

KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 180/2021

Present: Smt. Preetha P Menon, Member

Dated 25th August 2023

Complainant

Kuriachan Vamattathil Kuriakose
31/248A, Vamattathil, Mayanad,
Medical College P.O., Calicut.

(By Adv. John Varghese)

Respondent

Sobha Limited,
Represented by Anil Kumar Gopalan,
Sobha, Sarjapur, Marthahalli, Outer Ring Road,
Devarabisanahalli, Bellandur, Bangalore-568103.

(By Adv. Abraham Mathew Vettoor)

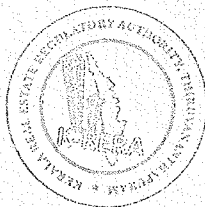
The above Complaint came up for virtual hearing on 07/06/2023 and the Counsel for the complainant and counsel for the Respondent were present. After hearing both parties and perusing the documents produced by both sides, the Authority passed the following order.



ORDER

1. The Complainant is an allottee of the project named 'SOBHA BELA ENCOSTA PHASE-I' located at Kozhikode District, developed by the Respondent/Promoter. The said project is registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016').

2. The facts of the Complaint are as follows: - The Complainant entered into agreements with the Respondent for sale of land and construction of villa No. A-70 in 'SOBHA BELA ENCOSTA', a real estate project situated in Payyadithazham, near Palazhi, Calicut, Kerala. In addition to the sale agreement and construction agreement, the Complainant and the Respondent entered into some oral agreement also. As per the agreement, the total cost of the villa is an amount of Rs. 4,20,42,320/- (Rupees Four Crores Twenty Lakhs Forty-Two Thousand Three Hundred and Twenty Only) excluding registration Fees and related Stamp duty. The said amount is inclusive of land cost of Rs.84,93,338/- (Rupees Eighty-Four Lakhs Ninety Three Thousand Three Hundred and Thirty Eight Only) and construction cost consists of Rs.3,35,48,962/- (Rupees Three Crores Thirty Five Lakhs Forty Eight Thousand Nine Hundred and Sixty Two Only) In October 2019, the Respondent informed the Complainant that the project has been completed and requested to remit the final payment of



Rs.27,22,494.00 (Rupees Twenty Seven Lakhs Twenty two Thousand Four Hundred and ninety Four Only). As on 11.03.2020, the Complainant had remitted total amount of Rs. 4,21,95,312/- (Rupees four crores twenty-one lakhs ninety-five thousand three hundred and twelve only), being the full and complete payment for the property including land and construction costs. An amount of Rs, 28,09,646/- (Twenty-Eight Lakhs Nine Thousand Six Hundred and Forty-Six Only) being the final installment due on the property along with interest for alleged delay was paid under protest on 11.03.2020. Since the project was not completed as per the master plan attached to the sale agreement and signed by both parties to the agreement, the Complainant had written a letter to the Respondent stating that there are two entry points as per the master plan and that the completed project has only one entry, which had reduced the value of the villa and the same is not in accordance with the agreement executed between the parties. On 17.10.2019, the Respondent informed the Complainant misrepresented that the project has been completed and a balance amount of Rs.27,22,494/- is to be paid as final Instalment. But the villa was not ready for handing over possession. On 7/1/2020 the Respondent through e-mail informed the Complainant the entry and exit of the project is Keezhmadu-Sadbhavana Road and as per clause 19 of the sale agreement no right is created over southern exit to the compound.



