



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.124/2022

Present: Sri. M.P Mathews, Member

Dated 20th February, 2023.

Complainant

1. Shiju Varughese Simon,
Chempakathinal,
Nalkalikkal P.O,
Aranmula -689533.
2. Saino Hanna Varughese,
Chempakathinal,
Nalkalikkal P.O,
Aranmula -689533.

(By Adv. Thomas Kochenayil)

Respondents

1. M/s P.T.C Builders,
PTC Towers,
S.S Covil Road, Thampanoor,
Thiruvananthapuram- 695 004.
2. Biju Jacob
Managing Partner
Palasseril House, Kottamugal,
Nalanchira, Thiruvananthapuram.

(By Adv.V.Ajakumar)



3. Jacob Mathew,
Mulakkilethu House,
Makkamkunnu, Santhosh Junction,
Pathanamthitta P.O

(By Adv.V.Philip Mathews)

The above Complaint came up for virtual hearing today. Complainant and counsel for the Respondents attended the hearing.

ORDER

1. The Complainant is an allottee of project named 'PTC Western Ghats' located at Pathanamthitta District, developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, (Registration No. K-RERA/PRJ/011/2021).

2. The 2nd respondent, who is the managing director of the 1st respondent, approached the Complainants and offered to sell an apartment in their project "PTC Western Ghats". Subsequently, he handed over a brochure of the same to the Complainants. Based on the the brochure, the Complainant decided to book an apartment in the said project. The respondents made believe the Complainants that they had obtained Building Permit bearing No. BA 111/13-14 dated 13.5.2013 for the construction of the multistorey building in the property in Pathanamthitta Village, belonged to the 3rd Respondent. The respondents had commenced construction of the said multistorey



building in 2013. Believing the words, representation, assurances, acts and deeds of the respondents, the applicants entered into an agreement for sale with the respondents on 4.5.2016 with respect to a project proposed and offered by them. The 2nd respondent signed the said agreement for himself as well as on the behalf of the 1st respondent. The true copies of the brochure and the agreement dated 4.5.2016 are produced.

3. As per the said agreement the respondents had agreed to construct a multistorey residential apartment in the said project and hand over occupation and possession of an apartment bearing No. 5G, measuring a super built up area of 1225 sq. ft on the 5th floor along with a car parking space on the basement/ground floor marked as No. 5G in the said project, along with 1.33% of undivided interest in the said property for a total consideration of Rs. 42,58,100/- in an occupiable state and with the facilities and amenities as mentioned by December 2016, with a grace period of 6 months. However, the respondents have not completed the construction within the said period as represented and agreed. The materials used for the construction is of poor quality and there are many defects in the said construction. The following work are yet to be completed- Most of the pipes have leak, STP is in leaking condition, STP and drinking water tanks are next to each other, The quality of tiles and bathroom fittings are not upto the mark of display unit as shown during the time of booking, Car parking area has not been plastered, There is a crack in the first-



floor driveway. The stability and security of the building is in question, Electrical connection has not been made in all the apartments, Water connection has not been given by the water authority, Painting work has not been done, Tiles in the flats and corridors have not been paved, Most windows as not been fixed due to which birds and flies enter into the apartments and causes nuisance, The basement and car parking area get water-logged during monsoon, Most walls have leakage, Kitchen work has not been completed, No door is seen fixed at dining area towards balcony, Glasses used are thin and not resistant and are highly dangerous.

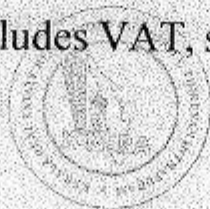
4. The applicants have been making payments as agreed by them in the above agreement. However, the respondents caused an inordinate delay in constructing the apartment and failed to perform their part of the obligations under the said agreement. As per the agreement, the value of the property is fixed to be Rs. 6,12,500/- and the cost of the apartment is fixed to be Rs. 36,45,600/- which includes VAT, service tax, cess and value of one covered car parking lot in the basement/ground floor. Thus, the applicants have paid a total sum of Rs. 29,41,000/- to the respondents as on 19.1.2017.

