



**KERALA REAL ESTATE REGULATORY AUTHORITY**  
**THIRUVANANTHAPURAM**

**Complaint No. 7/2023**

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

**Dated 10<sup>th</sup> October 2024**

**Complainant**

1. Sankara Pillai Kannan(Late)  
T C 29/1084,  
Ashirwad, Devi Nagar,  
Palkulangara Devi Temple,  
Pettah P O, Thiruvananthapuram- 695024

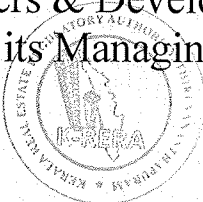
**Additional Complainants (impleaded as per order in I A 163/2023)**

2. Chithra S Kannan  
T C 29/1084,  
Ashirwad, Devi Nagar,  
Palkulangara Devi Temple,  
Pettah P O, Thiruvananthapuram- 695024
3. Aswathy Chithra Nair  
T C 29/1084,  
Ashirwad, Devi Nagar,  
Palkulangara Devi Temple,  
Pettah P O, Thiruvananthapuram- 695024

[ By Adv Yahiya Khan]

**Respondents**

1. M/s Anta Builders & Developers Private Limited  
Represented by its Managing Director,



Registered office at Vandanathil, Mangattoor,  
Kolenchery, Ernakulam- 682311

Current address at

1<sup>st</sup> Floor, Jubilee Memorial Building,  
Above Bread World, NH-47 By Pass,  
Thykooodam, Vytilla, Cochin- 682019

2. Midhun Kuruvilla Kurien  
Vandanathil(Kannikara Puthenpurayil) House,  
Mangattoor Kara, Kolenchery Post,  
Aikkaranad North Village  
Kunnathunadu taluk, Ernakulam- 682311

[By Adv Animon. A. John]

When the above complaint came up for final hearing, the counsel for the Complainants and counsel for the Respondents attended the hearing. The Complaint was reserved for orders on submission of counter-statement from the Respondent's side as per the request of the counsel concerned. As the Respondents have failed to submit counter statement even after giving ample time, it was decided to pass orders.

### **ORDER**

1. The facts of the case are as follows: - The Complainant is a retired senior citizen and allottee of the project developed by the Respondents. The 1<sup>st</sup> Respondent is a Private Limited Company in the field of developing land and construction of villas and the 2<sup>nd</sup> Respondent is the Managing Director of the 1<sup>st</sup> Respondent private limited company who is the signatory to the documents executed on behalf of the company. The Complainant who was in



search of investment for his only daughter; was approached by the representatives of the 1<sup>st</sup> with project brochures and project prospectus. The Complainant was thus canvassed to purchase the luxury villa from the 1<sup>st</sup> Respondent's villa project; in the name and style of "Anta Capital Greens-Simra Enclave" situated at Vellar Junction, Kovalam, Thiruvananthapuram. The Complainant also put forth the offer of a Special Buy Back/ Sales Scheme by the 1<sup>st</sup> Respondent and its representatives, as per which the 1<sup>st</sup> Respondent assured to purchase back the villa from the Complainant or initiate resale of the same, at the rate of Rs. 1,53,00,000/- upon completion of the project. Thus, upon the assurance of either a completed luxury villa with every amenity, for his daughter, or the appreciated return of Rs. 1,53,00,000/- which may be used for her secured future, the Complainant shelled out every saved penny of his hard-earned career into the 1<sup>st</sup> Respondent's villa project. Thus, as directed by and through the 1<sup>st</sup> Respondent, the Complainant purchased the Plot No. 4 of the said villa project, admeasuring to 2.30 Ares out of a total of 21.30 Ares in Venganoor Village, Thiruvananthapuram covered under Sale Deed No. 2563/2007 of Thiruvallam Sub Registry Office, together with 1.01 Are of undivided share in an extent of 39.52 Ares set apart for common roads, common areas and common amenities in the project to get usage right over the common area and common facilities provided throughout the housing scheme vide Sale Deed No. 386/2020 dated 27/02/2020 registered on 29.02.2020 executed in his favour by Sri. Mohammed Aazim M A and two others, for a total sale consideration of Rs. 11,80,000/-. The sale



consideration to the vendors was paid through the the 1<sup>st</sup> Respondent through RTGS transfer of HDFC Bank, Thripunithura Branch.

