

KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaint No. 86/2023

Dated 1st day of January 2025

Present: Smt. Preetha P. Menon, Member

Complainants

1) Noushad Rahuman &
2) Jisha Rahuman Shah
SRA 76A, Lecasa X1328 B1,
Masjed Road, Vazhakkala, Kakkanad
Ernakulam, Kerala – 682021.

Respondents

1. Sobha Limited, Bengaluru,
Sarjapur – Marathahalli Outer Ring
Road (ORR), Devarabisanahalli,
Bellander Post, Bengaluru – 560103.
2. Puravankara Limited,
No. 130/1, Ulsoor Road,
Bengaluru – 560042.
3. Riya Mary Shaji,
Senior Executive, Sobha Limited,
5th floor, Jomer Symphony,
Vytilla P.O, Cochin – 682019.

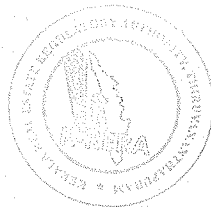


4. Puravankara Limited Cochin,
G-261, Panampilly Avenue,
Panampilly, Nagar, Cochin – 682036.

The above Complaint came up for final hearing on 21/08/2024. Counsel for the Complainants', Adv. Vijay Paul and Counsel for the Respondents Adv. Abraham Mathew Vettoor attended the virtual hearing.

ORDER

1. The Complainants are the allottees of the project named 'Marina One-Phase 1' located at Marine Drive, Kochi developed by the Respondents. The factual matrix of the Complaint are as follows: The Respondents had made several assurances and claims regarding the construction, top level amenities and other world class facilities along with timely delivery on 31.12.2021. Based on the assurances and promises of the Respondents, the Complainants had booked a four-bedroom apartment and entered into two agreements ie., agreement for sale dated 30.08.2018 and construction agreement dated 30.08.2018 towards buying the residential unit of Four-bedroom apartment at 4th floor, in Block North Wing-03, bearing no. A3-N3044 along with 0.11% (801.16 sft/74.43 sqm) undivided share in the property. The total purchase price of the Apartment was Rs.3,57,29,905/- inclusive of the value of land, External



Development Charges, Infrastructure Development Charges, and all other charges. In fact, the Complainants have already paid Rs.3,25,09,223/- as on date which is the 90% of the total purchase price. As per clause 5.1 of the construction agreement executed between the parties, Respondents had agreed to complete and deliver possession to the Complainants by 31.12.2021. By way of an email dated 16th March 2022, it was intimated that the date of completion of construction has been extended as per the invocation of Force Majeure by Kerala Real Estate Regulatory Authority, vide sec 6 of the RERA Act 2016 owing to Covid-19 Pandemic. On that account, the revised date of delivery and possession was on 30.06.2022. After the said date, repeated requests were made from the Complainants part to transfer the possession, no positive action has been seen taken from the part of Respondents till date. On 28.07.2022 a legal notice was sent to the Respondents demanding handing over possession of Apartment No. A3-N3044 of Marina One and to pay interest at 14% per annum on the total consideration paid by the Complainants as on date, till delivery of possession and to pay a sum of Rs.25,000/- as necessary cost and expense of sending the legal notice to the Respondents.

2. The Complainants further submitted that the possession of the said unit is not yet been delivered by the Respondents even after the extended due date, which is a clear case of negligence and deficiency of service from the Respondents. The

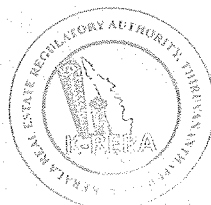


Complainants have paid 90% of the amount and paying interest on it every month to the bank which is causing a substantial financial burden and mental agony for them. However, the Respondents have failed to keep their commitment and have lost the customers' faith as it has delayed the possession of the said unit without any justification. The Complainants had availed a housing loan from Axis Bank, Kochi RAC Branch and an amount of Rs.4,35,14,087/- had to be totally paid by the Complainants till date which includes the principal amount and the Bank interest 8.35% per annum. Thus, the Complainants have so far paid Rs.3,25,09,223/- including the sale consideration and the construction cost. Despite making the payments as demanded by the Respondents there had been no progress in the matter. Hence the Complainants inspected the project site during November 2021 and the Complainants were shocked that the construction work was not at all progressing. It is estimated that almost 85% of the construction of the said multi-storied apartment has been completed, however the project was moving in a slow pace, and completely stopped in the year 2021, which indicates that the Respondents do not have any plan to finish construction and handover the project to the purchasers, including the Complainants. Having received the consideration of Rs.3,25,09,223/- the Respondents misappropriated this amount for other purposes and diverted the same for their personal gains with the sinister motive of fraud and deceit. Thus, the Respondents are bound to complete the construction of the building and to pay



