



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

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

**Complaint No. 132/2022  
Dated 11<sup>th</sup> September, 2023**

**Complainants**

1. N Sajeevan  
S/o Neelakantan  
Kaduvinal Tharayil,  
Athnad North P.O,  
Karunagappally, Kollam 690 542  
  
Prema Sajeevan,  
W/o Sajeevan  
Kaduvinal Tharayil,  
Athnad North P.O,  
Karunagappally, Kollam 690 542  
[Adv. M.Rajendran Nair & Sreedharan Nair]

**Respondents**

1. Samson and Sons Builders & Developers Pvt. Ltd  
Represented by its Managing Director  
Mr. John Jacob, T.C. 3/679, TKD Road,  
Muttada P.O, Thiruvananthapuram- 695 025.
2. Mr. John Jacob,  
Managing Director, Samson and Sons Builders  
& Developers Pvt. Ltd, T.C 3/678,  
Kannimattom, Muttada P.O,  
Thiruvananthapuram- 695 025.



The above Complaint came up for hearing on 19-07-2023 for which the Counsel for the Complainants attended online. Service of notice was completed on Respondents. The Respondents did not attend any of the hearings on 13-06-2022, 11-08-2022 and lastly on 19-07-2023. Hence, the Respondents set ex-parte and the Authority on 19-07-2023 decided to pass exparte order as follows:

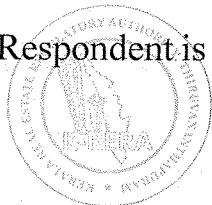
### **ORDER**

1. The case of the complainants is as follows:- The Complainants are allottees in the project named "Samson & Sons Sanctuary- Skylark (Block-I)" situated in RS No. 462/5, 462/6 & 465/4 Block No 34 of Karakulam village in Thiruvananthapuram with a total extent of 72.25 Ares belonging to the Respondents. The Complainants lured by the catchy advertisement and personal appeals by the 2<sup>nd</sup> Respondent and his agents entered in to an agreement for sale and construction dated 10-10-2012 with the Respondents, for the purchase of a flat in the above project. As per the agreement the Respondents agreed to sell 0.988 cents of undivided share in the said 72.25 Ares together with apartment No D-8 admeasuring (approximate) 1859 Sq.ft super built up area for a consideration of Rs. 35,00,000/- The agreement provided for the completion of the multi-storied apartment complex within the expected time frame of 31<sup>st</sup> December, 2015 with the facilities as specified in the brochure and transfer right to the allottee with proportionate right over undivided share of property free from mortgage, charge, attachment, arrears of tax etc. and similar agreements were executed with other investors also. The Respondents were learnt to have obtained huge sum of money nearly nine crores from the State Bank of India

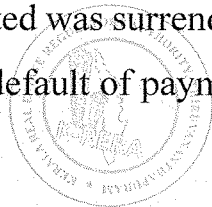


by mortgaging the property to the bank, the Respondents were dishonestly deceiving the Complainants and other investors offering to transfer title, free of mortgage, charge or other encumbrances. In spite of the lapse of several years, the Respondents did not complete the construction and they abandoned the site and thereby cheated the investors including the Complainants. The Complainants and other investors approached the Respondents when the site was so abandoned and sale proclamation notice was published by the bank, and had several discussions with the 2<sup>nd</sup> Respondent, though the 2<sup>nd</sup> Respondent initially promised and gave assurance to discharge the liabilities and complete the construction and hand over the apartment to the allottees and such assurances were violated and ignored. As the bank had initiated proceedings for the recovery of amount, the Complainants cannot expect to get completed the apartment as per agreement. Hence notice dated 03-03-2021 was issued to the Respondents demanding the money with interest and compensation as provided under section 18 of the Real Estate (Regulation and Development) Act, 2016. The Respondents had not responded to the notice. The consideration amount was paid by raising loan from the bank and incurred huge loss. The Complainants and similar allottees have a first charge on the property u/s 56 of the Transfer of Property Act. The relief sought for is for a direction to the Respondents to return the sum of Rs. 35,00,000/- with interest at 18% from the date of payment ie on 10-10-2012 till date of repayment and allow the Complainants to recover the sum from the Respondents and the property as first charge on the property. The Complainants have produced copies of agreement, receipts of payments, brochure of the project, photograph of site and lawyer notice sent to the Respondents.

