoter to the Complainant dated 08.11.2012. Thereafter to the knowledge of the Complainant, the construction did not move forward due to the reasons best known to the Respondents and Complainant was never served with any communication asking for payment as per



the schedule nor any communication canceling the sale cum construction agreement executed with the Complainant. The complainant had contacted the Respondents and enquired about the stage of the work and each time the Complainant was given the assurance of completing the project at the earliest. The Complainant had extended all support to the Respondents and awaited the continuance of the project.

4. It was submitted that later in the year 2015, when the delay in completing the work and handing over the apartment became inordinate the Complainant had contacted the Respondents and sought repayment of the amount already paid by the Complainant and together with the liquidated damages as agreed in clause 16 of the sale cum construction agreement. The Complainant was persuaded by the 4th and 5th Respondents stating that the amount will be repaid if construction is not completed. But the 4th and 5th Respondents had made such a promise with no intention to repay the amount and the Complainant was misled by the Respondents through their email communications assuring repayment. Later when repayment of the amount paid by the Complainant did not materialize the Complainant contacted the Respondents and they told that the Complainant had no right to revoke the sale cum construction agreement as per the terms contained therein and the Respondents further took the Complainant to confidence to complete the apartment project. The Complainant was assured that the apartment would be handed over



to the Complainant and then only the Complainant needs to make the balance payment. The fact that the Respondent did not choose to make any repayment, points to the above said aspect. The Complainant believed the words of the Respondents and on enquiry Complainant came to learn that the Respondents were commencing the construction and that they were proceeding with additional floors. As of 01.05.2016, the Respondents had completed thirteen floors and the project was ongoing and there was no completion certificate obtained by the Respondents and neither the Respondents had issued any intimation to the Complainant stating that they had terminated the project. Hence, as of 01.03.2016, when the Real Estate (Regulation and Development) Act, 2016 was passed the project 'TIKNAR Seawood Voyage' was ongoing and came within the purview of the Act 2016 and as per Section 3(1), of the Act 2016 the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued as on the date of commencement of the Act, the promoters were under obligation to make an application to the Authority for registration of the said project within three months from the date of commencement of the Act. It was submitted that the retrospective applicability of the Act to the ongoing projects was also settled in the decision in M/s Newtech Promoters & Developers Pvt Ltd. Versus State of UP & others. Hence the project TIKNAR Seawood Voyage attracted the provisions of Act 2016.



5. It was submitted that even though Respondents 1 to 5 received the amount from the Complainant and assured to complete the project in the year 2015, 2016, 2017, 2018, 2019, 2020, 2021 and last in the year 2022 and even now, the handing over of the apartment and registration of the sale deed has got miserably delayed and as per the terms of the sale agreement, Complainant was prevented from demanding for registration of sale deed till the construction of the apartment was over and the Complainant is prevented from revoking the sale cum construction agreement. During the year 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, the Respondents have been given the assurance to the Complainant that the grievances of the Complainant will be resolved and that they are proceedings with the project. The Complainant has now lost hope in the words and assurances given by the Respondents and thus repeatedly expressed his concern regarding the inordinate delay in completing the project and handing over possession. But on each occasion, the Respondents 1 to 5 had stated one or the other reason for delay and sought for extension of time. Complainant thus losing hope in the assurances given by the Respondent raised the demand with the Respondent whether to allot the apartment at the earliest or to pay back the amount received from the Complainant with interest which the Respondent had been utilizing all these years. But still today Respondents 1 to 5 have not handed over possession of the apartment or executed the sale deed or made arrangements for



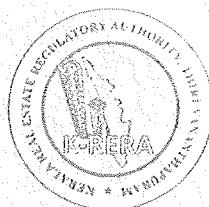
repayment of the amount collected from the Complainant with interest and liquidated damages to which the Complainant is entitled as per Clause 16 of the sale cum construction agreement. As per clause 16 of the sale cum construction agreement the Complainant is entitled to return/refund the amount received from the Complainant together with liquidated damages and interest at a rate equivalent to the growth rate in the real estate sector and not less than 18% per annum. In the meanwhile an amount of Rs. 50,000/- was paid by the Respondents to the Complainant and the Complainant is not aware on which account the said amount was paid to the Complainant. Complainant had prepared a data sheet of the amount repayable to the Complainant with liquidated damages and interest and the amount receivable by the Complainant from the Respondents as of 31st December comes to Rs. 51,80,774/-. The Detailed chart of the calculation of the amount receivable by the Complainant from Respondents is produced. Similarly, the Complainant has been put to much mental harassment and agony for the fault from the part of Respondents 1 to 5, which the Complainant is entitled to be compensated with substantial amount. Complainant is reserving his right to claim for compensation before the Adjudicating Officer by submitting Complaint in Form N. It was submitted that there is altogether an amount of Rs. 51,80,774/- which the Respondents 1 to 5 are bound to return/refund to the Complainant if they are unable to hand over



possession of the apartment. The split-up details of the claim amount are as follows:-