compensation and interest for the amount paid by the Complaint Complainants along with loss and damages. The reliefs sought by the Complainants are as follows: - (1) To allow interest at 15.45% per annum as per Rule 18(1) of the Kerala Real Estate (Regulation and Development) Rules 2018, upon the total consideration of Rs.3,25,09,223/- paid by the Complainants as on due date till the delivery of possession. (2) The Complainants have suffered mental agony and strain during all these years, the Complainants is still staying in a rented house and he will now have to incur loss by way of income tax on the above amount which will have to be made good. Hence, he is claiming an amount of Rs.5,00,000 as compensation in this regard. (3) A further loss of rent from 30.06.2022 till delivery of possession considering Rs.50,000/- per month has been incurred by the Complainants on account of loss of the expected rental income upon the completion within its stipulated period.

3. The Respondents have filed counter statement by denying entire averments in the Complaint and further submitted that the offer to complete the apartment and handing over possession of the same to the Complainants is subject to the other conditions stipulated in the construction agreement. The Complainants did not care to pay the stipulated instalments payable by them towards consideration of the land and the apartment as per the schedule of payment. As the Complainants



were not making payments of the instalments so payable by them as per schedule, the Respondents had issued demand notices for payment of the same. Even after issuance of such demand notices, the Complainants did not care to pay the amount so demanded in time, but has paid the same much belatedly occasioning for considerable delay. The demand of Rs.27,90,217/- made on 27-01-2021 with due date as 26.02.2021 has been complied within 2 instalments and accordingly paid Rs.20 lakhs on 18.05.2021 with a delay of 81 days and the balance amount of Rs.7,90,217/- was paid only on 25.07.2022 with a delay of 333 days. Likewise, the demand for Rs.27,90,217/- made on 07.06.2021 with due date as 07.07.2021 has been paid in 4 instalments, Rs.2,09,783/- lakhs was paid on 25.01.2022 with a delay of 202 days, an amount of Rs.10 lakhs paid on 28.01.2022 paid with a delay of 205 days, an amount of Rs.10 lakhs was paid only on 21.07.2022 with a delay of 379 days and the balance amount of Rs.5,80,435/- was paid on 24.11.2022 with a delay of 505 days. The further amounts under the last 2 instalments have not so far been paid by the Complainants even though the Respondents had completed the stage wise construction. Such persons cannot be heard to accuse the Respondents that the apartment offered to them has not been completed as on the offered date for completion and hand over. From the ledger produced by the Complainants itself would establish that there was considerable delay up to 505 days even in making the stipulated payments. The Complainants were not

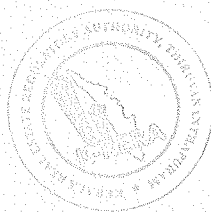


diligent enough in making the payments due from them towards cost of construction and land value and such persons cannot be heard regarding the allegation of delay in delivery of the apartment. The Complainants have conveniently suppressed the gross delay committed from their part in making the payment of the stipulated instalments and the consequent effect of clause 5.5.9 of the construction agreement with a view to get favourable orders from this Authority and on that score alone, the present complaint is liable to be rejected as one filed without sufficient bonafides.

4. The Respondents further submitted that the present Complaint being one filed quite prematurely is liable to be rejected. The date of completion as per the agreement was 31-12-2021 subject to the other clauses in the construction agreement. Clause 5 of the construction agreement had provided a grace period of 9 months and as such the Respondents were having time up to 01.10.2022 to effect delivery of the apartment. Because of the force majeure situation occasioned on account of the covid-19 Pandemic, the builder is further entitled for further extension of the completion date by one year more and as such the delivery time stands extended up to 30.09.2023. The tower in which the apartment is situated is one constructed as part of the phase 1 of the project by name "Marina One" and the same is also duly registered with the Authority. The time granted by this Authority for completion of the Phase I of the project is up to 30.06.2025.