2. Though notice was served and ample time was granted the Respondents have not attended or filed any objection/ statement to the Complaint. The 1<sup>st</sup> Respondent is a Private Limited company, 2<sup>nd</sup> Respondent



is the Managing Director, representing the 1<sup>st</sup> Respondent Company. In a Suo moto Notice issued by this Authority vide No 920/K-RERA/2020 dated 07-11-2020, with respect to a Complaint in No. 158/2020 filed by an allottee of another project named 'Orchid Valley' against the Respondent/promoter herein, the Authority directed the 2<sup>nd</sup> Respondent, the Managing Director of the 1<sup>st</sup> Respondent Company, to show cause for the non-registration of the said on-going real estate project named "Samson & Son's Orchid Valley" at Kudappanakkunnu village Thiruvananthapuram, under Section 3 of the Real Estate (Regulation and Development) Act, 2016, [herein after referred to as the Act, 2016]. Since the Respondents had not replied, second notice was sent on 11-02-2021 and to the same also, the Respondent had not replied. Thereafter, notice was sent again, directing Respondent to attend for an online hearing for taking a decision in the matter of registration of the said project in respect to which, the 2<sup>nd</sup> Respondent had furnished a reply dated 14-06-2021, in which it was submitted that the Respondent Company, engaged in the construction of multi-storied residential and commercial apartments, had undertaken and completed various projects for the last 13 years including the one mentioned above. According to the Respondent, the project was started prior to the commencement of the Act, 2016 and therefore the project could not be registered. Various factors affected the construction of the project, in the meantime, the customers of the projects were withdrawn from the agreement and filed cases against the company before various Forums including this Authority, the Directors of the Company were arrested and committed to jail. Even though the Directors were arrested and committed to prison, construction were going on, but under the pretext of cases, the customers had defaulted the payments of their shares of money as per the agreements. Apart from that, the property wherein the project was proposed to be constructed was surrendered as collateral security in Muthoot Fincorp and due to the default of payment from the customers, the bank has

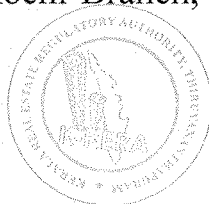


taken possession of the property under SARFAESI Act and the company is not having possession over the project now. In the situation the company could not proceed with the construction works of the projects. Attachment orders by the Civil Courts are also pending with respect to the project land and hence the company was constrained to abandon the project. Since the project is abandoned, the project could not be registered under the provisions of the Act, 2016. If the circumstances allow to proceed with the project in future and if cases are settled by customers and when attachment orders are withdrawn, the project can be proceeded with and under that circumstances it will be registered with the Authority and the Respondent requested the Authority to accept the reply and taken into file.

3. As the said reply was not satisfactory, the Authority sent a notice dated 28-10-2021 again to the Respondent to attend for hearing. But the Respondent failed to attend the hearing. Thereafter, the 2nd Respondent filed a reply on 06-04-2022 and submitted that cases are pending before Consumer Commission and in the National Company Law Tribunal (Kochi Branch), liquidation proceedings are going on and all relevant documents and account details are under the custody of the Insolvency Professional appointed by the National Company Tribunal Kochi Branch, Kerala. The Respondent has produced copy of Order No CP(IB)/05/KOB/2021 dated 03-11-2021 of the National Company Law Tribunal Kochi Branch, Kerala, ordering Corporate Insolvency Resolution Process in a Petition filed by one Operational creditor Mr. Vijayakumaran J, V.J. Constructions Kanyakumari District against the Corporate Debtor, Respondents No. 1 herein, and Copy of Order No I.A. (IBC) No. 14(KOB)/2022 in CP(IB)/05/KOB/2021 dated 16-03-2022 appointing Sri. K. Parameswaran Nair as the Resolution Professional in this matter. Then the Authority issued notice to the said Resolution Professional on 23-08-2022, calling details of proceedings initiated against the Respondent/ Promoter, in response to which Sri. K. Parameswaran Nair, the



