

**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Present: Sri. M.P. Mathews, Member

Complaint No. 169/2022

Dated 12th January, 2024

Complainants

1. Titus Kuraikose Koshi
PalamootilMadathil,
Peringilipuram, Ennakkad P.O,
Chengannur, Alleppey – 689624.
2. Shanti Kurienkoshi,
W/o Titus KuriakoseKoshi,
PalamootilMadathil,
Peringilipuram, Ennakkad P.O,
Chengannur, Alleppey – 689624

(By. Adv. Ramesh Cherian John)

Respondents

- 1 M/s Abad Builders Pvt. Ltd.,
8th Floor, Nucleus Mall & Office,
NH 85 (Kundanoor – Petta Road),
Maradu P.O, Kochi – 682304
Represented by its Managing Director
Mr. Najeeb Zackeria

(Impleaded as per order in IA No.20/2023)

- 2 M/s Infra Housing Pvt. Ltd,
1st Floor, CLS Building,



M. G Road, Ernakulam – 682011,
Represented by its Director
Mr George E George

- 3 Mr. George E George
Director M/s Infra Housing Pvt Ltd,
Villa No. 34,
Infra Meadows,
CSEZ P.O, Kakkanad,
Kochi – 682037
- 4 Mr. John George,
M/s Infra Housing Pvt Ltd,
1st Floor CLS Building,
M G Road, Ernakulam – 682011

(By. Adv. George Cherian)

The above Complaint came up for final hearing on 12.01.2024 for which the Counsel for the Complainant was present and the Respondent was absent and not represented.

ORDER

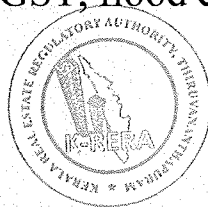
1. The Complainants are allottees of Apartments in 'Abad Infra Pinnacle' a project initiated by the 1st Respondent located at Thiruvananthapuram in 2013. The said project is registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (**herein after referred as Act, 2016**). Registration No. K-RERA/PRJ/166/2021.



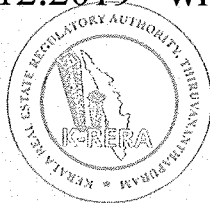
2. The facts of the Complaint are as follows: - The 2nd Respondent approached the Complainants offering to deliver a 3-bedroom luxury apartment in their ongoing project namely "Infra Pinnacle" with unmatched facilities and pride of location as mentioned in the brochure. The 2nd Respondent also assured the Complainants that the project would be completed within 30th June, 2014 and ensured handing over possession with all amenities within 180 days after completion. The Complainants bonafidely believing the offer and considering it to be true and genuine agreed to purchase an apartment in the ongoing project of the 2nd Respondent. Accordingly, on 23.09.2013 an agreement namely "Deed of Construction" was entered into by the 2nd Respondent represented by the 3rd Respondent and the Complainants herein. The 2nd Respondent as per the Deed of Construction allotted apartment NO. 7C on the 7th floor in the proposed building known as 'Infra Pinnacle' (including one half part in depth of the joints between the ceiling of each apartment and the floor of the apartment above it and internal and external walls between such levels) admeasuring 1708 sq.ft (approx.) and one covered car parking as specifically mentioned in Schedule B of the said deed. As per the payment schedule mentioned in the said deed the total consideration for the apartment with amenities therein including taxes and deposits was Rs. 46,99,000/-. As per clause 12 of the deed of construction, the 2nd Respondent had undertaken to ensure that the construction of the project is completed within 30th June,



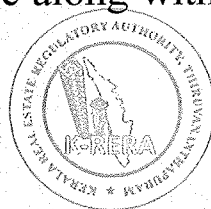
2014. As per clause 13 of the said deed the 2nd Respondent had also undertaken to ensure handing over possession of the apartment to the Complainants within 180 days after completion of construction as mentioned in clause 12. The project being a joint venture with the owners of the land namely Mr K M Cherian and Mrs. Annamma Cherian, on the very same day namely 23.09.2013, the 2nd Respondent also entered into an agreement with the Complainants for sale of the undivided interest of 1808/75000 for a total consideration of Rs. 8,69,648/- in respect of the property as described in Schedule A of the agreement with reference to apartment No. 7C having an area of 1708 sq.ft and one covered car parking as specifically mentioned in schedule B of the said agreement. It is submitted that as mentioned in the agreement for sale (Annexure C), the building permit bearing No. BP-592/2006-2007 was obtained by the landowner namely Mr K M Cherian and Mrs. Anamma Cherian from Thiruvalla Municipal Council as early as on 19.01.2011 for construction of ground +12 storied building thereon consisting of residential apartments for persons interested in purchasing undivided share in land for constructing apartments. On 10.09.2013 the 2nd Respondent issued a communication to the Complainants mentioning a total cost of Rs. 52,33,344/- which includes statutory charges and additional expenses. On 29.11.2019 the 2nd Respondent issued a email communication to the Complainants mentioning a revised payment schedule of Rs. 53,29,863/- which included GST, flood cess, statutory charges and