Therefore, the Complainants who were fully aware of all such details, conditions and clauses with respect to the date of completion has chosen to file the present complaint on 10.04.2023 and accordingly, it is one to be rejected as one filed quite prematurely. The apartment constructed for the Complainants is one fully completed and these Respondents are ready to hand over the possession of the same if the Complainants remits the entire balance amount due from them as per the last two instalments payable as per schedule. There is no hesitation from the part of the Respondents to register the apartment in favour of the Complainants if they remit the required amounts towards stamp duty and registration charges and other deposits and charges payable by them. The Complainants had received all the relevant documents relating to the project and the property in which it is constructed before entering into the construction agreement and sale agreements dated 30.08.2018 stating that they propose to avail bank loan for the purpose of purchase of the apartment. The default committed by the Complainants in making timely payments of the instalments also would ensure for further extension of the date delivery. At any rate, these Respondents need to provide delivery of the apartment only as per the time for completion fixed by this Authority, which aspect also has been conveniently suppressed in the Complaint. An amount of Rs.3,57,29,905/- is the amount payable towards total consideration as has been scheduled in the construction agreement. The Complainants claims that he has



already paid Rs.3,25,09,223/- as per the client ledger statement. But the said ledger itself shows that considerable portion of the amount so paid included interest charged for belated payment. The Complainants are yet liable to pay the last 2 instalments as per the schedule of payments and these Respondents did not make a specific demand for payment to the Complainants in view of the pendency of these proceedings. Therefore, the Complaint that these Respondents did not deliver the apartment in the time and are therefore liable to pay interest as provided under Sec. 18(1) of the Act is absolutely false and unsustainable. They have only paid Rs.3,18,03,541/- towards the instalments and the balance amount paid is towards interest charged for belated payment. The Respondents had not made any assurance to deliver the apartment to the Complainants on 30.06.2022 vide email dated 16/03/2022. A careful reading of the said document would disclose that the Respondents did not make any offer as claimed by the Complainants and the Respondents had only intimated them with respect to the completion date as per the RERA registration.

5. The Respondents further submitted that the Complainants who did not pay the consideration payable by them as per schedule of payment was not really entitled to make any request for transfer of possession and issue a lawyer notice with false claims. Such a lawyer notice issued under false pretext did not even deserve any reply. The claim made as per the lawyer



notice is totally unsustainable. There is no negligence or deficiency of service from the part of any of the Respondents enabling the Complainants to make a claim of this nature against them. There was absolutely no delay in the matter of completion of the apartment as has been alleged in the Complaint. The Complainants has availed the loan facility from the bank for the purpose of payment of consideration payable for the apartment offered to be purchased by them. Even despite availing such loan facility, the Complainants were not diligent enough in remitting the stipulated instalments. If the Complainants are ready and willing to pay the balance amount due from them including registration charges and other amounts, the Respondents have no hesitation to hand over immediate possession of the apartment and register the same is favor of the Complainants. The Complainants have never visited the apartment as has been alleged. Admittedly, these Respondents had completed 85% of the construction by November, 2021 and the present complaint has been made during April, 2023 without even ascertaining the factum of completion of the tower and the apartments therein.

6. In response, the Complainants submitted rejoinder to the above statement of objection filed by the Respondents as follows: The primary allegation in the Respondent's counter statement is that the Complainants defaulted on payment of instalments, justifying the Respondent's refusal to



deliver the apartment as per the agreement. To support this claim, the Respondents concealed the fact that no instalments were pending from the Complainants even at the time the counter statement was filed. The Complainants had timely cleared all payment requests. In addition, the Respondents claimed that the work related to the scheduled apartment was completed and they were ready to hand it over if the Complainants made the payment. The Complainants produced an email communication dated 04.10.2023 between the Complainants and the Respondent No.3, indicating that the Respondents were raising the second last invoice for the completion of internal plastering works, as evidenced by the said email dated 04/10/2023. The Respondents highlighted the delayed payments made by the Complainants but intentionally omitted the fact that the Respondents charged interest for delayed payments, which were primarily caused by the global Covid-19 pandemic. The Respondents also contended that, as per Clause 5.5 of the construction agreement, the Complainants could not claim compensation for delayed possession from the Respondents due to their alleged default in the timely payment of instalments. The Complainants made almost all payments on time even during the first wave of the COVID pandemic, until the 9th scheduled payment out of 13 instalments. However, due to the continuation an emergence of the second wave of the COVID pandemic, the Complainants could not make some payments on time. For the same, the Complainants paid the interest charged by



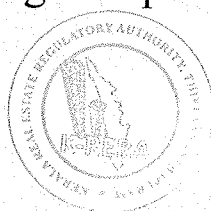
the Respondents in a timely manner. The Complainants maintained their commitment to timely instalments, even during the COVID period, and paid interest for delayed payments. Therefore, the Complainants are entitled to claim interest and compensation for the delayed possession of the apartments.