2. Subsequently, on 03.03.2020, the Complainant entered into an Agreement for Construction with the 1<sup>st</sup> Respondent to construct a two storied Villa No. 24 consisting of 2550 sq. ft built up area, inclusive of car parking and terrace area on the aforesaid 2.30 Ares of property with undivided share of 1.01 Ares, in the project. The Complainant had thus paid an amount of Rs. 1,10,000/- to the Respondent via Bank Transfer towards the consideration of the same which was inclusive of the aforesaid sale consideration, and the 1<sup>st</sup> Respondent also issued Receipt No. 058 dated 27.02.2020 acknowledging the same, as full and final payment towards the villa project; i.e., villa/plot No. 24 in 'Anta Capital Greens – Simra Enclave'. Through Clause 3 of the terms of the said Agreement for construction, the 1<sup>st</sup> Respondent undertook that they shall buy back the villa or initiate resale of the villa from the Complainant as per the Special Buy Back/Sales Scheme as earlier agreed with the Complainant at the time of canvassing at the rate of Rs. 1,53,00,000/- upon completion of the project. The Respondent Office bearers had convinced the Complainant that they were trustworthy builders and assured timely delivery of possession. As per the construction agreement, the 1<sup>st</sup> Respondent Company agreed to deliver possession of the completed villa to the Complainant on or before 12 months with an additional 3 months grace time from the date of agreement. The 1<sup>st</sup> Respondent was to deliver possession of the completed villa to the Complainant on or before

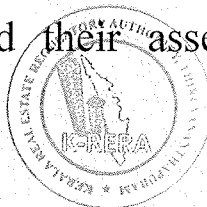


03.06.2021, but till date not even the 1<sup>st</sup> floor construction has been completed. As per the terms of the agreement for construction, owing to the builder's default, if the completed villa's possession is not handed over to the Complainant in due stipulated time; the Complainant is also entitled to receive @Rs. 10/- per Sq. Mtr per month for the area of 2550 sq. ft i.e., Rs. 2,370/- from the 1<sup>st</sup> Respondent, within two months from the date of intimation from the Complainant. The Complainant had thus paid a total sum of Rs. 1,10,00,000/- towards the villa no. 24 in the project Anta Capital Greens. The Complainant expected that the 1<sup>st</sup> Respondent would deliver possession of the villa after construction as per the terms of the agreement within the stipulated time. But to the utter dismay of the Complainant, the 1<sup>st</sup> Respondent, despite collecting such a large sum of money from the Complainant as well as other customers, has neither completed nor even pushed the project even to a partial completion stage. The Complainant, having put his entire savings into the project, has suffered a hefty loss owing to the non-performance of the agreement by the 1<sup>st</sup> Respondent. Being a law-abiding citizen, the Complainant had made clear-cut bank transfers to the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent issued receipt for the same on 27.02.2020. Thus, owing to constant follow-ups from the part of the Complainant, the 1<sup>st</sup> Respondent, represented by the 2<sup>nd</sup> Respondent finally issued a letter dated 06.10.2021 revising the project completion date of the project Anta-Capital Greens. Citing the course of the pandemic, and putting forth the contention that the Government of Kerala has given an extension of 9 months for the



completion of the project in the first pandemic period, and 6 months for the second pandemic period, the 1<sup>st</sup> Respondent sought for extension of the completion period, and assured the project to be fully completed in May 2022.

