KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint Nos. 293/2021

Dated 30th January, 2023

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

Complainant

Sudhan. P.K.
Sangeetha Bhavan,
Edappally North,
AIMS Ponekkara P.O.,
Kochi -682041

Adv.Venu Menon.

Respondents

1.M/s Asset Homes Pvt Ltd.
Asset Centrale, XV/246C,
NH By pass, Kundannoor Junction,
Maradu P O, Ernakulam
Kochi- 682021.

2.Sri. V Sunil Kumar,
Managing Director,
M/s Asset Homes Pvt Ltd.
Asset Centrale, XV/246C,
NH By pass, Kundannoor Junction,
Maradu P O, Ernakulam,
Kochi- 682021.

3. P Abdulla,
Melottu Parambil House,
Vadakkumbhagam,
AIMS, Ponekkara P.O.
Edappally North,
Kochi-682041.

By Adv Peeyus A. Kottam

The Complaint finally heard on 30th November, 2022 and both the parties along with their Counsels attended the hearing.

ORDER

1. The Complainant is an allottee of an apartment and the Respondents are the promoters of the project 'Assets Limelight' situated at Edappally, Ernakulam. The Respondent No 2 is the Managing Director representing the Respondent No 1 Company and Respondent No 3 is one of the Land Owners. The case of the Complainant is as follows: He approached the Respondents for purchase of an apartment and allotted with an Apartment No 4A in the project named 'Asset Limelight' situated at Edappally having 1617 sq. ft. area with all amenities, vide allotment letter dated 11-09-2018. Thereafter he entered in to agreement dated 04-10-2018 with the Respondents for the construction and sale of undivided share of the said project. As per the agreement, the date of completion of construction was on December 2020 and the date of handing over of the physical possession of the apartment was scheduled before June 2021. The complainant has paid Rs 37,00,000/-(Rupees Thirty-Seven Lakh only) in three instalments which was acknowledged by the Respondents by receipts dated 11-09-2018, 05-10-2018 and 01-07-2019. Copies of the receipts dated 11-09-2018, 05-10-2018 and 01-07-2019 issued by the Respondents are produced. According to the Complainant, he was in urgent need of flat and in constant touch with the Respondent/Promoter,

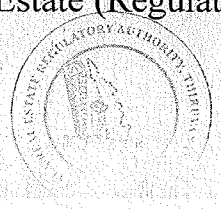
he requested early possession of flat, but there was no positive response/assurance about the completion of project in time, which forced the complainant to approach the Promoter for cancellation of booking and for the refund of entire money deposited along with interest. As per discussion with the Respondents the complainant issued withdrawal letter on 13-11-2019, though a copy of withdrawal letter is produced, wrongly as Annexure A1, but not marked. The Respondent Company proposed a refund Schedule and refunded the booking amount of Rs 33,23,710/-on different dates from 30-12-2019 to 30-03-2020 retaining an amount of Rs.3,76,290/-, which was paid towards GST as alleged and the Respondents by letter dated 07-12-2019 communicated that the GST amount paid will be refunded to the complainant after selling the unit. The copy of refund Schedule letter dated 07-12-2019 issued by the Respondent to the Complainant is produced. On repeated requests of the Respondent, he confirmed the cancellation of booking vide email dated 01-01-2020 with an intention to get refund of money deposited at the earliest. Copy of email communication dated 01-01-2020, conforming the cancellation of booking issued by the complainant to the Respondent is produced. The Complainant, approached the Respondents for release of balance amount on several occasions, but to no avail, a lawyer notice was issued on 16-08-2021, to which the Respondent replied vide letter dated 27-08-2021 denying all other claims except the GST amount without interest and cost. The Respondent stated that the balance amount of Rs.3,76,290/- which was paid towards GST can only be refunded after selling the apartment unit to a new purchaser. Copy of Lawyer Notice dated 16-08-2021 issued by the complainant and the copy of reply of the Respondent to the lawyer notice dated 27-08-2021 are produced. The relief sought for by the Complainant is to issue suitable direction to release the CGST/SGST amount deducted by the Respondent, with interest @ 12% along with

interest on the initial deposit remain with the Respondent till the date of refund @ 12 % per annum plus damages and cost of inconveniences amounting to Rs. 45,00,000/- lakhs and further interest till the date of payment.