7. Here, it has been noted that the Complainants have prayed for interest for the delay in handing over possession of their apartment by the Respondents/Promoters as well as for compensation from the Respondents/Promoters. As laid down in Section 71 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act 2016”], the claim for compensation can be adjudicated only by the Adjudicating Officer of the Authority for which a separate Complaint is to be filed in Form-N prescribed under the Kerala Real Estate (Regulation & Development) Rules 2018[hereinafter referred to as “the Rules 2018”]. Hence, this Authority heard both parties herein with respect to the claim of interest for the delay in completion and handing over and perused the documents produced by each of them carefully in this regard. The documents produced from the part of the Complainants are marked as Exbts.A1 to A12 and the documents produced from the part of the Respondents are marked as Exbts.B1 to B3. After hearing both sides and examining the pleadings and documents placed on record, the issues emerged for consideration of this Authority were as follows: -



- 1) Whether the Respondents/Promoters failed to complete and hand over possession of the apartment booked by the Complainants in accordance with the terms of the agreement for sale executed between the Complainants and Respondents?
- 2) Whether the Complainants herein is entitled to get interest for delay in completion and handing over possession of their apartment, as provided under Section 18(1) of the Act, 2016 or not?

8. **Point No.1 & 2:** The project named 'Marina One-Phase 1' is found registered before the Authority under section 3 of the Act 2016, vide Registration No. K-RERA/PRJ/251/2020 and the proposed date of completion is shown as 30/06/2025. The documents produced from the part of the Complainants is marked as **Exbts. A1 to A7. Ext.A1** is the copy of agreement for sale dated 30/08/2018 executed between the Complainants and the Respondents No. 1 & 2. As per the said agreement the Respondents agreed to sell 0.11 % undivided share over A Schedule property, equivalent to 801.16 sft. for the purpose of constructing an apartment No. A3-N3044 on the 4th floor in block North wing-03 of the project with a carpet area of 2725.23 sq.ft, balcony area of 86.76 sft, and 718.29 of proportionate share in common areas, totalling to super built up area of 3530.28 sq.ft

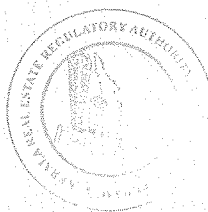


along with two car parking for a total consideration of Rs.1,22,25,360/-. **Ext.A2** is the copy of agreement for construction dated 30/08/2018 executed between the Complainants and the Respondents No. 1 & 2 represented by its respective authorised signatories. As per the said agreement, the Respondents 1 & 2 agreed to construct a 4 bed room apartment bearing No.A3-N3044 on the 4th floor in block North wing-03 of the project with a carpet area of 2725.23 sq.ft, balcony area of 86.76 sft, and 718.29 of proportionate share in common areas, totalling to super built up area of 3530.28 sq.ft along with two car parking in the stilt level for a total consideration of Rs.1,86,39,878/-. It was also stated in the said agreement that the Respondents shall complete and deliver possession of the apartment by the end of 31/12/2021. **Exbt.A3** is the copy of client ledger summary report for a period from 31/07/2018 to 24/03/2023. **Exbt.A4** is the copy of e-mail dated 16.03.2022 issued by the 1st Respondent to the Complainants stating that due to covid-19 Pandemic, the Authority by invoking Force Majeure extended the completion date of all projects and the date of expiry of registration by six months. **Exbt.A5** is the copy of legal notice dated 28.07.2022 issued by the Complainants to the Respondents, calling upon them to immediately handover the possession of apartment No. A3-N3044B and to pay interest for delay to the Complainants. **Exbt.A6** is the copy of Account Statement issued by the Complainant's Bank dated 04.04.2023. **Exbt.A7** is the copy of email dated 04/10/2023 issued by the 1st



Respondent demanding payment of Rs.17,28,454/-. **Exbt.A8** is the copy of application dated 09/09/2023 submitted before K-RERA under the Right to Information Act. **Exbt.A9** is the copy of reply dated 07/10/2023 issued by K-RERA under the RTI Act. **Exbt.A10** is the copy of email dated 01/12/2023 issued by the Respondents stating that Marina One North wing -3 tower is completed and ready for occupancy and handover process will be initiated on receipt of final payment. **Exbt.A11** is the copy of client ledger summary report from 31/07/2018 to 20/05/2024. **Exbt.A12** is the copy of letter dated 17/02/2024 issued by the Respondents to the Complainants, stating the residential address of the unit.