additional expenses. The Complainants bonafidely believing in the offer and undertaking given by the 2nd Respondent had made several remittances at different stages from most of their life savings to the 2nd Respondent in the expectation of getting delivered a completed apartment with the amenities therein along with the undivided interest in property as per the deed of construction and agreement for sale respectively. The remittances made by the Complainants to the 2nd Respondent at different stages which can be seen from the statement as on 26.11.2021. From the said statement issued by the 2nd Respondent it can be seen that the Complainants have transferred a total amount of Rs. 40,93,580/- from their savings in State Bank of India to the 2nd Respondent's Bank namely HDFC and South Indian Bank. Eventhough the Complainants were making periodical payments honouring their commitment, the 2nd Respondent failed to complete the project within the stipulated time namely 30.06.2014 and hand over possession of the apartment within 180 days after completion as agreed to in the deed of construction. Moreover, the construction of the project had also come to a complete standstill. Since considerable delay had occurred on the part of the 2nd Respondent due to stoppage of work, the allottees who had invested money jointly approached the 2nd Respondent and requested to complete the work as expeditiously as possible. Accordingly, the allottees and the 2nd Respondent entered into an Memorandum of Understanding on 26.12.2019 whereby the 2nd Respondent



undertook to complete the project within 9 months from the date of commencement after receipt of certain funds from certain sources. It is submitted that the 2nd Respondent has also violated the undertaking given in the Memorandum of Understanding and no such funds could be garnered by the 2nd Respondent for commencing the work so far. Most of the flat allottees paid 2 installments as stipulated in the MOU but the 2nd Respondent failed to invest the promised funds. It was submitted that the 2nd Respondent has miserably failed to complete the work of the project within the stipulated time and hand over possession. The Complainants from the conduct of the 2nd Respondent have lost all faith in their commitments and ability to complete the work of the project. The 2nd Respondent had also informed the allottees that they do not have sufficient funds to complete the project. The Complainants are also convinced that the 2nd Respondent will not be in a position to complete the project in the near future. The Complainants are now desirous of withdrawing from the project and to seek refund of the amounts paid so far to the 2nd Respondent with admissible interest, damages and compensation in accordance with law. It was submitted that apart from paying a total amount of Rs. 40,93,580/- to the 2nd Respondent, which proved to be a futile and dead investment, the Complainants have also suffered several losses and unwanted additional expenditure due to inordinate delay and non-completion of the project. The interest mentioned under Section 18(1) of the Act payable along with return of the amount



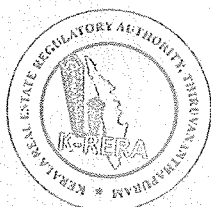
is to be arrived at as provided under Rule 18 of the K-RERA Rules 2018. Since the Complainants want to withdraw from the project this Hon'ble Authority may be pleased to direct the Respondents to return the amount of Rs. 40,93,580/- already paid by the Complainants with admissible interest as provided under Section 18(1) of the Act read with Rule 18 of the Rules. Hence the Complainant is left with no other efficacious and alternate remedy than to approach this Hon'ble authority for redressal of their grievance.

3. The reliefs sought by the Complainants were as follows: - (i) Direct the 1st Respondent to return the amount of Rs.40,93,580/- paid by the Complainants to the Respondents towards consideration for the cost of the apartment with amenities therein which has not been completed so far in the project "Infra Pinnacle, Mission Hospital Road, Muthoor P.O, Thiruvalla – 689007. (ii) Grant interest as per proviso to Section 18(1) of the Act read with Rule 18 of the Act for an amount of Rs. 38,84,310.93 upto 18.05.2022 calculated as per State Bank of India's PLR + 2% as mentioned in statement of facts and computation statement attached to this Complaint.

4. The Respondents filed written statement on 01.09.2022, and submitted that the Complainants had filed the Complaint by suppressing material facts and only as an attempt for fraudulently extracting money from the Respondents. According



to the Respondents the Complainant ought to have paid Rs.40,41,145/- plus taxes and deposits by 10.02.2014. Whereas Complainants had paid the agreed amounts in part with huge delay. The last 2 payments on 04.12.2019 and 27.05.2020 were paid by the Complainants subsequent to the Memorandum of Understanding executed between the Complainants and the first Respondent. The amounts as per the MOU to be paid by the Complainants Rs. 5,29,835/- on 01.02.2020 and Rs. 3,53,223/- to be paid by the Complainants on 01.03.2020 are defaulted by the Complainants. Further an amount of Rs. 3,53,223/- was also agreed to be paid by the Complainants on handing over of the apartment. It was stated by the Respondents that the first Respondent assured the Complainants that the project would be completed within 30th June, 2014 and ensured handing over possession with all amenities within 180 days after completion is misleading and hence denied. The Completion and handing over of Complainant's apartment No. 7C in Infra Pinnacle, Thiruvalla is on the basis of the Complaints fulfilling the payment obligations. Whereas against the specific schedule of payment provided in the construction agreement, Complainants have defaulted payment and made part payments with huge delay. Hence Complainants are not entitled to get apartment No. 7C in Infra Pinnacle as per the time schedule given in the construction agreement. The Complainants themselves admit in paragraph 4(3) of the Complaint that as per the payment schedule in the construction