3. Despite the undertaking, the stature of the construction remains the same though as per the agreement, the possession was to be handed over before the pandemic breakdowns. The grace period for completion was for mere three months. However, till date, not even half of the skeleton structure of the Complainant's villa has been completed. Now, even after repeated demands of completion or refunds, no action is being taken by the 1<sup>st</sup> Respondent. The reliefs sought by the Complainants are as follows: (i) To pass an order in favour of the Complainant for the reimbursement of the consideration paid by the Complainant; Rs. 1,10,00,000/- with future interest at the rate of 12% per annum from 27.02.2020 to till the date of realization, fully charged upon the schedule property to be realized from the Respondents and their assets both movable and immovable. (ii) To pass an amount of Rs. 11,00,000/- as compensation for the unlawful financial loss, mental agony, and undue hardship from the Respondents and their assets both movable and immovable. (iii) To pass an order directing the Respondent to pay Rs. 2370/- per month towards the delay in handover of possession as per the terms of agreement, from the date of intimation by the Complainant. (iv) Allowing the cost of the suit incurred to the Complainants to be realized from the Respondents and their assets. The Complainants have



produced the copies of the sale deed, agreement for construction, payment receipt, letter dated 6.10.2022, photographs, brochure, certificate of Authority.

4. When the Complaint came up for initial hearing on 06/03/2023, the counsel for the Respondents attended and informed the Authority that the Complainant expired soon after filing this Complaint. Neither the Complainant nor his counsel attended the hearing. It was decided to inform the legal heirs of the Complainant to get impleaded in the Complaint. Accordingly, the counsel for the Complainant filed IA No. 163 of 2023 and submitted as follows- The above-numbered Complaint was filed by the husband of the additional Complainant No. 1, Mr. Sankara Pillai Kannan for refund of the amount from the Respondents, who entered into a sale agreement with the Complainant for sale and delivery of possession of the completed two storied villa project numbered as villa 24 consisting of 2550 sq. feet built up area to be completed within 12 months with an addition of 3 months grace time from the date of agreement. The Respondents received an amount of Rs. 1,10,00,000/- as sale consideration. Even though they executed the sale deed, even the 1<sup>st</sup> floor of the villa has not been completed by which complete violation of agreement has been done. But unfortunately, the Complainant died on 25.11.2022. It was submitted that the additional Complainants are the wife and daughter of the deceased Complainant and are the legal heirs of the deceased Complainant. As it was highly necessary to implead them as legal heirs of the deceased Complainant and to change the cause title of the



Complaint and implicate them as Complainants for the proper just trial of the above Complaint. It was prayed to implead them as additional Complainants. The Complainant's counsel also filed I A 38/2024 & I A 39/2024 to set aside abatement due to the death of the Complainant and delay condonation petition as the lawyer through whom the Complaint was filed was not responding to the additional Complainants and they sought time for appointing a new lawyer for them to contest the case. The Complainants have also produced the death certificate and legal heirship certificate of the deceased Complainant. The I A 163/2023 was allowed on 07/12/2023 and the petitioners were impleaded as Additional Complainants.

5. The Respondents did not file the counter-statement or any documents even after giving ample time to file the same with the Authority.

6. After hearing both parties and examining the documents produced 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 Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?

b. Whether the Complainant 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?

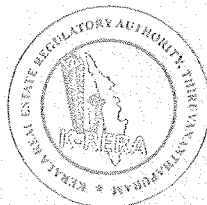




c. What order as to costs?

7. **Point No.1 & 2:-**The documents produced from the part of the Complainant are marked as Exbts.A1 to A9. **Exbt.A1** is the sale deed dated 27.02.2020 executed by the land owners in favour of the deceased Complainant. **Exbt.A2** is the copy of agreement for construction dated 03/03/2020 executed between the deceased Complainant and the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent. As per the said agreement the builder agreed to construct a villa as per the plan and design for a construction cost of Rs. 1,10,00,000/- and also mentioned that the client has paid the said amount to the Respondent/Builder which is acknowledged. As per the said agreement Respondents/Builder agrees to complete the construction of the villa and deliver the possession of the same within 12 months with a grace time of an additional 3 months. **Exbt.A3** is the payment receipt issued by the Respondents for the payment made by the Complainant. **Exbt A4** is the letter issued by the Respondents showing the revised date of project completion. **Exbt A5** is the original photos of the project. **Exbt A6** is the brochure of the project. **Exbt A7** is the certificate issued by the Authority. **Exbt A8** is the death certificate of the Complainant No.1. **Exbt A9** is the legal heirship certificate of the Complainant No.1.