2. The Respondent filed counter statement as follows: The complainant entered in to an agreement dated 04-12-2017 for sale with the owners of the property in survey No 38/6A, 38/4A5, 38/4B3, 38/4A7, 38/4B2, 38/4A8 in Edappally North village for purchasing 2.027% of undivided share in 17.55 Ares of property for a sale consideration of Rs. 29,56,404/-. The Complainant also entered in to an agreement for work construction dated 04-10-2018 with the first Respondent Company to construct an apartment described as 4A, in the agreement, admeasuring 150.28 Sq.m (1617 sq.ft.) together with covered car parking in the Apartment Complex under the name and style 'Asset Limelight' and appurtenant there to at a contract price of Rs 59,13,696/-(Rupees Fifty Nine Lakhs Thirteen Thousand Six Hundred and Ninety Six only) and Rs 10,64,465/- (Rupees Ten Lakhs Sixty Four Thousand Four Hundred and Sixty Five Only). The copy of said agreement dated 04-10-2018 for construction is produced. The Respondent undertook the construction work as per the agreement and that the complainant remitted Rs 37,00,000/- (Rupees Thirty-Seven Lakh only) in three instalments which was acknowledged by the Respondents by receipts dated 11-09-2018, 05-10-2018 and 01-07-2019. The Respondents submitted that they used to keep the Complainant informed of the progress of the work periodically by email communications in the registered email address of the Complainant and produced copies of email communications dated 26-10-2018, 01-12-2018, 20-12-2018, 02-01-2019 and 27-02-2019. The complainant without any provocation from the Respondent/Promoter sent

a letter dated 13-11-2019 informing his desire to withdraw from the project unilaterally and without assigning any reasons and the complainant's withdrawal from the project was on his own volition and free will. As the complainant was not ready to continue with the project, the Respondent informed the complainant about the repayment plan by email dated 07-12-2019 and it was specifically mentioned that the GST amount of Rs 3,76,290/- already paid would be refunded to the Complainant after the resale of the unit, there was no response from the complainant to this communication, they were reminded vide communication dated 26-12-2019. On 01-01-2020, the Complainant informed his confirmation on the repayment plan offered by the Respondent and accordingly the Respondent company effected refund totaling to Rs. 33,23,710/-(Rupees Thirty-Three Lakhs Twenty-Three Thousand Seven Hundred and Ten Only), on different dates from 30-12-2019 to 30-03-2020. They refunded the entire amount except GST, in full and final settlement of dues to the Complainant. But they are yet to complete the resale of Apartment 4A and also that the refund was made without deducting 10% of the amount remitted by the Complainant which the Respondent was otherwise entitled to recover as per clause 8 of the Agreement entered in to between the parties, copy of Agreement dated 04-10-2018 is produced. The Respondent No.1&2 submits that the claim of the Complainant regarding the GST amount which already remitted to Government, damages and interest are unsustainable and liable to be dismissed.

3. The Complainant filed a reply affidavit in which, he repeated the earlier contentions and stated that the Respondents levied the GST wrongly by misinterpreting the GST Statute and that there is no provision in the Real Estate (Regulation and Development) Act, 2016 to



deduct the CGST or GST in respect of agreement to purchase and the GST collection can only be aroused after sale of undivided share of property on building and hence the GST collection is illegal. The inordinate delay in granting possession, forced the Complainant to go for cancellation of booking and demand of the deposited amount along with interest as per agreement. Also submitted that the Authority has power under section 35 and 36 of the Act to direct the Respondent to make refund of GST, interest damages and cost of inconvenience.

4. The Respondent filed Rejoinder to the reply affidavit of the Complainant in which, it has been stated that the contention of the Complainant that there is no provision in the Real Estate (Regulation and Development) Act, 2016 to deduct the CGST or GST in respect of agreement to purchase the undivided share in the property and building therein and that it can only be aroused after sale of undivided share in the property is incorrect and against facts. As per GST Act the due amount was collected at source and paid over to the authority and receipts were duly served to the complainant. The Complainant after entering in to the agreement, voluntarily withdrawn from the agreement. The Contention of the complainant that the Authority has power under section 35 and 36 of the Act to direct the Respondent to make refund of GST etc. are incorrect and against facts.