agreement they ought to have paid Rs. 46,99,000/- excluding taxes and deposits, which they failed to fulfil. Further in paragraphs 4(4) and 4(5) of the Complaint, Complainants themselves have agreed that as per the sale agreement with the owners of the project land Complainants are liable to pay Rs. 8,69,648/- and that the land owners got the building permit No. BP-592/2006-07 dated 19.01.2011 for construction of a ground +12 storied building consisting of residential apartments from Thiruvalla Municipal Corporation. Hence the land owners are necessary parties to these proceedings. Thus the Complaint is bad for non-joinder of necessary parties. It was been specifically stated in the letter dated 10.09.2013 that it was the detailed cost work out and that the registration charges will be extra and applied as per actuals at the time of execution and that Rs. 3,04,051/- was shown as advance for statutory charges. It was submitted that Rs. 3,24,254/- + Taxes payable by the Complainants on 10.05.2014 was paid in part, Rs. 2,02,892/- on 18.12.2014 with a delay of 222 days. It was submitted that Rs. 3,24,254/- + Taxes payable by the Complainants on 10.06.2014 was paid in part, Rs. 1,00,000/-, on 11.08.2015 with a delay of 427 day. It was submitted that Rs. 3,24,254/- + Taxes payable by the Complainants on 10.07.2014 was paid in part, Rs. 1,02,892/-, on 17.08.2015 with a delay of 403 days. It was submitted that Rs. 2,68,668/- + Taxes payable by the Complainants on 10.09.2014 was paid in part, Rs. 1,52,169/-, on 14.03.2016 with a delay of 551 days. It was submitted that Rs. 1,89,920/- + Taxes



and deposits payable by the Complainants on 10.10.2014 was paid in part, Rs. 1,52,169/-, on 26.09.2016 with a delay of 717 days. It was submitted that Rs. 1,89,920/- + Taxes and deposits payable by the Complainants on 10.12.2014 was paid, Rs. 2,64,917/-, on 27.05.2020 with a delay of 1995 days. It was further stated by the Respondents that the Complainants were defaulters and the amounts as per the MOU to be paid by the Complainants Rs. 5,29,835/- on 01.02.2020 and Rs. 3,53,223/- to be paid by the Complainants on 01.03.2020 are defaulted by the Complainants. Further an amount of Rs. 3,53,223/- was also agreed to be paid by the Complainants on handing over of the apartment. The Complainants being chronic defaulters are making false allegations against the Respondents that Complainants have lost all trust and faith in the Respondents and in their capacity to complete the project. The Complainants in order to hide their default had issued a notice dated 07.03.2022 and thereafter came to the first Respondent that the matter can be amicably settled. First Respondent, though Complainants are chronic defaulters, has offered to return the amounts paid by the Complainants with 6% interest as a good will gesture. The Complainants have agreed for this proposal. Thus no reply notice was issued/caused by the Respondents. Complainants are not entitled for the claim in paragraph 4(16) of the Complaint, the interest as per Section 18(1) of Real Estate (Regulation and Development) Act, 2016 and Rule 18 of the K-RERA Rules, 2018. It was stated by the Respondents



that the prayer for refund of Rs. 40,93,580/- along with Rs.38,84,311/- calculated as per State Bank of India's PLR – 2% up to 18.05.2022 as per the computation statement is not tenable in the facts and circumstances of this case.

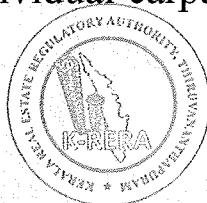
5. The Respondents filed additional Written Statement on 28.11.2022, and submitted as follows: - Subsequent to the filing of the written statement dated 30.08.2022, this Hon'ble Authority had considered the joint application dated 31.08.2022 filed by the first Respondent and M/s Abad Builders Pvt Ltd under Section 15 of the Act, 2016. This Hon'ble Authority after considering the facts and documents as per order No. K-RERA/T1/1459/2022 dated 22.09.2022 approved the transfer of the real estate project 'Infra Pinnacle' in favour of M/s Abad Builders Pvt Ltd and shall be the promoter of the project for all legal purposes. Therefore, the new promoter 'M/s Abad Builders Pvt Ltd' shall be replaced as Respondent No.1 in lieu of M/s Infra Housing Pvt Ltd.

6. The Complainant has filed IA No.20/2023 to implead M/s Abad Builders Pvt. Ltd., as 1st Respondent in the party array. The same was allowed and M/s Abad Builders Pvt. Ltd., was impleaded as 1st Respondent. Amended Complaint was filed on 13.04.2023 in which it was further submitted that this Hon'ble Authority vide order dated 22.09.2022 in order number K-RERA/T1/1459/2022 approved the transfer of the Real Estate



Project “Infra Pinnacle” in favor of M/s Abad Builders Private Ltd. It was made very clear in the said order by this Hon’ble Authority that the transfer shall not result in any extension of time to complete the real estate project. It is further stated that M/s Abad Builders Private Ltd shall be the promoter of the project “Infra Pinnacle” having registration number K-RERA/PRJ/166/2021 for all legal purposes and shall comply with all pending obligations of the erstwhile promoter and in case of default, shall be liable to the consequences of breach or delay as provided under the Act 2016, Rules and Regulations made thereunder.