Resolution Professional, vide letter dated 13-09-2022, has submitted a report with respect to the Corporate Insolvency Resolution Process (CIRP) of Respondent No 1 under Insolvency and Bankruptcy Code, 2016. In the said report, the Resolution Professional stated that the NCLT bench had initiated CIRP with effect from 03-11-2021 vide order No CP(IB)/05/KOB/2021 dated 03-11-2021 and the present Resolution Professional was appointed vide Order No I.A. (IBC) No. 14 (KOB)/2022 in CP(IB)/05/KOB/2021 dated 16-03-2022 and made public announcements inviting for the claims on 15-11-2021, the Resolution Professional appointed the IBBI registered valuers on 25-05-2022 to estimate the fair and liquidation value of the assets as per IBC, appointed Forensic auditors also to find out the excessive PUFEE transactions, the Resolution Professional made a public announcement on 10-06-2022 in Form G giving Expression of Interest from the Prospective resolution Applicants based on which the last date for Resolution Application was 18-09-2022, which the applicants requested for extension due to the reason that, i) the audited financials are available only up to 31-03-2015, ii) the accounts, financials and tally are unsigned and provisionally submitted only on 21-07-2022, iii) Resolution Professional prepared the Information Memorandum based only on the available information, which needs substantial modification also after getting the major details such a Allottee Register, Fixed Asset Register, Statutory Registers, Minutes of Board Meeting, AGM, EOGM, bank statement etc, and iv) since the Resolution Professional had not received these details and documents in spite of repeated requests in writing, emails and phone calls, the RP filed a report u/s 19(2) of the IBC for Non- Co-operation against the Promoter Directors, the second hearing was on 19-09-2022. The Resolution Professional has also produced copy of Order No CP(IB)/05/KOB/2021 dated 03-11-2021 of the National Company Law Tribunal Kochi Branch, Kerala and copy of Order No I.A.



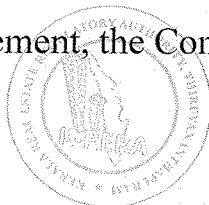
(IBC) No. 14 (KOB)/2022 in CP(IB)/05/KOB/2021 dated 16-03-2022 appointing Sri. K. Parameswaran Nair as the Resolution Professional.

4. Thereafter, the Resolution Professional through email dated 04-05-2023, has forwarded copy of order of the NCLT Kochi Branch No I.A. (IBC) 157 (KOB)/2023 in CP(IB)/05/KOB/2021 dated 26-04-2023. As per the said order, the Respondent M/s Samson & Sons Builders and Developers (P) Ltd., was ordered to be liquidated u/s 33 of the Insolvency and Bankruptcy Code 2016. Sri. K. Parameswaran Nair, the Insolvency Resolution Professional was appointed as the Liquidator of M/s Samson and Sons Builders and Developers Pvt. Ltd and directions was issued for the Liquidation process. Then on the basis of the said order the Counsel for the Complainants also appeared before the Authority, to revive the files which were kept in abeyance and requested to pass orders. Copy of the said order is produced by him also.

5. The project still remains un-registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016, before this Authority.

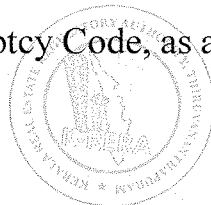
6. Heard the Counsel for the Complainant and examined the documents submitted by the Complainant carefully and decided to pass order as follows:

7. The copies of documents produced by the Complainants are marked as **Exhibit A1 to A8**. The copy of agreement for sale and construction dated 10-10-2012 is marked as **Exhibit A1**. As per the said agreement the Respondent No. 1 represented by Respondent No.2 agreed to sell 0.988 cents of undivided share in the said 178 cents together with apartment No C-16 admeasuring (approximate) 1859 Sq.ft super built up area in the multi-storied residential apartment complex, with car parking area and the proportionate common areas and common amenities. The copy of bank transaction statement of the Complainants is marked as **Exhibit A2**. As per the said statement, the Complainants had made a total payment



of Rs. 35,00,000/- to the Respondents. Rupees Thirty lakh was paid on 15-10-2012 and Rupees Five lakh on 17-10-2012. The copy of Brochure of the project released by the Respondent is marked as **Exhibit A3**. The brochure shows that the project was planned with more than one tower. The photographs of the project site are marked as **Exhibit A4 series**. The photographs reveal that the project is still incomplete and in its initial stage, ie, in the level of erecting pillars at 1<sup>st</sup> or 2<sup>nd</sup> floor level. The copy of lawyer notice dated 03-03-2021 sent by the Complainants to the Respondent is marked as **Exhibit A5**. The copy of Order in I.A No. 968/21 in C.C. No. 174/2016 dated 18-04-2013 of the Kerala State Consumer disputes Redressal Commission, Thiruvananthapuram produced by the Complainants is marked as **Exhibit A6**. The copy of final Order in C.C. No. 143/2016 dated 15-06-2013 of the Kerala State Consumer disputes Redressal Commission, Thiruvananthapuram produced by the Complainants is marked as **Exhibit A7**. The copy of order of the NCLT Kochi Branch in No I.A. (IBC) 157 (KOB)/2023 in CP(IB)/05/KOB/2021 dated 26-04-2023 with respect to initiation of liquidation process by appointing Sri. K. Parameswaran Nair, the Insolvency Resolution Professional as the Liquidator of M/s Samson and Sons Builders and Developers Pvt. Ltd., which is produced by the Counsel for Complainants is marked as **Exhibit A8** The Exhibits A6, A7 and A8 reveals that the assets of the Respondents are under Corporate Insolvency Resolution process and the National Company Law Tribunal has ordered Liquidation of the Respondent No. 1 Company and a Liquidator was also appointed for this purpose.

8. The Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Limited & Another Vs Union of India and Others (2019) 8 SCC 416 held that the Act, 2016 is to be read harmoniously with the Insolvency and Bankruptcy Code, as amended by the Amendment Act and





it is only in the event of conflict that the Code will prevail over the Act, 2016, the remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, the Act, 2016 as well as the triggering of the Insolvency and Bankruptcy Code. Hence this Authority is competent to adjudicate the matter in question under the Complaint.

9. Section 52 of the Insolvency and Bankruptcy Code 2016,[herein after referred to as “the Code, 2016”] explains the position of a secured creditor in liquidation proceedings, as follows:

*“(1) A secured creditor in the liquidation proceedings may—*

*(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

*(b) realise its security interest in the manner specified in this section.*

*(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.*

*(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—*

*(a) by the records of such security interest maintained by an information utility; or*

*(b) by such other means as may be specified by the Board.*

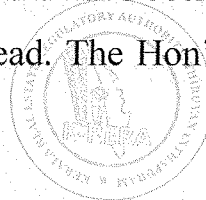
*(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.*

*(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.*



*may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*” As per Section 19(4) of the Act 2016, “*the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, if the promoter fails to comply or is unable to give possession of the apartment, plot or building as the case may be, in accordance with the terms of the agreement for sale*”. As per Exhibit A1 agreement the project had to be completed before 31<sup>st</sup> December, 2015. From the pleadings and the documents produced as Exhibit A4, A6 and A7, it is confirmed that the project is one which had been abandoned by the Respondents/ Promoters. 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. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. In this case the Complainants selected the second option, to withdraw from the project and to claim refund with interest.