5. The Complainants further submitted that they have paid a sum of Rs. 17,00,000/- which included the above said amount by availing loan from the Federal Bank of India Ltd., Pathanamthitta and the said bank has been collecting and deducting



an amount of Rs. 23,418/- from the account of the Complainants maintained by them in the said bank by ACH on the first day of every month from 1.10.2016. Thus, the applicants have been repaying the loan amount together with interest even though the respondents failed to hand over occupation of the said apartment to the applicants within the time frame as agreed by them. The statement of account dated 1.9.2020 obtained from the above bank is produced. While so, the Complainants received a legal notice on 24.8.2020 from the respondents that they have obtained the occupancy certificate from the Pathanamthitta Municipality on 30.7.2020 and claiming various false allegations and stating that the applicants have to pay Rs. 35,82,987/- as balance amount for obtaining the apartment. Copy of the said notice is also produced.

6. The Complainant through their lawyer sent a reply dated 10.9.2020 to the notice sent by the respondents, whereby the applicants categorically denied the averments in the notice raised by the respondents and the building permit made mention of in the notice as No. BA 199/13-14 dated 29.8.2013 in place of building permit as No. BA 111/3-14 dated 13.5.2013 made mention of in the agreement entered into between the applicants and respondents. It is pertinent to note that as per the agreement, the total consideration for the sale of the above property and apartment with the amenities and facilities therein is Rs. 42,58,100/- which includes VAT, service tax, cess and value of one



covered car park. However, in the notice sent by the respondents, it is stated that tax, car park etc. have to be paid extra. The applicants had already paid a total sum of Rs. 29,41,000/- as on 19.1.2017 out of the total consideration of Rs. 42,58,100/- as agreed between the applicants and respondents in the agreement for sale. Now, the respondents claiming an amount of Rs. 35,82,987/- in addition to the amount of Rs. 29,41,000/- and thereby claim an amount of Rs. 6,23,987/- against the agreement price of Rs. 42,58,100/-. Copy of the reply notice issued by the Complainant through their lawyer is produced. However, it is submitted in the notice sent by the respondents that they have the right to resell the apartment if the applicants fail to pay the amount, which is exorbitant and against the agreement entered into between the applicants and respondents. The respondents have also issued advertisements in the Malayala Manorama daily dated 9.9.2020, regarding the sale of the property and apartment. The respondents have no authority, whatsoever to enter into agreement or contract to sell the above property and apartment as it is covered by the agreement between the applicants and the respondents which is still in existence due to the delay caused by the respondents in performing their part of obligations under the said agreement. Moreover, it is now learnt that the respondents have pledged or mortgaged the apartment and the facilities and amenities attached to the apartment agreed to be sold to the applicants with Federal Bank and they have availed huge amount by way of loan from the



Bank, on the security of the said apartment and the facilities and amenities attached thereto. Now the respondents raise illegal and unlawful claim and demand for more amount from the respondents against the terms and conditions in the agreement.

7. The Complainants are entitled to get refunded the entire amount of Rs. 29,41,000/- along with interest at 12% from 19.1.2017 till the date the respondents make the payment. The Complainants are also entitled to compensation for causing mental agony by delaying completing the construction. It is humbly requested that the Authority may be pleased to allow the reliefs claimed hereunder on the grounds explained above.

8. The reliefs sought by the Complainant is to refund the entire amount received by the respondents from the Complainants along with interest at 12% from 19.1.2017 till the date the date of realization.

9. The Respondents 1 & 2 have filed written statement stating that the above Complaint is not maintainable either in law or on facts. An allottee like the Complainant, who have deliberately violated his obligations under section 19 of the Act cannot file a complaint for return of the part paid amount towards cost of the construction which was already utilized for the construction based on the promise given by the Complainant. In spite of breach of promise by the Complainant to pay the amount



of consideration, the 1st Respondent has invested its own funds by availing loans at higher rate of interest and completed the construction and obtained occupancy certificate for the building and requested the Complainant to take possession of the Apartment No.5G by paying the balance amount with interest. But the Complainants refused to pay the balance amount to the 1st Respondent and to take possession of the apartment.

10. The Respondents further submitted that it is admitted by the 3rd Respondent that the 1st Respondent is the only person permitted to effect construction on his land by collecting money from the intending purchasers and a power of attorney was executed by the 3rd Respondent in favour of the 2nd Respondent in that regard. True copies of joint venture agreement and power of attorney are produced. It is the bounden duty of the 3rd Respondent to answer the claims of the allottees, and also the claims of the Respondents 1 & 2 for the breach of terms of joint venture agreement. The above Complaint is filed in active collusion with the 3rd Respondent to purposefully harass the Respondents 1 & 2 and to make unjust enrichment in this regard and evade payments due to the 1st Respondent.