7. Thereafter on 06/06/2023 the impleaded 1st Respondent filed written statement which was similar to the written statement filed on 01.09.2022 by the Respondents. In addition to the above the 1st Respondent further submitted that as a good will gesture the 1st Respondent is providing the following additional amenities by incurring an amount of Rs. 48 Lakhs in the apartment project Abad Infra Pinnacle. The additional amenities are Motorised main gate, Automatically operating boom barrier, Centralized gas supply with 3 level safety system, On grid solar system for reducing common area electricity, CCTV for common area surveillance, Outdoor Gym & Party area at roof top, Pressure Booster Pump, Water Treatment Facility, Waste water recycling & re-use for flushing, Sewage Treatment Facility with UF, Dedicated EV charging points for individual carparks and Both lifts landing



upto terrace floor. First Complainant was the Secretary of Infra Pinnacle Apartment Owners Association which along with the builder initiated the steps for entrusting the first Respondent to undertake the entire remaining work of Infra Pinnacle as per the approved building permit and facilities promised to the allottees. The permit issued by the Thiruvalla Municipality for the Infra Pinnacle housing project is valid till 11.12.2026. This Hon'ble Authority has granted time for completion of Abad Infra Pinnacle housing project till 31.12.2023. All the endeavors been made by the first Respondent to complete the housing project ahead of time by November 2023. Hence it is evident that the Complaint is bereft of any bonafides and an abuse of the process of this Hon'ble Authority. Thus, the Complainants cannot claim any amount from the first Respondent under Section 18(1) of the Act, 2016. Hence the Complaint may be dismissed with the compensatory cost of the first Respondent.

8. The Complainant has submitted rejoinder on 15/06/2023 stating that the 1st Respondent was casting aspersions on the Complainants not only to mislead this Hon'ble Forum but also to evade its responsibility and liability to the Complainants. As per the rejoinder, the 1st Respondent by its conduct and statement in the written statement was only attempting to unduly delay the matter. The statement that the Complainants is a chronic defaulter and have not made the payment of Rs. 40,41,145 plus



taxes and deposits by 10.12.2024 is false. It was submitted that due to inordinate delay in construction of the project by the 2nd Respondent which ought to have been completed by 30th June, 2014 and handed over within 180 days after completion, the 2nd Respondent issued a rescheduled stage wise payment schedule on 12.04.2014 based on the progress of work with projected additional expense. It was submitted that the Complainants have made payments in a timely manner as per the original and revised payment schedule issued by the 2nd Respondent. It was the Respondents after having delayed the project considerably, who have changed the original payment to suit their convenience to a stage wise payment schedule based on the progress of work. It was submitted that out of the total amount payable by the Complainants as per the revised schedule, an amount of Rs. 40,93,580/- had been already paid by the Complainants until now which amounts to 77% of the total amount payable. Even though, the payment as per revised schedule issued by the 2nd Respondent was to be made on actual progress of work, the progress of work was almost non-existent with only the concrete shell completed. It was submitted that even now major works are remaining to be completed which includes electric wiring, electrical fixtures, plumbing fixtures, etc. A project which was due to be completed in 2014 is nowhere near completed even during the latter half of 2022 with a huge delay of almost 8 years and with no end in sight. In the written statement, the 1st Respondent relying on a Memorandum of Understanding



stated to be executed between the Complainants and the 2nd Respondent. It was submitted that in the first place the said MOU had no force of law and was not binding on the Complainants. The Respondents with the intention of prolonging the completion of the project indefinitely had made hapless allottees like the Complainants to sign on the MOU. The allottees like the Complainants who have invested all their savings in this residential project was forced to sign on the MOU since completion of the project by the Respondent at the earliest was the only factor which weighted in the mind of the allottees. Initial payment which is stated to have been paid by the Complainant was out of sheer helplessness with the bonafide belief that the project would be completed at the earliest. The actions of the Respondents proved contrary to the undertaking given in the MOU and the genuineness and bonafides of the Respondent became doubtful and the Complainants lost all the trust and confidence in the Respondents. Moreover, the Respondents 2 to 4 also miserably failed to infuse the funds promised in the said MOU. Hence the said alleged MOU itself was a nonstarter. The Complainants also obtained reliable information that the funds already given by the allottees have been diverted by the Respondents and they do not have the required funds in completing the project. It was stated by the Complainants that the statement that the Complainants are chronic defaulters and last two payments on 04.12.2019 and 27.05.2020 were paid by the Complainant subsequent to MOU executed between the



Complainants and 1st Respondent is wholly irrelevant since the very idea of MOU was brought in by the Respondents in order to buy time and with malafide intentions. Moreover, the said memorandum does not in any manner take away the rights of the Complainants as per the original agreement entered into with the Respondents and the Complainants. As per the rejoinder, if there was any delay in payment, it was only due to delay in progress of work. The new revised stage wise payment schedule was issued on 12.04.2014 based on the work progress on site. Based on these revised payment schedule Complainants made the payments and the allegation that there is delayed payment is baseless and false. On the revised project cost issued by the 2nd Respondent for the value of Rs. 53,29,863/- for the apartment, an amount of Rs. 40,93,580/- has been paid by the Complainants to date. The said revised value of Rs. 53,29,863/- includes the land cost component of Rs. 8,69,648/-. Thus the total revised cost of Rs. 53,29,863/- was broken down to stage wise payments. All stages of work when intimated to the Complainants by the Respondent have been duly paid. The Complainants have already paid 77% of the total cost inspite of the fact that the actual progress is pathetic and well beyond schedule. As already stated, revised stage wise payment schedule based on work progress on site was issued to the Complainants on 12.04.2014 by the 2nd Respondent. It was submitted that the registration charges are to be incurred at the time of handing over of the apartment to the Complainant and the same