Sl. No:	Category	Amount
1	Amount paid to Respondents as per construction cum sale agreement	Rs. 12,87,334/-
2	Liquidated damage [rent of Rs. 10,000 per month as a compensation for the delay in completion of project as per clause 16 of the sale cum construction agreement till December 2022]	Rs. 11,50,000/-
3	Interest for the payments made, calculated at 18% per annum till 31 st December, 2022	Rs. 27,93,410/-
4	Total Amount [1+2+3]	Rs. 52,30,744/-
5	Amount paid by Respondent	Rs. 50,000/-
	Balance [4-5]	Rs. 51,80,774/-

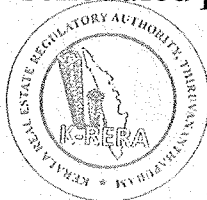
6. It was further submitted that Respondents 1 to 5 have not complied with its obligations as mandated under the Act, 2016 which itself calls for doubting the intention of Respondents 1 to 5 to complete the project. The cause of action for the claim arose in July 2013, the date of completion of the project as per the revised project schedule, and thereafter in the year 2015 till date when the Complainant were given repeated assurance of



completing the project. The reliefs sought by the Complainant is as follows:- (1) To direct the Respondents 1 to 5 to return/refund the amount of Rs. 51,80,774/- with 18% interest; (2) To declare that the Respondent 1 to 5 are bound to return/refund the amount received by them with liquidated damages as per clause 16 of the sale cum construction agreement along with interest at the rate of 18% as per Section 18(1) of the Real Estate (Regulation and Development) Act 2016; (3) To issue such other reliefs as this Authority may deem fit and proper; (4) Allow the Complaint with cost of the Complainant.

7. The Respondents 1 & 2 and Respondents 4 & 5 did not attend any of the hearings despite several notices and exparte notice issued by the Authority. Hence set exparte.

8. The Respondent No. 3 filed counter affidavit and submitted that Respondent No.3 is the owner of the property having a total extent of 99.655 cents made up of 11.560 cents (4.68 ares) , 84.095 cents (34.03 ares) and 4 cents (1.62 ares) in Block No. 8 in Thengode Kara in Kakkanad Village, Ernakulam District. On 31.03.2007, they entered into a Joint Venture Agreement with Respondent No.1 whereby it was agreed that the above-described property would be developed by them. As per the terms of the Joint Venture Agreement, it was agreed that Respondent No. 1 shall construct at their expense 33% of the total super built-up area pertaining to each floor of the building to be constructed on the above-scheduled property other than the floors



kept apart for car parking, together with one car park each for each apartment consisting the share of the owner, for Respondent No.3, and Respondent No.1 shall be permitted to sell the remaining portion to various individuals. It was agreed that Respondent No.3 was permitting Respondent No.1 to construct and sell 67% of the total super built up area as consideration for constructing 33% of the total super built up area for Respondent No.3. The copy of the joint venture agreement dated 31.03.2007 is produced. The only obligation on the part of Respondent No.3 was to cooperate with Respondent No.1 to sell the undivided share corresponding to 67% super built up area which Respondent No.1 was selling to third parties. It was submitted that this arrangement and reference to the Joint Venture Agreement is captured in recital no. 6 of the Sale Cum Construction Agreement dated 14.09.2010 produced by the Complainant herein. The said agreement also specifies that the Complainant has engaged the Respondent No.1 as the builder who will construct the apartment for them. It was submitted that in furtherance of the sale cum construction Agreement, the amounts that were paid were received by Respondent No.1 and the receipts were issued by Respondent No.1 which is evident from the receipts produced by the Complainant. It was also submitted that Respondent No.3 has not received any amounts from any home buyer as of date.