11. It was further submitted that the agreement clearly stipulates that the obligations of the allottee to make payments in accordance with the progress of construction as agreed



in the schedule of the agreement. Admittedly the promise on the part of the allottee to make the payment as agreed and commitment on the part of the promoters to effect construction are reciprocal promises in respect of the same matter and the obligation on the part of the allottee to make the payment is the one first to be performed. If the allottee fails to make payments as agreed, the promoters are not bound to perform the reciprocal promise of construction as stipulated in Section 51 of the Indian Contract Act and under section 19 of the Act, 2016. So unless it is proved that the Complainant / allottee has performed his obligation of periodical payments, he cannot claim the possession of the apartment, interest for delay or any compensation. It is true that the Complainant had entered into an agreement with the 1st Respondent for purchase of Apartment No.9Q in the project vide agreement dated 03/08/2013. In addition to the cost of Rs.56,96,787/- the allottee is liable to pay VAT, Service Tax (Now GST), Cess etc. and has to meet stamp duty, registration charges, property tax and other taxes and also the connection charges. There were unforeseen circumstances in the construction which delayed the construction. There was substantial delay in getting permit for blasting rock under control circumstances and to transport the same under permit. Only thereafter the foundation work could be started.

12. It was further submitted that inspite of non payment of the agreed consideration on the part of the Complainant,



the Respondents 1 & 2 have completed the construction and obtained occupancy for the building through the 3rd Respondent after a long battle. All promised amenities are provided in the apartment complex and the construction of the apartment No.9Q is also completed. Various expert commissioners as well as the statutory Corporation has certified the completion of construction of the apartments and the completion of common amenities. Only if the construction are complete the Municipality will issue the Occupancy and the same was issued on 30/07/2020 by the Pathanamthitta Municipality.

13. The Respondents further submitted that though several demands for payment were made to the Complainant, he has not turned up to pay the balance payments due to the 1st Respondent. Hence the Complainant is liable to pay the balance amount along with interest for delayed payments and is bound to take possession of the apartment as the 1st Respondent has fully performed the obligations on its part even though the Complainant had committed total breach of the terms of the agreement and thereby the Respondents 1 & 2 were put to heavy loss. The 1st Respondent had filed separate Complaint against the Complainant and the 3rd Respondent to realize the balance amount and the interest for the delayed payments of instalments and balance consideration vide Complaint No.149/2021 and the same is pending before the Authority. As on 31/05/2021 the Complainant



has to pay an amount of Rs.51,03,466/- towards balance of contract value and the interest for delayed payments and Rs.6,85,274/- towards connection charges. On getting occupancy, notice dated 24/08/2020 was issued to the Complainant demanding payments. No fabricated documents were produced for obtaining the permit. A false Complaint was filed by the Power of attorney holder of the Complainant as Crime No.2947/2018 under section 420 r/w section 34 of IPC. The 2nd Respondent obtained anticipatory bail in the above crime and it is ruled by the Hon'ble Sessions Judge Pathanamthitta that no cheating was done by the Respondents. It is also learned that the said case was referred as false by the Police.

14. The Respondents further submitted that the Complainant has fully betrayed and cheated the Respondents 1 & 2 in collusion with 3rd Respondent who is constantly in war with the Respondents 1 & 2 since 2016 to make unjust enrichment on their part. Even the interim compromise award was violated by the 3rd Respondent and hence the Hon'ble Arbitral Tribunal has passed the final award in the dispute in between the 1st and the 3rd Respondents allowing partition and the interim award has become redundant. The Respondents have not violated any of the provisions of the Act, 2016. After completion of construction and obtaining occupancy the Complainant has no right to demand for cancelling the allotment and demand refund or interest as the contract on the part of the 1st Respondent was fully performed.



Copies of building permit dated 29/08/2013, joint venture agreement dated 10/09/2013, General power of attorney, copy of completion certificate filed by the 3rd Respondent along with the Architect reporting completion of construction, copy of Occupancy Certificate, copy of notice dated 24/08/2020 issued to the Complainant demanding payments, copy of land owner's agreement dated 09/05/2013, copy of general power of Attorney dated 10/05/2013, copy of interim award dated 25/11/2019, completion certificate and affidavit filed by the 3rd Respondent for issue of occupancy dated 27/07/2017 and 20/03/2020, true copy of memo filed by the 1st Respondent before the Arbitral Tribunal to direct the Respondent No.3 to register 14 sale deeds dated 27/01/2021 are the documents produced from the part of the Respondents 1 & 2.