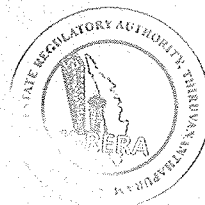
payable to the Government of Kerala. Moreover, it was submitted that the revised cost of Rs. 53,29,863.- is inclusive of the advance for statutory charges. Since the project is nowhere near completed, the same cannot be expected to be obtained in the near future. Hence the Complainants are perfectly justified in exercising their option to withdraw from the project and demand for the return of the amounts paid till date with interest as provided u/s 18 of the Act r/w Rule 18 of the Rules. The 1st Complainant had never initiated any steps for entrusting the 1st Respondent to undertake the entire remaining work of the project as per the approved building permit and facilities promised to the allottees. Even assuming but not admitting that as the former Secretary of the Association, the 1st Complainant took some initiative to complete the project which was discontinued by the 2nd Respondent, the Complainants had never approached the 1st Respondent or had anything to do with them. These are all false and frivolous allegations made against the Complainants in order to deny the refund with admissible interest legally due to the Complainants. As per the rejoinder, the Complainants had approached this Authority at the time when violation was committed by the 2nd Respondent who was the original promoter by not adhering to their commitments. The cause of action arose much earlier and the above said statements made regarding validity of the permit and time granted for completion of the project was not relevant or applicable as the 1st Respondent had already become liable for the



violations, obligations and liabilities of the 2nd Respondent as per the provisions of the Act and also Order No. K-RERA/T1/1459/2022 dated 22.09.2022 of this Hon'ble Authority. The Complainants are therefore absolutely entitled to claim the refund under Section 18(1) of the Act with interest as provided under Rule 18.

9. The Respondents have submitted two additional documents on 05/09/2023, Memorandum of association and bye-laws of Infra Pinnacle apartment owners' association and Memorandum of understanding.

10. The Complainants have filed objection on 08.09.2023 against accepting the said two documents produced by the Respondents stating that the Memorandum of Association and bye-laws of M/s Infra Pinnacle Apartment Owners Association produced by the Respondent is irrelevant and inapplicable to the Complainants since the Complainant had already resigned from the so-called M/s Infra Pinnacle Apartment Owners Association as early as on 11.01.2022 which is much before the Complaint was filed by the Complainants before this Hon'ble Authority. The Memorandum of Understanding produced is an undated one and unsigned on all pages except one. Moreover, the witness portion in the alleged Memorandum of Understanding is left blank. Hence the said document which was purported to be a Memorandum of



Understanding cannot be accepted and admitted as additional document since the same was invalid.

11. The Complainants filed I.A No. 138/2023 on 18.09.2023 for amending the relief portion of the Complaint adding prayer No. 3 as follows: - (iii) Grant interest as per proviso to Section 18(1) of the Act read with Rule 18 of the Act for an amount of Rs.38,84,311/- as per SBI PLR + 2% upto 18.05.2022 as per the computation statement attached to the Complaint and revised interest calculated up to 12/09/2023 along with accrued interest till date of payment of the interest amount. The prayer for adding liquidation damages cannot be considered by this Authority. On 12.01.2024 I.A No. 138/2023 was allowed and the relief portion was amended as follows: -

- (i) Direct the 1st Respondent/Respondents 2 to 4 to return the amount of Rs.40,93,580/- paid by the Complainants to the Respondents towards consideration for the cost of the apartment with amenities therein which has not been completed so far in the project "Infra Pinnacle, Mission Hospital Road, Muthoor P.O, Thiruvalla – 689007.
- (ii) Grant interest as per proviso to Section 18(1) of the Act read with Rule 18 of the Act for an amount of Rs. 38,84,310.93 calculated as per



State Bank of India's PLR + 2% as mentioned in statement of facts and computation statement attached to this Complaint.

- (iii) Grant interest as per proviso to Section 18(1) of the Act read with Rule 18 of the Act for an amount of Rs.38,84,311/- as per SBI PLR + 2% upto 18.05.2022 as per the computation statement attached to the Complaint and revised interest calculated up to 12/09/2023 along with accrued interest till date of payment of the interest amount. The prayer for adding liquidation damages cannot be considered by this Authority.

12. It is to be noted that the relief sought by the complainant under (ii) and (iii) above are one and the same except for the revised interest claim calculated upto 12/09/2023 and accrued interest till date of payment of interest amount. The Complainant has filed I.A No. 160/2023 on 09.11.2023 to permit the Complainants to seek the following final additional relief without prejudice to the other final and interim reliefs sought for:
- "The Respondent may be directed not to sell or mortgage any one of the unsold apartments."



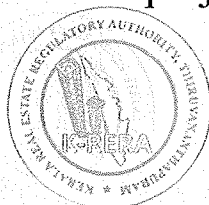
13. The 1st Respondent has filed objection to the IA.No.160/2023 on 20.11.2023, stating that the interlocutory application filed by the Complainants against the 1st Respondent not to sell or mortgage anyone of the unsold 8 apartments with Apartment Nos. 1A, 1B, 2A, 2C, 7B, 8C, 12A and 12B was not sustainable either in law or on facts of the case. The first Respondent providing the additional amenities which was estimated to be Rs. 48 Lakhs, whereas the 1st Respondent was incurring Rs. 75 Lakhs in the apartment project 'Abad Infra Pinnacle for the said additional amenities. The 1st Complainant was the Secretary of Infra Pinnacle Apartment Owners Association which along with the builder initiated the steps for entrusting the first Respondent to undertake the entire remaining work as per the approved building permit and facilities promised to the allottees. It was further submitted by the 1st Respondent that the malafide intentions of the Complainants are clear that they want injunction order against the other Apartment Nos. 1A, 1B, 2A, 2C, 7B, 8C, 12A and 12B whereas they don't want any such order against their apartment No. 7C which was having 1708 Sq. Ft and that according to their own estimation in the affidavit that apartment is having the market value of Rs. 93,59,840/- and the amount paid by the Complainants are only Rs. 40,93,580/-.