5. The documents produced by the Complainant are marked as Exhibits A1 to A7 and those of Respondents are marked as Exhibits B1 to B6. Finally heard on After hearing both the parties in detail and perusing the pleadings and documents submitted by each of them, following points emerged for consideration:

1) Whether there was any failure on the part of the Respondent/Promoter in completing and handing over possession of the apartment to the Complainant in accordance with the terms of the agreement for sale to invoke Section 18(1) of the Act 2016?

2) Whether the matter in question comes under any of provisions of the Act 2016 or not?

3) What order as to costs?

6. **Points No: 1 & 2**- The Complainant approached this Authority seeking for a direction to the Respondent/Promoter to refund the amount of GST which was deducted by the Respondent/ Promoter while refunding the amount to the Complainant in the wake of alleged non- completion of project by the Respondent/Builder and withdrawal by the complainant from the project. The amount of refund excluding the GST is not contested by the Complainant. The circumstances where an allottee gets entitlement for refund of the amount remitted by him to the Promoter are specified in Section 18(1) of the Act 2016. 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." Likewise, Section 19(4) which is mirror provision of section 18(1) of the Act 2016 stipulates that "*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 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.

7. Exhibit B6 is the Agreement for construction dated 04-10-2018 entered in to between the Complainant and the Respondent No 1, to get constructed an Apartment No. 4A along with amenities in the Residential Building Complex 'Asset Limelight'. In Clause 1 of the Agreement, it is agreed that "the Builder shall build/construct and complete the Schedule B property for a total contract price of Rs 59,13,696/- and Rs 10,64,465/- towards GST." In clause 2 of the agreement, it is stated that "the Client has paid a sum of Rs 1,19,048/- (Rupees One Lakh Nineteen Thousand and Forty-Eight Only) and Rs.21,428/- (Rupees Twenty-One Thousand Four Hundred and Twenty-Eight Only) towards GST". In Clause 3 of the Agreement, it is stipulated that "Subject to the Conditions herein after contained and also the other terms, conditions, covenants, right and obligations contained in the Schedule C to F herein appended which shall form part and parcel of this agreement, the client shall pay to the Builder the balance contract price of Rs. 57,94,648/- (Rupees Fifty-Seven Lakhs Ninety-Four Thousand Six Hundred and Forty-Eight Only) and Rs. 10,43,037/- Rupees Ten Lakhs

Forty-Three Thousand and Thirty-Seven Only) towards GST". In Clause 4 of the agreement, the balance amount to be paid to the Builder is shown in a Table, wherein also the Construction cost amount, GST and Total amount has been separately specified. As per B6 Agreement, the date of completion of the construction of the project was agreed on December 2020 and the date of handing over of the physical possession of the apartment was scheduled before June 2021.

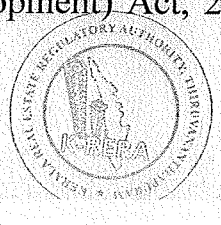
8. Exhibit A1 series documents are the receipts dated 11-09-2018, 05-10-2018 and 01-07-2019 issued by the Respondent to the Complainant. In all the three Receipts given to the Complainant, the Respondent/Builder has shown the Construction cost, Land Value and GST amounts separately. In Exhibit A(a) Receipt dated 11-09-2018, the Construction value is shown as Rs 1,19,048/-, Land Value as Rs 59,524/- CGST as Rs 10,714/- and SGST as Rs 10,714/- amounting to a total of Rs 2,00,000/- In Exhibit A1(b) Receipt dated 05-10-2018 the Construction value is shown as Rs 16,66,667/-, Land Value as Rs 8,33,333/- CGST as Rs 1,50,000/- and SGST as Rs 1,50,000/- amounting to a total of Rs 28,00,000/- In Exhibit A1(c) Receipt dated 01-07-2019, the Construction value is shown as Rs 4,16,667/-, Land Value as Rs 2,08,333/- CGST as Rs 37,500/- and SGST as Rs 37,500/- amounting to a total of Rs 7,00,000/-In the Exhibit B6, Agreement and in the Exhibits A1 series Receipts acknowledged, the GST amount has been shown separately and the same was collected separately. Though the Agreement was not in the Form in Annexure A as prescribed under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2016, the agreement is seen signed and agreed by both parties to levy tax separately and as such it is bound between them. Exhibit A2 is the email communication dated 07-12-2019 issued by the Respondent to the