15. The 3rd Respondent / Land owner has filed written statement and denied all the allegations in the Complaint and submitted that the 3rd Respondent is an unnecessary party in the proceedings. There is no agreement or transaction between the Complainant and the 3rd Respondent. The 3rd Respondent is the owner of the land where the PTC Builders have constructed the apartments mentioned in the Complaint. The 3rd Respondent is no way liable for the transactions which were only between the Complainant and the Respondents 1 & 2. The 3rd Respondent has not collected or received any amounts from the Complainant. The



agreement is for purchase of apartment constructed based on permit No.BA111/13-14 dated 13/05/2013. There was no such permit. The buildings / apartments now available in the property owned by the 3rd Respondent is constructed based on building Permit No.BA 199/13-14 dated 29/08/2013 obtained from Pathanamthitta Municipality. No document is produced by the Complainant justifying his claim over the building / apartments constructed based on building permit No.199/13-14.

16. The 3rd Respondent further submitted that during the year 2013 the 2nd Respondent had approached the 3rd Respondent and requested him to permit him to construct residential apartments in 41 cents of land of the 3rd Respondent. He offered to allot 20% space of the total constructed area to 3rd Respondent. After discussions respondents 1 & 2 requested the 3rd Respondent to permit them to make constructions in 57 cents instead of 41 cents. They offered to pay Rs.30,00,000/- to the 3rd Respondent in addition to 20% of constructed area. They also made the 3rd Respondent believe that the total constructed area would be 80,000 sq.ft. and 14 apartments were agreed to be given to 3rd Respondent. Subsequently 2nd Respondent purchased 1 apartment from the 3rd Respondent out of the 14 apartments offered and paid Rs.42,63,000/-. The original receipt dated 11/06/2013 regarding the said transaction is also produced. The sum of Rs.30,00,000/- offered was then reduced and total amount to be paid was fixed as Rs.70,00,000/-. Total sum of



Rs.27,37,000/- after Rs.42,63,000/- was agreed to be paid on or before 09/06/2014. The possession of the land was handed over on 10/05/2013 to the Respondents 1 & 2. The Respondents 1 & 2 did not completed the constructions within 24 months as agreed. Balance payment of Rs.27,37,000/- due to the 3rd Respondent was also not paid before 09/06/2014. Therefore the 3rd Respondent initiated steps for appointment of arbitrator. During the course of arbitration the time for completion was extended up to 31/12/2017 as requested by the Respondents 1 & 2. Copy of order dated 23/10/2017 passed by the Arbitrator in Arbitration Request No.39/15 is also produced. The Respondents 1 & 2 did not complete the construction of apartments before 31/12/2017 as agreed in the arbitration proceedings.

17. It was further submitted that the Respondents 1 & 2 attempted to get the Occupancy Certificate from Pathanamthitta Municipality without completing the constructions. Hence application submitted was rejected. Thereafter the Municipal Secretary by notice / order dated 13/06/2018 directed that no one should be permitted to occupy the apartment without occupancy certificate. The Municipal Secretary vide communication dated 23/08/2018 informed the builder and 3rd Respondent that the Occupancy cannot be issued considering the difference between site plan for which permit was given and site plan produced with completion plan. The second Respondent has filed appeal



Nos.620/18 & 754/18 before the Tribunal for Local Self Government Institutions, Thiruvananthapuram challenging the orders rejecting Occupancy Certificate. The building permit was valid till 26/08/2016. Before its expiry the 2nd Respondent submitted application dated 28/07/2016 by forging the signature of third Respondent for renewal of permit. The Municipal Authorities detected the forgery and issued communication dated 26/10/2016 stating that signature in the application for renewal of permit is different from the signature in other documents submitted by the 3rd Respondent. Later on 23/02/2017 the Respondents 1 & 2 issued a letter to the third Respondent admitting the forgery.