9. The documents produced from the part of Respondents are marked as **Exbts. B1 to B3**. **Ext.B1** is the copy of letter dated nil issued by the Complainants to the Respondents stating that they are liable to pay Rs.20,441/- to the Respondents towards interest for delay and is liable to pay along with balance instalment amount due. It is stated in the said letter that, based on their request the Respondents agreed to waive off the said amount charged towards late payment interest and considering the said reduction the Complainants agreed not to claim compensation for the delay caused for completion of the project as agreed or to hand over possession of the apartment due to any reason including but not limited to delay in receipt of occupancy certificate for the said project. **Exbt.B2** is the copy of letter dated 17/02/2024 issued by



the Complainants stating that they have made 100% payment for Flat No. A3-N3044 and agreed that the cancellation clause as per agreement becomes null and void from the date of signing this letter and requested to take the said letter as their deemed possession acceptance. **Exbt.B3** is the copy of letter dated 17/02/2024 issued by the Respondents to the Complainants stating the residential address of unit of the Complainants.

10. The above Compliant was finally heard and taken for orders on 11/03/2024. Thereafter, the Complainants have filed I.A.77/2024 on 27/05/2024 to accept additional documents, in which it was stated as follows: They have made final payments towards the instalment on 13/02/2024 and cleared all instalments as per the payment schedule of the agreement. Now the Complainants have made total payment of **Rs.3,65,52,131/-**, out of which Rs.3,59,66,361.18 has been paid towards the price of the apartment. The Respondents had charged Rs.23,25,348/- against the final instalment in which the Complainants must pay additional Rs.1,27,437/-. It was also submitted that on 17/02/2024 the Complainants got the delivery of the apartment after a delay of around 592 days from the promised date of delivery ie., 30/06/2022.

11. Then the Respondents have filed counter statement to the said I.A.No.77/2024 and stated as follows: They had issued a communication dated 01/12/2023 intimating the



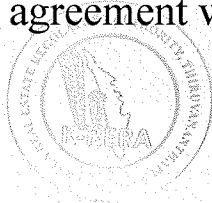
Complainants with respect to the completion of the apartment and offering to deliver the same as it has received occupancy certificate 10 days prior to the issuance of the said communication dated 01/12/2023. The Respondents had also forwarded to the Complainants final payment request dated 02/12/2023 seeking payment of the balance amount to be paid by the Complainants. The Complainants took possession of the apartment on 17/02/2024 on paying the balance amount on 16/02/2024 on arriving into an amicable settlement of the entire issues between the parties including the compensation claimed in this Complaint on fully realizing that the claim made by them is under wrong pretext. The Respondents further submitted that while taking delivery of the apartment, the Complainants had sought for waiver of interest charged upon him on account of delayed payments. Accordingly, the Respondents have given considerable concessions to the Complainants by way of interest deduction. While availing such concessions with respect to waiver of interest charged on him, the Complainants had issued a letter in favour of the Respondents. Accordingly, the Respondents have executed sale deed and registered as document No.1939/2024 on 06/06/2024 with the SRO Ernakulam.

12. During the final hearing, the learned counsel appeared for the Complainants contended that only based on the assurances given by the Respondents, the Complainants had booked an apartment bearing No.A3-N3044 at 4th floor, in Block



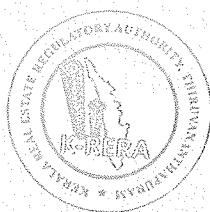
North Wing-03 along with 0.11% undivided share in the property for a total consideration of Rs.3,57,29,905/- and entered into two agreements ie., agreement for sale & construction on 30.08.2018 and as per clause 5.1 of the construction agreement the Respondents had agreed to complete and deliver possession of the apartment to the Complainants by 31.12.2021. He submitted that the Respondents/Promoters, sent an email on 16.03.2022, intimating the Complainants that the date of completion of construction has been extended as per the invocation of Force Majeure by Kerala Real Estate Regulatory Authority vide sec 6 of the RERA Act 2016 owing to Covid-19 Pandemic and on that account, the revised date of delivery and possession was on 30.06.2022. The Counsel for the Complainants argued that even after the said date, repeated requests were made from the Complainants' part to transfer the possession, but no positive action was taken by the Respondents and ultimately after filing the above complaint and at the fag end of the proceedings, on 17/02/2024 the Complainants was given delivery of the apartment after a delay of around 592 days from the promised date of delivery and the Complainants have paid total amount of Rs.3,65,52,131/- to the Respondents.