14. The Complainant has filed reply dated 08/12/2023 to the objection filed by the Respondents in



IA.No.160/2023 stating that the 1st Respondent was relying on the first payment schedule which was revised by the Respondents themselves for seeking time to complete the construction. Till the Respondents revised the payment schedule, the Complainants had made payments strictly in accordance with the payment schedule and there was no delay or default by the Complainants in any manner. It was submitted by the Complainants that many of the so-called additional facilities provided by the builder are standard free for a luxury project and equipment mentioned are required for the commissioning and handover of the project. Moreover, no detailed side by side comparison, of the original facilities as per drawings, specifications and brochures to promised facilities was available. It was further submitted by the Complainants that the 1st Complainant resigned from the post of the Secretary much before any decision was taken for entrusting and handing over the work to the 1st Respondent. It was also evident from the order of the Authority that the 1st Complainant was not a party to entrusting and handing over the work to the 1st Respondent. After hearing the learned Counsels and going through the I.A and the objections filed I.A No. 160/2023 was dismissed.

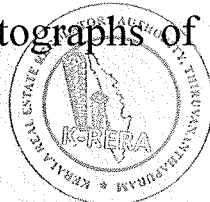
15. The Authority heard the learned counsels and perused the documents available on record. The documents produced by the Complainants were marked as **Exhibits A1 to A15**. The copy of the brochure project 'Infra Pinnacle' issued by



the 2nd Respondent to the Complainant is produced and marked as **Exhibit A1**. As per this brochure, it is a project consisting of ground + 12 storied, 3 BHK luxury apartment project with all the facilities including exquisite landscaping and garden, roof top party area, fitness centre, children's play area, swimming pool and round the clock security. Apart from the ground floor which flaunts an elegant lobby, each of the twelve floors of Infra Pinnacle will have only three apartments in two sizes, 2443 sq. ft and 1708 sq. ft. The copy of the deed of construction dated 23.09.2013 executed by the 2nd Respondent represented by the 3rd Respondent and Complainants is produced and marked as **Exhibit A2**. As per this agreement, the 2nd Respondent agreed to construct the apartment for a consideration of Rs. 38,29,352/- together with the consideration for sale of undivided share of land of Rs. 8,69,648/- . The 2nd Respondent agreed to complete the construction within 30th June 2014 and hand over possession of the constructions to the Complainant within 180 days after completion. The copy of agreement for sale dated 23.09.2013 executed between the 2nd Respondent represented by the 3rd Respondent and the Complainants is produced and marked as **Exhibit A3**. As per this agreement, the Respondent agreed to sell the Scheduled property to the Complainant for a total consideration of Rs. 8,69,648/-. The copy of the communication dated 10.09.2013 issued by the 2nd Respondent to the Complainants is produced and marked as **Exhibit A4**. As per Exhibit A4, the total outflow is Rs. 52,33,344/-



. The copy of the statement dated 26.11.2021 prepared by the Complainants mentioning the remittances made at different stages of the project is produced and marked as **Exhibit A5**. As per the statement, the total amount paid by the Complainants to the Respondent is Rs. 40,93,580/-. The copy of covering letter dated 10.09.2013 along with copy of receipts issued by the 2nd Respondent to the Complainants is produced and marked as **Exhibit A6 Series**. As per the covering letter, the amounts paid as per the receipt no: 2312 dated 14.08.2013 is Rs. 1,00,000/-, receipt no: 2325 dated 05.09.2013 is Rs. 8,00,000/- and receipt no: 2326 dated 05.09.2013 is Rs. 26,455/-. The copy of covering letter dated 25.04.2019 along with copy of receipts issued by the 2nd Respondent to the Complainants is produced and marked as **Exhibit A7 Series**. As per the covering letter, the amounts paid as per the receipt no: 2389 dated 06.12.2013 is Rs. 4,75,000/-, receipt no: 2440 dated 07.02.2014 is Rs. 4,75,000/-, receipt no: 2467 dated 10.03.2014 is Rs. 3,50,000/-, receipt no: 2354 dated 10.10.2013 is Rs. 4,75,000/-, receipt no: 2877 dated 17.08.2015 is Rs. 1,02,892/-, receipt no: 2864 dated 11.08.2015 is Rs. 1,00,000/-, receipt no: 3031 dated 14.03.2016 is Rs. 1,52,169/-, receipt no: 2700 dated 18.12.2014 is Rs. 2,02,892/-, receipt no: 2999 dated 19.01.2016 is Rs. 1,52,169/- and receipt no: 3153 dated 26.09.2016 is Rs. 1,52,169/-. The copy of the letter dated 07.03.2022 by the Counsel of the Complainants is produced and marked as **Exhibit A8**. The copy of the recent photographs of showing the state of work in



progress is produced and marked as **Exhibit A9 Series**. The copy of counter slip send to Counsel of Respondents is produced and marked as **Exhibit A10**. The true copy of the proof of delivery is produced and marked as **Exhibit A11**. The true copy of statement showing the interest payable is produced and marked as **Exhibit A12**. As per this Exhibit, the total capital plus interest payable is Rs. 79,778,90.93/-. The copy of the resignation letter dated 11.01.2022 of Association Secretary is produced and marked as **Exhibit A13**. The copy of the revised interest calculated upon 12.09.2023 along with the accrued interest is produced and marked as **Exhibit A14**. As per this statement the total interest payable is Rs. 54,24,709.21/-. The copy of the liquidated damages from 28.12.2014 to 12.09.2023 is produced and marked as **Exhibit A15**. As per this Exhibit, the total liquidated damages payable is Rs. 5,31,025.45/-.