8. 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 is shown as 30/10/2024.



9. The relief sought by the Complainants is the refund of the amount of Rs. 1,10,00,000/- paid to the Respondent with interest @12% p.a from 27/02/2020 till the date of realization. According to Section 18(1) of the Act 2016, *“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 as 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 cannot give possession of an apartment, plot or building per 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



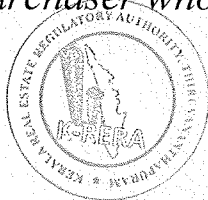
the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here, the Complainants had decided to withdraw from the project and demanded refund with interest.

10. The Exbt. A2 is the copy of the agreement for construction dated 03/03/2020 executed between the deceased Complainant and the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent. As per the said agreement, the builder agreed to construct a villa as per the plan and design, for a construction cost of Rs. 1,10,00,000/- and it was also mentioned that the client has paid the said amount to the Respondent/Builder which is acknowledged by the Respondent/builder. As per the said agreement Respondents/Builder agrees to complete the construction of the villa and deliver the possession of the same within 12 months with a grace time of an additional 3 months. During the final hearing, the counsel for the Respondent admitted that the project was not completed and would be completed within the next 2 months and only 81% of the work was completed. From the said admission itself, it is clear that there is huge lapse from the side of the Respondents in completing and handing over the project on time as promised. Here the Respondent/builder has acknowledged through the agreement that he has received the amount as the Exhibit A3 receipt and admitted in the hearing that he could not hand over possession as the project is not completed. Exhibit A4 is the letter issued to Complainant No.1 by Respondent No. 2 by which they



have informed the Complainant that the project will be completed only by May 2022. The latest photographs produced by the Complainants marked as Exhibit A5 also reveal that the project is not completed and still there is more work to be completed.

11. Under Section 11(4) of the Act, 2016, the Respondent/Promoter is responsible to obtain the occupancy certificate, from the Competent Authorities and under Section 17 of the Act, 2016 after which, he is duty bound to hand over physical possession to the allottees. Section 17 of the Act, 2016 stipulates that *“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. 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 hand-over 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, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate”*. 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.”* It is clear that the Promoter has made use of the investments of the Complainant’s hard-earned money for the past years and failed to complete the work and possession was not given as per the terms of the agreement. Hence, it has been established beyond doubt that the Respondents No. 1 & 2 have failed to perform their part and honour the promises given to the Complainants who trusted them and invested their hard-earned savings and as such the Complainants herein are entitled to get refund of the amount deposited by them 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 UP & 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 Complainants was collected by the 1<sup>st</sup> Respondent, as revealed from the Exbt No. A3 produced by the Complainants. Point No. 1 & 2 are answered accordingly in favour of the Complainants.

12. In view of the above facts and circumstances detailed in the pre paras, it is found that the Respondents 1& 2 have failed to complete and hand over possession of the apartment to the Complainants herein in accordance with the terms of the agreement and hence the Complainants 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. Anyhow, the Complainant herein sought interest-only @ 12%.

13. The Complainants have produced copy of the receipt of payments for Rs.1,10,00,000/- made to the Respondents marked as Exhibits A3. Details of payments made, as confirmed by the Authority based on the above documents are as detailed below:



### Payment Schedule

Date	Amount(Rs)
27.02.2020	1,10,00,000/-

14. 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/Promoters shall return the amount of **Rs.1,10,00,000/-** to the Complainants, with simple interest @ 12% per annum from the date of payment, as shown in the payment schedule above, till the date of realization of the full amount.
- 2) If the Respondents No 1&2/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 sale deed.
2. Exhibit A2: copy of the construction agreement
3. Exhibit A3: copy of the payment receipt.
4. Exhibit A4: copy of the letter dated 06.10.2021.
5. Exhibit A5: photographs of the project.
6. Exhibit A6: brochure of the project.
7. Exhibit A7: information from the Authority website.
8. Exhibit A8: copy of the death certificate
9. Exhibit A9: copy of the legal heirship certificate.

### **Documents produced by the Respondents**

NIL