13. In his reply, the learned counsel appeared for the Respondents argued that the present Complaint being one filed quite prematurely is liable to be rejected. He argued that the date of completion as per the agreement was 31-12-2021 subject to the

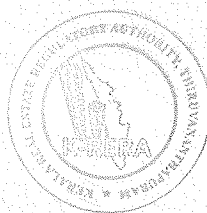


other clauses in the construction agreement and the Clause 5 of the construction agreement had provided a grace period of 9 months and as such the Respondents had time up to 01.10.2022 to effect delivery of the apartment. According to him, on account of the force majeure situation occasioned on account of the covid-19 Pandemic, the Respondents were further entitled for further extension of the completion date by one year more and as such the delivery time stands extended up to 30.09.2023 and moreover, the time granted by this Authority for completion of the Phase I of the project is up to 30.06.2025. The counsel argued that the Complainants who were fully aware of all such details, conditions and clauses with respect to the date of completion have chosen to file the present complaint on 10.04.2023 and hence it is liable to be dismissed.

14. As mentioned above, the project in question is a registered project under Section 3 of the Act 2016 before this Authority and the proposed date of completion is given by the promoter as 30.06.2025. The main contention raised by the Respondents was that the time granted by the Authority for completion of the Phase I of the project is up to 30.06.2025 and the Respondents need to provide delivery of the apartment only as per the time for completion fixed by the Authority and hence the Complaint is premature. It is a settled position of law that the date of promise for completion and handing over given to the allottees of ongoing projects through previous agreements shall not be



affected by the new timeline obtained by the Promoter through registration as per the 1st proviso to Section 3 of the Act 2016. While considering the same aspect, the Hon'ble Supreme Court of India in its judgement in *M/s Imperia Structures Ltd. vs. Anil Patni & another*, observed as follows: *"The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration."* At the same time, the arguments from the part of the Respondents cannot be discarded with respect to their helplessness to continue works during the force majeure situation arose in the Country in the form of Covid-19 pandemic and consequent lock downs in the years 2020 & 2021. The Respondents also pointed out the Clause concerned in the Exbt.A2 agreement insisting to take into account such force majeure events at the time of consideration of compensation prescribed therein for delay in completion and handing over. It is also found that in this case, the promised date of completion and handing over as per Exbt.A2 was clearly hit by the Covid -19 pandemic as mentioned above. During the final hearing, the learned counsel for the Respondents submitted that the Complainants took possession of the apartment on 17/02/2024 on paying the balance amount on 16/02/2024 on

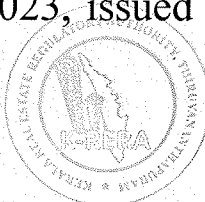


arriving into an amicable settlement of the entire issues between the parties including the compensation claimed in this Complaint on fully realizing that the claim made by them is under wrong pretext. It was also submitted that while taking delivery of the apartment, the Complainants had sought for waiver of interest charged upon them on account of delayed payments and the Respondents have given considerable concessions to the Complainants by way of interest deduction. According to the Respondents, while availing such concessions with respect to waiver of interest charged on him, the Complainants had issued Exbt.B1 letter in favour of the Respondents stating that the Complainants are liable to pay Rs.20,441/- to the Respondents towards interest for delay and is liable to pay along with balance instalment amount due and based on their request the Respondents agreed to waive off the said amount charged towards late payment interest. On perusal of Exbt. B1 letter, it is written that considering the abovesaid reduction of late payment interest, the Complainants "agreed not to claim compensation for the delay caused for completion of the project as agreed or to hand over possession of the apartment due to any reason including but not limited to delay in receipt of occupancy certificate for the said project". However, the learned counsel for the Complainants, during the final hearing, strongly objected the above-mentioned 'amicable settlement' claimed by the Respondents and denied issuance of Exbt.B1 letter produced by the Respondents. He argued that if at all said Exbt.B1



letter is taken into consideration in this stage of the proceedings, it may amount to dilution of the provisions of the Act 2016 and he reiterated that the Complainants had remitted the interest to the Respondents for the delay occurred in their payments as revealed from the documents placed on record.