18. In this connection the 3rd Respondent further submitted that as construction was not over by June 2018, the 3rd Respondent filed AR.No.67/18 before the Hon'ble High Court of Kerala for appointment of Arbitrator. A retired judge was appointed as Arbitrator and during the course the disputes were settled as Respondents 1 & 2 / builder promised to complete the construction on or before 31/12/2019 providing all common amenities. A written settlement was signed on 27/10/2019. Arbitration proceedings terminated as per section 30(2) of the Arbitration & Conciliation Act, 1996. There was no correction, interpretation or additional award within the time prescribed in section 33 of the Arbitration Act. The time limit fixed under section 29A (3) of the Arbitration Act expired in November 2020. The Respondents 1 & 2 did not



complete the works before 31/12/2019. There is no water connection from KWA till now as he has not made necessary payments. There is leakage in several parts of the building. Parking areas are filled with water during rains due to poor quality and defective constructions. There is no provision for civic infrastructure such as water and sanitation in the building. So 3rd Respondent did not sign the application for occupancy certificate to ensure that builder completes the work and make the building habitable.

19. The 3rd Respondent further submitted that the Respondents 1 & 2 filed application before the Arbitrator in March 2020 praying to direct the 3rd Respondent to sign and submit application for occupancy Certificate. The 3rd Respondent has filed objection before the Arbitrator. Later the Arbitrator passed an order to sign the application on 19/03/2020 and the 3rd Respondent was forced to reluctantly sign the application for occupancy certificate. The third Respondent is also an allottee. He has been offered 13 apartments. The Respondents 1 & 2 are not permitting the 3rd Respondent to enter into the apartments to prevent detection of irregularities committed by him. They have locked the gate.

20. The Authority heard the learned counsel for both the parties and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 to



A5. The documents produced from the part of the Respondents are marked as Exbt.B1 to B13.

21. **Exbt.A1** is the copy of agreement for sale and construction execution between the 1st Respondent represented by the 2nd Respondent and the Complainant. As per the said agreement the 1st Respondent /builder agreed to sell the Flat No.5G in the project 'PTC Western Ghats', having super built up area of 1225 sq. ft, situated in the 5th floor and a car parking marked as 5G along with 1.33 of undivided interest in the A schedule property for a total consideration of Rs.42,58,100/-. It was also stated in the agreement that the Respondents / Builder will complete the Construction by December 2016 with a grace period of 6 months.

22. **Exbt.A2** is the copy of brochure released by the 1st Respondent. **Exbt.A4** Copy of lawyer's notice issued by the 1st Respondent demanding balance amount. **Exbt.A5** is the copy of reply to the lawyer's notice send by the Complainant.

23. **Exbt.B2** is the copy of Land Owners Agreement dated 10/09/2013 executed between the 1st Respondent represented by the 2nd Respondent and 3rd Respondent. It was stated in the agreement that the Builder / Respondent 1 & 2 have conceived a project for constructing a multi storeyed residential apartment complex on the land owned by the 3rd Respondent which is



described as A schedule and in accordance with the above agreement the 3rd Respondent applied for and obtained permit from the Pathanamthitta Municipality for the construction of the apartment building with basement Floor, ground floor and 12 upper floors coupled with terrace floor and machine room.

24. Exbt.B3 is the copy of Power of Attorney executed by the 3rd Respondent in favour of the 1st Respondent represented by the 2nd Respondent. As per Exbt.B3, the 3rd Respondent had authorised the 1st Respondent to enter into agreements, MOU with intending purchasers, to receive / pay money in their names, or in the names of their nominees.

25. The Occupancy Certificate was received on 30/07/2020 and was produced by the 1st Respondent / Promoter and is marked as Exbt.B5. Immediately after obtaining the Occupancy Certificate the 1st Respondent had sent a legal notice to the Complainants to settle the balance payment and take possession of the apartment under section 19(10) of the Act, 2016 within 2 months from the date of receipt of occupancy certificate . In the legal notice the Respondents had claimed balance amount of Rs.15,53,201/- out of the agreed contract value of Rs.42,58,100/-. Though the Complainants initially expressed their willingness to take possession provided, the balance works were completed within 7



days on receipt of the Exbt.A5 reply notice, the Complainants insisted on withdrawal under section 18 subsequently. In the Written statement filed by the Respondents they admitted that there were unforeseen circumstances in the construction which delayed the construction. According to the Respondents 1 & 2 there was substantial delay in getting permit for blasting rock and to transport the same under permit, and only after the above work was completed the foundation work commenced.