Complainant, as per which the plan of schedule of refund was communicated to the complainant. The copy of email communication dated 01-01-2020, stated as Exhibit A3, in the list of enclosures and shown as "Annexure A4" in the document is marked as Exhibit A3. Exhibit A4 is the copy of Lawyer Notice dated 16-08-2021 issued by the Complainant to the Respondent and Exhibit A5 is the copy of reply dated 27-08-2021 issued by the Respondent to the Lawyer Notice by the Complainant. The document stated in the list of enclosures as Exhibit A3, and shown as "Annexure A3" is actually a copy of email communication issued by the Respondent to the Complainant dated 26-12-2019, instead of email dated 01-01-2020. This document dated 26-12-2019 is marked as Exhibit A6.

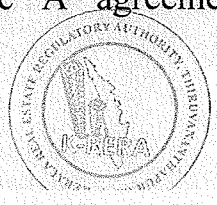
9. The contentions of the Complainant that he was in urgent need of flat and was in constant touch with the Respondent and requested early possession of flat, but there was no positive response/assurance about the project in time, which forced the complainant to approach the Respondent for cancellation of booking and refund of entire money along with interest and as per discussion with the Respondents, he issued withdrawal letter dated 13-11-2019, etc. cannot be acceptable since the Complainant could not produce any documents to substantiate these contentions. At the same time, Exhibit A7 copy of Letter dated 13-11-2019 from the complainant to the Respondent shows that he himself chose for withdrawing from the project without assigning any reasons. Moreover, the Exhibits B1, B2, B3, B4 and B5 are the email communications dated 26-10-2018, 01-12-2018, 20-12-2018, 02-01-2019 and 27-02-2019 issued by the Respondent to the complainant, as per which the Respondent informed of the progress of the work periodically by emails in the registered email address of the Complainant. As per Exhibit B6 agreement, the completion of the construction was promised

as December 2020. In a Project agreed to be completed by December, 2020, the Complainant had decided to withdraw from it as early on 13-11-2019 i.e; one year before the date of the promised time for completion and handing over. From the above, it is clear that the Respondent/Promoter is not liable to be implicated with any failure in honouring the promise as to completion and handing over the apartment to the Complainant. Obviously, Section 18(1) of the Act 2016 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. As in this case, the Complainant sought withdrawal from the project much before the date of promise to hand over the apartment, Section 18(1) of the Act 2016 shall not be attracted.

10. Furthermore, the argument of the Respondent that Ext. A7 withdrawal letter dated 13-11-2019 from the complainant informing his desire to withdraw from the project was without assigning any reasons is to be taken in to account, since in the said letter, the Complainant has only stated that "I wish to withdraw from the project, please do the needful". So also, in the Exhibit A2 refund plan schedule, dated 07-12-2019, the Respondent informed the Complainant that the amount paid as GST would be refunded after the sale of the unit, to which the Complainant has given his consent through his email communication dated 01-01-2020, (Ext.A3) wherein, the complainant wrote "I confirm", without mentioning anything about the CGST/SGST refund, simply accepted the proposed refund schedule of the Respondent. From the above, it can be seen that the withdrawal from the project was solely according to the free will of the Complainant himself, as such, Section 18 of the Real Estate (Regulation and Development) Act, 2016 shall not be made applicable