15. It is obvious that 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. On perusal of the registration web portal of this Authority, it reveals that the project in question is not completed even now. On verification of data uploaded by the Respondents/Promoter in the registration web page it is seen that out of 293 units in the project in question, all the units have been sold out but the status of the project is still shown as "In progress". The Occupancy Certificate uploaded in the web page was seen issued to the project on 20/11/2023. It is also noted that the Form No.6 showing completion of the project is not yet uploaded by the Respondents/Promoters in the web portal. As far as this Authority is concerned, the registration web page of the project is an important piece of evidence in this respect and hence, the registration web portal reveals that the project in question is not completed even now. From Exbt.A7 which is the copy of email dated 04/10/2023, issued by the 1st Respondent to



the Complainants demanding payment of Rs.17,28,454/-, it could be seen that the Respondents demanded final payment from the Complainants only on 04/10/2023, which is after filing of the above Complaint before the Authority. On perusal of Exbt.A10 copy of email dated 01/12/2023 sent by the Respondents to the complainants, stating that “Marina One North wing-3 tower” is completed and ready for occupancy and handover process will be initiated on receipt of final payment”, it could be found that the apartment was completed and ready for taking possession only at that time. As the Occupancy Certificate was obtained only on 20.11.2023, it is obvious that the Respondents/Promoters could offer possession only after the said date, as they did as per the Exbt. A10 communication. Moreover, the Respondents themselves stated in their pleadings that *“Admittedly, these Respondents had completed 85% of the construction by November, 2021 and the present complaint has been made during April, 2023 without even ascertaining the factum of completion of the tower and the apartments therein”*. Anyhow, the communication with respect to the readiness for handing over was through Exbt. A10 e-mail dated 01.12.2023, after obtaining the Occupancy Certificate, as mentioned above. The Respondents/Promoters cannot shift the burden to the shoulders of the Complainants alleging delay in making instalments as the Complainants had paid interest for the delay in each payment. The Respondents themselves have admitted that “the Complainants have only paid Rs.3,18,03,541/-



towards the instalments and the balance amount paid is towards interest charged for belated payments.” It is also to be noted that the Complainants have paid 90% of the amount of consideration to the Respondents and paying interest on it every month to the bank from where they availed the loan. When the plea of the Respondents is taken into consideration with respect to the difficulties faced by them during the period of Covid-19 pandemic causing substantial delay in completing the project, this Authority is responsible equally to appreciate the submissions from the part of the Complainants regarding their issues on account of the same pandemic situation, which caused delay in their payments to the Respondents as per the terms of the agreements. As per Exbt.A2 agreement, the Respondents should have completed and handed over possession of the Unit on or before 31/12/2021. But the Occupancy Certificate is seen obtained to the project only on 20/11/2023 as mentioned above and admittedly, the Respondents have handed over possession of the apartment to the Complainants only on 17/02/2024 and the sale deed was executed in favour of the Complainants only on 06/06/2024. 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:

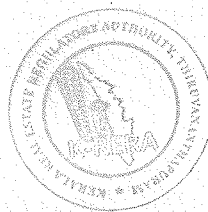
"Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. 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."

Hence, it has been established beyond doubt in this case that the Respondents/Promoters have failed to complete and handover the apartment to the Complainants as per the terms of Exbt. A2



agreement. Since the Respondents could not hand over possession as per the terms of the agreement, the Complainants are eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016.

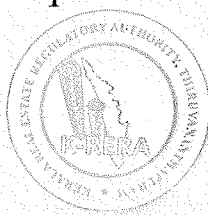
16. Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act, 2016”] states that “If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act-Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It will not be out of place to mention here, the observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others as follows: *“ If the Promoter fails to give possession of the apartment plot or building within the time*



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

17. In view of the above facts and findings as discussed in the pre paras, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete and hand over possession of the apartment to the Complainants herein as per the terms of the Exbt. A2 agreement and hence the Complainants herein are entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainants.

18. In the instant case, it has been found that the complainants have remitted entire amount of **Rs.3,63,80,203.76** to the Respondents. According to the Complainants the Possession was handed over to them only on 17/02/2024 and the complainants pray for interest for the delayed months. As per Exbt.A3, A6 and A11 out of the total amount, **Rs.2,83,95,952/-** was paid by the complainants before the promised date of completion, ie,



31/12/2021. The respective dates of payments made before 31/12/2021 are as follows: -

<u>Date</u>	<u>Amount</u>
31/07/2018	Rs.11,20,000.00
31/08/2018	Rs.51,23,813.00
01/09/2018	Rs.6,70,000.00
15/10/2018	Rs.27,65,525.00
24/04/2019	Rs.27,65,526.00
22/11/2019	Rs.27,90,217.00
24/01/2020	Rs.27,90,218.00
06/03/2020	Rs.27,90,217.00
03/09/2020	Rs.27,90,218.00
27/11/2020	Rs.27,90,218.00
18/05/2021	Rs.9,00,000.00
18/05/2021	Rs.11,00,000.00
Total	Rs. 2,83,95,952.00