26. As per Exbt.A4 & A5 the 1st Respondent has collected an amount of Rs.29,41,000/- from the Complainants. No payments were made to the 3rd Respondent and in the application for registration under section 3 of the Act, 2016 submitted by the 1st Respondent, the promoter is shown as the 1st Respondent and the authorised signatory is the 2nd Respondent. The 1st Respondent has not raised any objection on payments received from the Complainant. The details of the payment made to the 1st Respondents is as follows:-

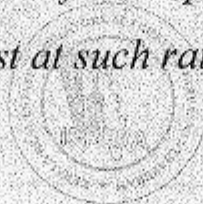
Payment schedule

<u>Date</u>	<u>Amount</u>
13/01/2016	Rs.1,000.00
18/01/2016	Rs.4,99,000.00
06/06/2016	Rs.2,00,000.00
29/07/2016	Rs.1,00,000.00
16/08/2016	Rs.1,40,000.00
31/08/2016	Rs.15,00,000.00



26/10/2016		Rs.1,00,000.00
31/10/2016		Rs.1,000.00
22/11/2016		Rs.1,00,000.00
17/01/2017		Rs.1,00,000.00
19/01/2017		Rs.2,00,000.00
Total		Rs.29,41,000.00

27. The promised date of completion as per the Exbt.A1 agreement was December 2016 with a grace period of 6 months and occupancy certificate for the project was obtained only on 30/07/2020, the Complaint is entitled to withdraw from the project and claim refund of the amount paid with interest as per section 18 of the Act, 2016. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this*



behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed". The Section 19(4) of the Act also specifies that "The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, 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 agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder". Here, in this case the Allottee is entitled to claim refund of the amount paid with interest, as the promoter failed to complete and is unable to give possession of the apartment as per the agreement.

28. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below "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/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".

On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under the Act, 2016.

29. Hence, the Complainant herein is entitled to get refund of the amount paid by him along with interest according to section 18 of the Act, 2016. 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 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018, but the Complainants limited their claim to 12% interest. Hence it is found that the Respondent's 1 and 2 are liable to refund Rs.29,41,000/- received by them to the Complainant along with 12% simple interest on the amount received as per the above payment schedule from the date of receipt of payment till the date of realization.

30. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order: -

1. The Respondents 1 & 2 shall refund the amount of **Rs.29,41,000/-** to the Complainants with simple interest @ 12% per annum on the payment made as per the above schedule from the date of each payment, till the date of realization.

2. If the Respondents fail to pay the aforesaid sum 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 No.1



and its assets & Respondents No.2 and his assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Sri M.P Mathews
Member

/True Copy/Forwarded By/Order



Secretary (legal)

Exhibits**Exhibits marked from the side of Complainants**

Ext.A1- Copy of deed of agreement for sale & Construction dated 04/05/2016.

Ext.A2- Copy of brochure.

Ext.A3 series-Copies of Photographs.

Ext.A4-Copy of legal notice issued by Respondents.

Ext.A5-Copy of reply notice issued by Complainants.

Exhibits marked from the side of Respondents 1 & 2

Ext.B1- Copy of building permit dated 29/08/2013

Ext.B2- Copy of Land Owner's Agreement dated 10/09/2013

Ext.B3- Copy of power of Attorney.

Ext.B4- Copy of Completion certificate filed by the 3rd Respondent along with the Architect reporting completion of construction.

Ext.B5- Copy of Occupancy Certificate dated 30/07/2020.

Ext.B6- Copy of notice dated 09/10/2020 issued to the Complainant demanding payments.

Exhibits marked from the side of 3rd Respondent

Ext.B7- Copy of receipt dated 11/06/2013.

Ext.B8- Copy of letter dated 23/02/2017 issued by the Respondents 1 & 2.

Ext.B9- Copy of Order dated 21/07/2022 in R.P.No.490/2022.

Ext.B10-Copy of judgement dated 16/12/2022 in Con. Case No.2243/22.

Ext.B11- Copy of application for registration of project dated 09/12/2020 submitted by the 1st Respondent.

Ext.B12-Copy of affidavit filed by the 2nd Respondent before Pollution control board.

Ext.B13- Copy of letter dated 05/12/2022 informing the Complainants about 3rd Respondents willingness to execute sale deed.