against the promoter. Concisely, the withdrawal is seen at the sole initiative of the Complainant and the Builder refunded the entire amount except that of GST paid over to the Government, for which the builder has undertaken to refund on resale of the property. The Respondent made it clear that the refund of the GST amount would be settled on the resale of the Apartment, for which they are taking efforts. Moreover, the complainant has not produced any documents to substantiate that there was a breach of the said undertaking from the part of the Respondent. With regard to the arguments of the Complainant that there is no provision in the Act, 2016 to deduct the CGST or GST in respect of agreement to purchase the undivided share in the property and building therein and that it can only be arouse after sale of undivided share in the property, and that the Authority has power under section 35 and 36 of the Act to direct the Respondent to make refund of GST etc., it is to be made clear that in case the Complainant were entitled to get relief under Section 18(1) of the Act, undoubtedly he could have obtained the full amount whatsoever paid by him to the Respondent/Promoter. But in this case, this Authority cannot invoke Section 18(1) of the Act as no failure from the part of the Respondent/Promoter could be made out with respect to completion and handing over. Anyhow, Exhibit A2 shows that there is an undertaking of the Respondent/Promoter that he shall refund the deducted amount after resale of the apartment allotted to the Complainant. The Explanation (ii) given to Clause 1.2 of Annexure A to the Kerala Real Estate (Regulation and Development) Rules, 2018 specifies that the "Total Price includes Taxes". But as per the Exhibit B6 Agreement and Exhibit A1 series Receipts, the taxes are shown separately. It is to be specifically mentioned that as the project in question is an ongoing project registered before this Authority under Section 3 of the Act, the parties are bound to follow the abovementioned Annexure A agreement format. The Exhibit B6



Agreement is seen executed on 04-10-2018 whereas the Kerala Real Estate (Regulation and Development) Rules 2018 were published on 14.06.2018 itself and hence deviation from the prescribed format is a clear violation of Rule 10 of the Rules 2018. The Clause No. 7.5 of the Annexure A agreement deals with situation where the allottee cancels/withdraw his allotment without fault of the project which is as follows: "*The allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act: provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within 45 days of such cancellation.*" But, the Respondent/Promoter herein has refunded the total amount of consideration except the GST amount upon an undertaking/confirmation through Exhibit A2 refund plan schedule that the deducted amount shall be refunded after the resale of the apartment for which they are taking efforts. In the light of the above facts and findings, we hold that relief sought by the Complainant shall not attract any of provisions of the Act and hence it is not for this Authority to intervene. The points 1 & 2 are answered accordingly against the Complainant.

The Complaint is hereby dismissed. Both parties are directed to suffer their own costs.

Sd/-	Sd/-	Sd/-
Smt. Preetha. P. Menon	Sri M.P Mathews	Sri. P H Kurian
Member	Member	Chairman

True Copy/Forwarded By/Order/

Secretary (Legal)

APPENDIX

Exhibits submitted by the Complainant

Exhibit A1 (a)-(c) Copies of receipts dated 11-09-2018, 05-10-2018 and 01-07-2019 issued by the Respondent to the complainant.

Exhibit A2 - Copy of email communication dated 07-12-2019 of the Respondent to the complainant

Exhibit A3- Copy of email communication dated 01-01-2020 of the complainant to the respondent.

Exhibit A4-Copy of Lawyer Notice dated 16-08-2021 by the Complainant to the Respondent

Exhibit A5- Copy of reply dated 27-08-2021 by the Respondent to the Lawyer Notice issued by the Complainant.

Exhibit A6 – Copy of email communication dated 26-12-2019, issued by the Respondent to the Complainant.

Exhibit A7-Letter dated 13-11-2019 of the complainant to the Respondent.

Exhibits submitted by the Respondent

Exhibit B1- Copy of email communication dated 26-10-2018 sent to the Complainant by the Respondent regarding progress of construction

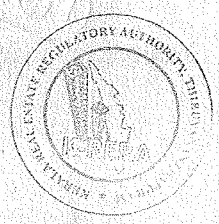


Exhibit B2- Copy of email communication dated 01-12-2018 sent to the Complainant by the Respondent regarding the progress of construction.

Exhibit B3- Copy of email communication dated 20-12-2018 sent to the Complainant by the Respondent regarding the progress of construction.

Exhibit B4- Copy of email communication dated 02-01-2019 sent to the Complainant by the Respondent regarding the progress of construction.

Exhibit B5- Copy of email communication dated 27-02-2019 sent to the Complainant by the Respondent regarding the progress of construction.

Exhibit B6- Copy of the agreement dated 04.10.2018 entered in to between the Complainant and the Respondent