9. It was submitted that there is no promoter-allottee relationship between the Complainant and Respondent



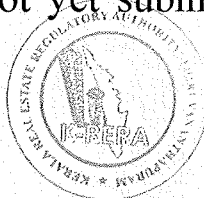
No. 3. In fact, this Respondent is also an allottee who was to be allotted apartments which would have constituted 33% of the super built up area of the apartment complex. The Respondent No.3 is an aggrieved party here, who has given 99.655 cents in favour of Respondent No.1 and is still not in a position to use the land nor receive finished apartments from the said joint venture agreement. The Respondent No. 3 should also be construed as an allottee and not classified as a promoter. It was further submitted Respondent No1 and its Managing Director has acted against the interest of Respondent No.3, by unauthorizedly using the Power of Attorney executed by Respondent No.3 in favour of the 4th Respondent herein, who is the Managing Director of Respondent No. 1. Any undertaking provided by Respondent No.1 to the purchaser is without the knowledge of Respondent No.3 and hence is invalid in as much as it is not authorized by this Respondent. It was submitted that in a similar case in C K James and another V. M/s Seawood Developers Pvt Ltd and Others in Complaint No. 250 of 2020, the Kerala Real Estate Regulatory Authority, Thiruvananthapuram passed an order exempting M/s Seawood Developers Pvt Ltd, against any reliefs sought by the Complainant therein against M/s Seawood Developers Pvt Ltd. A true copy of the order dated 15.09.2023 in C K James and another V. M/s Seawood Developers Pvt Ltd and Others in Complaint No. 250 of 2020 is produced. It was submitted that no relief be granted against the Respondent as this Respondent is not the promoter and



is an allottee, who is in the same aggrieved position as that of the Complainant.

10. Heard both parties in detail. The documents produced from the part of the Complainant are marked as Exbts.A1 to A8. The documents produced from the part of the Respondent No.1 are marked as Exbts B1 & B2. The above Complaint came up for final hearing on 27/03/2024. The relief sought by the Complainants is for direction to for refund of payment made by them to the Respondents. Only the 3rd Respondent filed vakalath and counter statement. The Respondents No.1 & 2 and Respondents 4 & 5 have not attended any of the hearings despite issuing notices which were returned as 'left'. The Authority issued ex-parte notices to the said Respondents on 06/10/2023 and case was posted for final hearing. None of the said Respondents appeared or filed their reply statement to the above Complaint, so far. The Authority directed the Complainant to take substituted services and decided to pass the ex-parte order as follows:

11. The project in question is not a registered project before this Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the "Act 2016"]. Several notices have been issued to Respondent No. 1 & 4 asking for explanation as to why penal action cannot be taken against them for not registering the project. The Respondents have not yet submitted any reply nor applied for



project registration. As the Respondents/Promoters have failed to register the project under section 3 of the Act 2016, the penal proceedings initiated by this Authority against the Respondents/Promoters under section 59(1) of the Act 2016 are going on and notice with regard to this has been issued on 22.03.2024.

12. After hearing both parties and examining the documents produced on the part of both sides following points came up for consideration: -

a. Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants, in accordance with the terms of the agreement or duly completed by the date specified therein or not?

b. Whether the Complainants herein is entitled to withdraw from the project and claim refund of the amount paid with interest as provided under Section 18 (1)(a) of the Act 2016 or not?

c. What order as to costs?

13. **Point No.1 & 2:-** The documents produced from the part of the Complainants are marked as Exbts.A1 to A8. **Exbt.A1** is the copy of the resolution dated 01.02.2017. **Exbt.A2** is the copy of the Memorandum of Association. **Exbt.A3** is the copy of agreement for sale cum construction dated 14/09/2010