16. The documents produced by the Respondents were marked as **Exhibits B1 to B4**. The true copy of the order No. K-RERA/TI/1459/2022 dated 22.09.2022 along with the additional written statement is produced and marked as **Exhibit B1**. The copy of the certificate of registration dated 15.07.2021 is produced and marked **Exhibit B2**. The copy of Memorandum of Association and bye laws of Infra Pinnacle Apartment Owners Association is produced and marked as **Exhibit B3**. The true copy of Memorandum of Understanding executed between the Infra



Pinnacle Allottees Association and 2nd Respondent is produced and marked as **Exhibit B4**.

17. The agreement dated 26.08.2022 executed between the land owners, the 2nd Respondent and the 1st Respondent is available on the website maintained by the Authority and the same is marked as **Exhibit X1**. In this agreement, the President and the Treasurer on behalf of the Infra Pinnacle Apartment Owners Association has signed as a witness. It is stated in the agreement that the first Respondent shall commence work from 01.09.2022 and the total scheduled time for completion of works shall be 16 months from the date of commencement.

18. This is a case where the project was taken over by a builder under Section 15(1) of the Act, 2016 with the written approval of this Authority. Under Section 15(2) of the Act, 2016, *“On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees. Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and*



he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.”

19. The pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees as per the certificate of registration issued by this authority was to complete the project by 31.12.2023. As per Exhibit A2 agreement, the 2nd Respondent was to construct the apartment for a consideration of Rs. 38,29,352/- together with the consideration for sale of undivided share of land of Rs. 8,69,648/- and the agreed date of completion was 30.06.2014. The possession was to be handed over to the Complainants within 180 days after completion. It is to be noted that the project was on the verge of stagnation and Exhibit B4 Memorandum of Understanding made between the erstwhile promoter and Infra Pinnacle Allottees Association (herein after referred to as Association) represented by its adhoc committee it is clear that the erstwhile promoter was not able to complete the project on time. The 1st Complainant is a signatory to Exhibit B4 MOU and he was also the Secretary of the Association as revealed through Exhibit B3 Memorandum of Association and bye-laws of the Association. The declaration in Exhibit B3 document was made on 11.09.2020 and the 1st Complainant,



Secretary is a signatory to the Memorandum of Association and bye-laws. After executing Exhibit B4 MOU with the erstwhile promoters it is seen from Exhibit A5 statement that two payments were made on 04.12.2019 and 27.05.2020 by the Complainants. The intention of the Complainants not to withdraw from the project is very clear from the Exhibit B4 MOU and the payments made to the erstwhile promoter to get the apartment project completed. Refund under section 18 cannot therefore be considered once the complainants had expressed their intention to continue and the revised date was finalised with the consent of the Association and takeover of the project was completed with the permission of this Authority and the 1st respondent started the work with the cooperation of the Allottees, Association and Landowners.

20. According to the Complainant the details of payments made by him are as follows: -

Payment Schedule

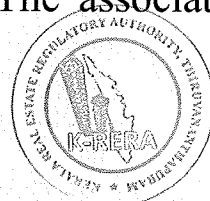
Date	Amount
14.08.2013	1,00,000
05.09.2013	8,00,000
05.09.2013	26,455
10.10.2013	4,75,000
06.12.2013	4,75,000



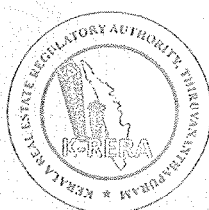
07.02.2014	4,75,000
10.03.2014	3,50,000
04.12.2014	2,028,92
11.08.2015	1,00,000
17.08.2015	1,02,892
19.01.2016	1,52,169
14.03.2016	1,52,169
26.09.2016	1,52,169
04.12.2019	2,64,917
27.05.2020	2,64,917
Total	Rs.40,93,580/-

The payment receipt for the highlighted payment in the payment schedule is not produced. It is admitted by the Complainants that the full payment for the apartment has not been settled by the Complainants as is clear from the payment schedule, and Exhibit A2 and A3 agreements.

21. Section 8 of the Act, 2016 states that upon lapse of the registration or on revocation of the registration under the Act the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the Association of allottees or in any other manner as may be determined by the Authority. The association of allottees shall



have the 1st right of refusal for carrying out of the remaining development works. The intention of the parliament while enacting the legislation was to ensure that all the ongoing projects are completed and handed over to the allottees. A situation where no builder comes forward to take over the apartments that are abandoned by promoters due to various reasons, under Section 15 is existing in the real estate sector for non-cooperation of the allottees their Association and Landowners. In this particular case, all the allottees except the Complainant had given their consent for the first Respondent to proceed with the takeover of the project. Mr. K M Cherian, one of the land owners had given a consent letter in which it is stated that the 1st Respondent with the approval of this Authority shall complete the project in 16 months' time vide letter dated 04.08.2022. 19 customers of the project had given confirmation and approval to the 1st Respondent, Abad Builders to proceed with the takeover of the project 'Infra Pinnacle'. It was stated in the letter that the allottees shall comply with the balance payable amounts and additional amounts of Rs. 7 Lakhs for the apartments necessary to meet the increased cost of development in the last 10 years. It was also agreed to execute additional agreements to enable the first Respondent to proceed with the construction and to commence all related works and ensure smooth progress of the project. The Cooperation extended by the land owner and the allottees to the 1st Respondent/promoter who have



taken over the project and since completed it on time is commendable.