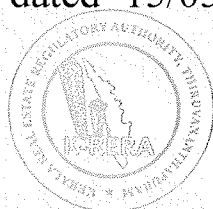
19. The respective dates of payments made after 31/12/2021, the promised date of completion and amounts in total are as follows: -

<u>Date</u>	<u>Amount</u>
25/01/2022	Rs.10,00,000.00



28/01/2022	Rs.10,00,000.00
21/07/2022	Rs.10,00,000.00
24/11/2022	Rs.9,58,475.82
27/03/2023	Rs.6,192.00
08/11/2023	Rs.17,28,453.00
13/02/2024	Rs.16,63,690.94
15/02/2024	Rs.1,00,000.00
17/02/2024	Rs.5,27,440.00
Total	Rs. 79,84,251.76
-	

20. As the complainants are found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the complainants as per the proviso to Section 18(1) of the Act, 2016. In this case the complainants are entitled to get interest for the period from 01/01/2022 till 17/02/2024, the date of actual handing over of possession on **Rs.2,83,95,952.00** which is the amount paid by them before the promised date of completion and also, they are entitled to get interest from the dates of payment of each amount, as shown in the table inserted above, paid after the promised date of completion till 17/02/2024, the actual date of handing over possession. But, in this case, the promised date of completion and handing over as per Exbt.A2 was clearly hit by the Covid -19 pandemic as mentioned above. In this regard, as per the Order No. K-RERA/T3/102/2020 dated 15/05/2020 and 19/07/2021, this



Authority had taken cognizance of the adverse effects of Covid-19 Pandemic and the lock downs on the real estate projects in the state and resolved to treat this as an event of force majeure as per the provisions of the Act, 2016. In view of the above, the one-year period from 31/12/2021 has been considered to be treated under the force majeure clause under the Act 2016 and found that the Respondents are not liable to pay delay interest for the said period of One year. Hence the delay interest is payable from 31/12/2022 in this case.

21. 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 15.15% with effect from 15/09/2024. Hence it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%].

22. On the basis of the facts and circumstances of the case as detailed above and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, the Respondents are hereby directed as follows:

1) The Respondents shall pay to the complainants, simple interest @ 17.15% per annum, (a) for **Rs.2,83,95,952/-** the

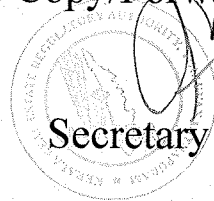


amount paid before the promised date of completion, for every month from 01/01/2023 till 17/02/2024 the date of handing over possession and (b) for the amounts paid after the promised date of completion, for every month from the date of each payment as mentioned in the table inserted above till 17/02/2024, the date of handing over possession.

2) If the Respondents fail to pay the aforesaid amount of interest as directed above, within a period of 60 days from the date of receipt of this order, the complainants are at liberty to recover the amount from the above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Smt. Preetha P Menon
Member

True Copy/Forwarded By/Order



Secretary (legal)

EXHIBITS

Documents produced from the side of Complainants

Exhibit A1: - Copy of Agreement for sale dated 30.08.2018.

Exhibit A2:- Copy of Agreement for Construction dated 30/08/2018.

Exhibit A3:- Copy of client ledger summary report up to 24.03.2023.

Exhibit A4: - Copy of e-mail dated 16.03.2022.

Exhibit A5: - Copy of legal notice dated 28.07.2022.

Exhibit A6:- Copy of loan Statement issued by Axis Bank dated 04.04.2023.

Exhibit A7:- Copy of email dated 04/10/2023.

Exhibit A8:- Copy of application dated 09/09/2023 submitted before K-RERA under the Right to Information Act.

Exhibit A9:- Copy of reply dated 07/10/2023 issued by K-RERA under the RTI Act.

Exhibit A10:- Copy of email dated 01/12/2023.

Exhibit A11:- Copy of client ledger summary report from 31/07/2018 to 20/05/2024.

Exhibit A12:- Copy of letter dated 17/02/2024 issued to the Complainants.

Documents produced from the side of Respondents

Exhibit B1:- Copy of letter dated nil issued by the Complainants.

Exhibit B2:- Copy of letter dated 17/02/2024 issued by the Complainants.

Exhibit B3:- Copy of letter dated 17/02/2024 issued by the Respondents.