executed between the Complainants, 3rd Respondent represented by its constituted attorney the 1st Respondent and the 4th Respondent. As per the said agreement the builder agreed to construct Apartment No. J having super built up area of 123.55 sq. metres on the 14th floor and proportionate share in the common areas and common facilities and covered car park for a total consideration of Rs.28,74,450/-, out of which Rs.27,24,450/- is the construction cost of the said apartment (inclusive of the consideration for the said undivided share in the land) and Rs.1,50,000/- is the value of the car park. As per the said agreement the Respondents 2 & 3 shall construct the apartment **on or before 30/11/2012** with a grace period of 6 months. **Exbt.A4** series is the copies of payment receipts issued by the 1st Respondent. **Exbt.A5** is the copy of the communication issued by the 1st Respondent to the Complainant dated 21.11.2011 along with the revised payment schedule. **Exbt.A6** is the copy of the email communication issued by the 1st Respondent to the Complainant dated 08.11.2012. **Exbt.A7** is the detailed chart of the calculation of the amount receivable by the Complainant from Respondents. **Exbt A8** is the paper publication dated 03/12/2024. The documents produced from the part of the Respondents are marked as Exbts.B1 to B2. **Exbt B1** is the joint venture agreement dated 31.03.2007 executed between the 1st Respondent and 3rd Respondent. **Exbt. B2** is the order dated 15.09.2023 issued by the Authority in Complaint No. 250/2020.



14. The 3rd Respondent has contended that in furtherance of the Sale cum Construction Agreement, the amount that the Complainant paid was received by the 1st Respondent which is evident from the receipts produced by the Complainant marked Exbt A4 series. The 3rd Respondent has not received any amounts from any home buyer as on date. It was argued by them that they are one of the allottees, who was allotted with apartments in the project. As per the terms of the Joint Venture Agreement which is marked as Exbt B1, it was agreed that Respondent No. 1 shall construct at their expense 33% of the total super built-up area pertaining to each floor of the building to be constructed on the scheduled property other than the floors kept apart for car parking, together with one car park each for each apartment consisting the share of the owner, for Respondent No.3, and Respondent No.1 shall be permitted to sell the remaining portion to various individuals. It was also agreed that Respondent No.3 was permitting Respondent No.1 to construct and sell 67% of the total super built up area as consideration for constructing 33% of the total super built up area for Respondent No.3. It was further submitted that Respondent No.1 and its Managing Director has acted against the interest of Respondent No.3, by unauthorizedly using the Power of Attorney executed by Respondent No.3 in favour of the 4th Respondent herein, who is the Managing Director of Respondent No. 1. Any undertaking provided by Respondent No.1 to the purchaser is without the



knowledge of Respondent No.3. That they are only land owners and there is no promoter-allottee relationship between the complainant and the 3rd Respondent.

15. As per the Exbt.A3 agreement it was agreed that, the Respondents No.1 & 4 shall construct and handover the apartment **on or before 30/11/2012** with a grace period of 6 months. As per Exbt.A5 the letter dated 21.11.2011 issued by Respondent No.1 the date of Completion of the project was changed to 31/07/2013. Even then, the said Respondents could not complete and hand over the apartment to the Complainant. From the document placed in record, it is evident that Respondent No. 1,2,4&5 are promoters of the project in question. Since the Respondents/Promoters failed to complete and hand over possession of the apartment as per the terms of the agreement, the Complainant herein are eligible to withdraw from the project and claim refund of the amount paid by them as per Section 18(1) of the Act, 2016.

16. Section 18(1) of the Act 2016 stipulates 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.” As per Section 19(4) of the Act 2016, *“the allottee shall be entitled to claim the refund of the amount paid with interest at such rate as may be prescribed, 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 the agreement for sale”*. It is obvious that Section 18(1) is applicable 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 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 Complainants had decided to withdraw from the project and demanded refund with interest.

17. As per the Exbt. A3 agreement for sale cum construction dated 14/09/2010 executed between the Complainant, 3rd Respondent represented by its constituted attorney, the 1st Respondent represented by the 4th Respondent,



the Respondents 1 & 4 ensured to construct the apartment **on or before 30/11/2012** with a grace period of 6 months., but unfortunately, even after lapse of a huge period of time, the project is not completed and the Respondents could not hand over the flat or refund the amount received from the Complainant. During the hearing of the above complaint it has come to our notice that the Respondents have completed only 13 floors slab alone out of the 19 floors as per the schedule to the agreement which is clear from the Exbt A6 email communication. Hence, it has been established beyond doubt that the Respondents No. 1 have failed to perform their part and honour the promises given to the Complainant who trusted them and invested their hard-earned savings and as such the Complainant herein is entitled to get refund of the amount deposited by him with interest, as provided under Section 18(1) of the Act 2016. With respect to the right of the allottees for getting refund of the amount in such cases, the Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/S Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows: *"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". The entire amount claimed by the Complainant was collected by the 1st Respondent, as revealed from the Exbt No. A4 series produced by the Complainant. Here, the Respondents No. 1,2,4&5 neither appeared before this Authority nor contested the case. Point No. 1 &2 are answered accordingly in favour of the Complainant.