12. As per the Exhibit A1 agreement, the promised date of completion and handing over was on 31<sup>st</sup> December, 2015, but Exhibit A4, A6, A7 reveals that the project remains still incomplete. Hence it is clear that the Respondent/Promoter has grievously failed to perform his part and honour the promises given to the Complainants who trusted him and invested their hard-earned savings and have been waiting for a long period in the dream of a roof over the head. The Hon'ble Supreme Court in its



landmark judgment dated 11.11.2021 in M/s Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows: *“The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act”*. In these circumstances, the complainants herein are entitled to withdraw from the project under Section 18 of the Real Estate (Regulation & Development) Act 2016, and claim the return of the amount paid to the Respondents along with interest from the date of receipt of payment by the promotor till refund to the Complainants with interest. Moreover, **Section 69(1) of the Act, 2016** stipulates that *“where an offence under the Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”*

13. The interest payable by the Respondents to the allottees is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.85%. Hence,



the allowable interest rate is  $14.85\% + 2\% = 16.85\%$ . The relevant portions of Rule 18 of the said Rules is extracted below: “(1) *The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India’s Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.*”

14. From Exhibit A2, it is clear that the Respondents had received an amount of Rs.35,00,000/- from the Complainant. The details of the payment made to the respondents is scheduled below: -

<u>Date</u>	<u>Amount</u>
15-10-2012	Rs. 30,00,000.00
17-10-2012	Rs.5,00,000.00

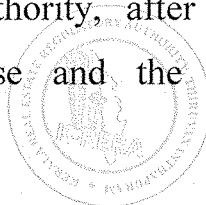
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<b>Total</b>	-	<b>Rs.35,00,000.00</b>
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15. Hence, the Complainants are entitled for refund of an amount of Rs. 35,00,000/- paid by them along with interest at the rate of 16.85% Percent per annum, as simple interest from the respective dates of payment till date of realization of amount. As per provisions of Section 52 of the Code, 2016, the complainants, the secured creditor herein may approach the Liquidator for realisation of security interest under Section 52 of the Code, 2016.

16. The Authority, after going through the facts and circumstances of the case and the documents produced by the



Complainants and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016 hereby directs as follows: -

- i) The Respondents shall return the total amount of, **Rs.35,00,000/-** received by them, as scheduled above, **with simple interest @ 16.85% per annum**, to the Complainants, from the respective dates of payment, as shown in the schedule above, till the date of realisation of amount.
- ii) If the Respondents fail to pay the aforesaid sum with interest as directed above within a period of 60 days from the date of receipt of this order, the Complainants are at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder and in this particular case, the Complainants are at liberty to proceed under the Code, 2016 for realisation of security interest under Section 52 of the Code, 2016 by intimating the liquidator.
- iii) The registry shall forward a copy of this order to the Liquidator of Samson & Sons Builders & Developers Pvt. Ltd., appointed under the Code, 2016.

Sd/-  
Preetha P. Menon,  
Member.

Sd/-  
P. H. Kurian,  
Chairman



True Copy/Forwarded By/Order

Secretary (Legal)

## APPENDIX

### Exhibits marked on the side of the Complainants

- Exhibit A1: The copy of agreement for sale and construction dated 10-10-2012.
- Exhibit A2: The copy of bank statement of the Complainants.
- Exhibit A3: The copy of Brochure of the project
- Exhibit A4 series: The copy of photographs of the project site.
- Exhibit A5: The copy of lawyer notice dated 03-03-2021 sent by the Complainant to the Respondent
- Exhibit A6: The copy of Order in I.A No. 968/21 in C.C. No. 174/2016 dated 18-04-2013 of the Kerala State Consumer disputes Redressal Commission, Thiruvananthapuram
- Exhibit A7: The copy of final Order in C.C. No. 143/2016 dated 15-06-2013 of the Kerala State Consumer disputes Redressal Commission, Thiruvananthapuram.
- Exhibit A8: The copy of order of the NCLT Kochi Branch No I.A. (IBC) 157 (KOB)/2023 in CP(IB)/05/KOB/2021 dated 26-04-2023 appointing Sri. K. Parameswaran Nair, the Insolvency Resolution Professional as the Liquidator of M/s Samson and Sons Builders and Developers Pvt. Ltd

### Exhibits marked on the side of the Respondents

NIL