22. In the above circumstances, the reliefs sought by the Complainants for refund under Section 18(1) cannot be granted. The 3rd relief to grant interest as per proviso to Section 18(1) of the Act read with Rule 18 of the Act for an amount of Rs. 38,84,311/- as per SBI PLR + 2% cannot be considered as the completion date agreed as per the registration granted by this Authority was 31/12/2023. It is also important that the 1st Respondent is allowed to complete the works as per the terms and conditions of the takeover, in the interest of all the allottees who had cooperated in the completion of the project. The 1st Complainant who was a Secretary of the Association from 11.09.2020 as per the declaration in Exhibit B3, had resigned from the post through Exhibit A13. Exhibit B3 MOA and by-laws of the association produced does not state anything about the resignation of the managing committee members, nor has the 1st Complainant produced any letter of acceptance of the Exhibit A13 resignation letter.

23. It is evident that the Association had initiated discussions with the erstwhile promoters to ensure completion of the project and in this connection the 1st Respondent had come forward to take over the project with the consent of the Association, landowners and all allottees except the



Complainants. The allottees are entitled to claim delay interest only if the project is delayed beyond the date of completion stated in the Registration Certificate issued under Section 5 of the Act, 2016 by the Authority. In Exhibit B1 order dated 22.09.2022, the above referred Complaint No. is referred to and there was a direction to include the new promoter 'M/s Abad Builders Pvt Ltd' as the first Respondent in lieu of 'M/s Infra Housing Pvt Ltd'.

24. The 1st Respondent/promoter upon obtaining the occupancy certificate from the competent authority shall offer in writing the possession of the apartment to the allottee in terms of the agreement to be taken within 3 months from the issue of such notice and the promoter shall give possession of the apartment to the allottee as per Clause 7.2 in Annexure A under Rule 10 of the Rules, 2018. As per Section 19(10) of the Act, 2016, every allottee shall take physical possession of the apartment within a period of two months of the occupancy certificate issued for the apartment. As per Section 19(3), the allottee shall be entitled to claim the possession of the apartment as per the declaration given by the promoter under Section 4(2)(1)(C).

25. Considering the facts and circumstances of the case this Authority under section 37 of the Act issues the following directions: -



1) The Respondents shall inform the complainants upon receipt of the Occupancy Certificate and the details of the payment due as per the agreements as required under the Act, 2016 and execute registered conveyance deed in favour of the allottee and handover the physical possession of the apartment to the allottee under Section 17(1) of the Act, 2016.

2) The Complainants shall settle the balance payment due and take physical possession of the apartment within a period of two months of the occupancy certificate issued for the said apartment as per Section 19(10) of the Act, 2016.

3) The Respondents are free to approach this Authority under section 18(1) of the Act, 2016 for any delay in handing over possession of the apartment in accordance with the terms of the agreement for sale duly completed by 31.12.2023.

Sd/-
Sri M.P Mathews
Member

True Copy/Forwarded By/Order



Secretary (legal)



APPENDIX

Exhibits marked on the side of the Complainants

- Exhibit A1: The copy of the brochure project 'Infra Pinnacle' issued by the 2nd Respondent to the Complainant
- Exhibit A2: The copy of the deed of construction dated 23.09.2013 executed by the 2nd Respondent represented by the 3rd Respondent and Complainants
- Exhibit A3: The copy of agreement for sale dated 23.09.2013 executed between the 2nd Respondent represented by the 3rd Respondent and the Complainants
- Exhibit A4: The copy of the communication dated 10.09.2013 issued by the 2nd Respondent to the Complainants
- Exhibit A5: The copy of the statement dated 26.11.2021 prepared by the Complainants mentioning the remittances made at different stages of the project
- Exhibit A6 Series: The copy of covering letter dated 10.09.2013 along with copy of receipts issued by the 2nd Respondent to the Complainants
- Exhibit A7 Series: The copy of covering letter dated 25.04.2019 along with copy of receipts issued by the 2nd Respondent to the Complainants
- Exhibit A8: The copy of the letter dated 07.03.2022 by the Counsel of the Complainants
- Exhibit A9 Series: The copy of the recent photographs of showing the state of work in progress



- Exhibit A10: The copy of counter slip sent to Counsel of Respondents
- Exhibit A11: The true copy of proof of delivery
- Exhibit A12: The true copy of statement showing the interest payable
- Exhibit A13: The copy of the resignation letter dated 11.07.2022 of Association Secretary
- Exhibit A14: The copy of the revised interest calculated upon 12.09.2023 along with the accrued interest
- Exhibit A15: The copy of the liquidated damages from 28.12.2014 to 12.09.2023

Exhibits marked on the side of the Respondents

- Exhibit B1: The true copy of the order No. K-RERA/TI/1459/2022 dated 22.09.2022
- Exhibit B2: The copy of the certificate of registration dated 15.07.2021
- Exhibit B3: The copy of Memorandum of Association and bye laws of Infra Pinnacle Apartment Owners Association
- Exhibit B4: The true copy of Memorandum of Understanding executed between the Infra Pinnacle Allottees Association and 2nd Respondent

Additional documents marked by the Authority

- Exhibit X1: The agreement executed between the land owners, 2nd Respondent and the 1st Respondent