18. As mentioned above, notices were sent to the Respondents No. 1,2,4&5/Promoters several times directing them to appear before this Authority, and ex-parte notice dated 06/10/2023 was also sent to the Respondents/promoters, but none of them appeared or was represented by anybody. Hence the Complainant was directed to complete substituted service subsequent to which Paper publication was produced by the Counsel for the Complainant which is marked as Exbt A8 and then the Respondent No 1 &2 and 4&5 were set ex-parte. Hence it has been found that the Complainant herein is entitled to get allowed with the 1st prayer as such in the complaint.

19. In view of the above facts and circumstances detailed in the pre paras, it is found that the Respondents No. 1 &2 and 4&5/Promoters have failed to complete and hand over possession of the apartment to the Complainant herein in accordance with the terms of the agreement and hence the

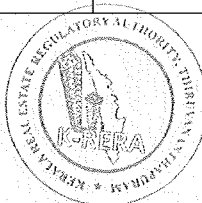


Complainant in the above complaint are entitled to withdraw from the project under Section 18(1) of the Real Estate (Regulation & Development) Act 2016, and claim return of the amount paid to the Respondents No.1 along with interest from the date of payment till the date of receipt of the amount. As 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 15% with effect from 15/12/2023. Hence it is found that the Respondents No. 1 to 3 are liable to pay interest on the amounts paid @ 17 % [15%(current BPLR rate) +2%].

20. The Complainant has produced copies of Receipts of payments for Rs. 12,87,334/- made to the Respondents which are marked as Exhibits A4 series. The Complainant has also submitted that he has received back an amount of Rs. 50,000/- from the Respondent No.1. Hence the Complainant is entitled to get refund of an amount of Rs. 12,37,334/- after deducting Rs. 50,000/- from the total amount paid. Details of payments made, as confirmed by the Authority based on the above documents are as detailed below:

Payment Schedule

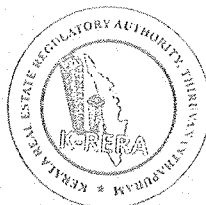
Date	Amount(Rs)
19.11.2009	1,43,723



03.02.2010	2,39,597
08.04.2010	2,39,537
13.10.2010	2,39,477
22.11.2011	2,00,000
05.03.2012	75,000
11.06.2012	1,50,000
Total	12,87,334

On the basis of the above facts and documents placed on records and, invoking Section 37 of the Act, this Authority hereby directs as follows: -

- 1) The Respondents No 1,2,4&5/Promoters shall return the amount of **Rs.12,37,334/-** to the Complainant, with simple interest @ 17% per annum from the date of each payment, as shown in the payment schedule above, till the date of realization of the full amount.
- 2) If the Respondents No 1,2,4&5/Promoters fail to comply with the above direction and 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 Complainant is at liberty to recover the aforesaid sum from the Respondent/Promoter and their assets by executing this decree in accordance with Section 40

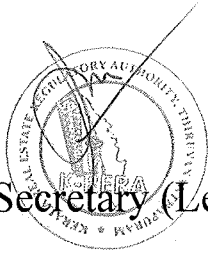


(1) of the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Preetha P Menon
Member

Sd/-
P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)

APPENDIX

Documents produced by the Complainant

1. Exhibit A1: copy of the resolution of Tiknar Homes Private Limited dated 01.02.2017
2. Exhibit A2: copy of the memorandum of Association of M/s Tiknar Realtors and Developers Private Limited
3. Exhibit A3: copy of the agreement executed by the Complainant with the Respondents 1 to 3 dated 14.09.2010
4. Exhibit A4: copy of the Receipts issued by the Respondents to the Complainant
5. Exhibit A5: copy of the communication issued by the 1st Respondent to the Complainant dated 21.11.2011 along with the revised payment schedule
6. Exhibit A6: copy of the email communication issued by Tiknar Homes Private Limited to Complainant dated 08.11.2012
7. Exhibit A7: Detailed chart of the calculation of the amount receivable by the Complainant from Respondents

Documents produced by the Respondents

1. Exhibit B1- copy of the joint venture agreement.
2. Exhibit B2- copy of the order in C No. 250/2020 issued by the Authority.