Complainant immediately. Though the entire amount was paid by the Complainant as early as 11.03.2020, the Respondent did not care to register the villa in favour of the Complainant till date of this complaint. The Complainant, vide e-mail dated 16/11/2020 requested the Respondent to complete the process of registration and handing over of the villa. Again on 18.11.2020, Complainant sent another e-mail to the Respondent, requesting to get a draft copy of the document to be executed in between the Complainant and the Respondent for handing over possession of the villa. Thereafter on 13.01.2021 a reminder e-mail was sent by the Complainant to the Respondent. The Respondent informed the Complainant that after settlement of the final installment, he can take possession of the property. On Inspection of the property and villa, the Complainant found that the contract is not completed as per the agreement. The occupancy certificate for the Complainant was issued on 27.02.2020. It is evident from occupancy certificate, that the Respondent is not in compliance with Sec. 17(1) of the Act and as such the Complainant is eligible for compensation. Also, it is evident from payment receipts that the Complainant cleared the entire amount as early as on 11.03.2020 and thereafter the Complainant sent umpteen number of correspondences to the Respondent demanding registration of the Villa in favour of the Complainant. But the Respondent failed to register the property within the permissible time. A true copy of the latest email dated 09.06.2021 and 24.06.2021 sent by the complainant to the



respondent is also produced. The complainant also sent lots of communications to the Respondent regarding the violation of the construction agreement. But no positive reply to register the sale deed or rectify the defect is received till this day from the Respondent. The reliefs sought by the Complainant are (1) Issue an order directing the Respondent to pay to the complainant penal interest @ 18% per annum on Rs. Rs. 4,21,95,312/- being the entire price of the villa and plot for the period of delay in handing over and registration of the property starting with 11-3-2020 to the date of claim settlement; (2) Issue an order to immediately register the property in the complainant's name (3) Award the costs of these proceedings to the complainant.

4. The Respondent filed counter statement and submitted as follows: The statement of claim for interest on the ground of delay in registering the villa is made on artificial grounds and such a claim is not sustainable under Section 17 of the Act. The Respondent had completed the villa during October, 2019 and accordingly intimated the Complainant regarding the same and requested him to make the final payment of Rs.27,22,494/- and take possession of the property and to make arrangements for registration. The Complainant, instead of taking possession and making arrangements for registration approached this Hon'ble Authority by way of complaint No. 19 of 2020 stating that there were 2 accesses provided to the project and only the north side



exit/entry access road has been provided and accordingly the project is not completed. He had also sought an interim relief that "delay the taking possession of the villa A-70 without any charge to the complainant and allow 12% interest on the compensation claim amount till the date of settlement of the claim, pending final decision on the complaint". This Hon'ble Authority was pleased to reject the complaint as per the order dated 04-09-2020 against which the Complainant filed appeal as REFA 1 of 2021 before the Hon'ble Kerala Real Estate Appellate Tribunal which was also dismissed as per the judgment dated 15-04-2021. So, the delay in delivery and registration is the contribution of the Complainant himself and he is not entitled for any interest or any other benefit on account of such delay. Subsequent to the dismissal of REFA No. 1 of 2021, the Complainant approached the Respondent and took delivery of the Villa on 10-07-2021. The handing over date as per the agreement executed by the complainant was July 2021 and the handing over has been done on 10-07-2021 and the Villa was under his possession and enjoyment since then and started doing interior decoration works which was completed after several months. It is only after completion of the interior decoration works that the Complainant requested the Authority to complete the registration and accordingly, the registration was done on 15-06-2022. The complainant who willfully delayed the registration of the villa in his favor on one ground or other cannot make any claim for compensation or interest on the ground of 'res Ipsa loquitor' as the



complainant cannot take advantage of his willful latches and negligence. No reason has been offered anywhere in the complaint for the inordinate delay in arranging the last payment and the registration charges of about Rs. 40 lakhs when the Respondent had offered to deliver the villa. The Complainant is trying to take advantage of his own faults which is not permissible in law or equity.

5. The Respondents submitted that after dismissal of the REFA No. 1 of 2021, the Complainant approached the Adjudicating officer by way of CCP No.137 of 2021. Simultaneously, he had filed Complaint No.180 of 2021 before this Hon'ble Authority. Finding that there is overlapping in the claim made before the Adjudicating officer, he requested to delete relief Nos. 1 to 3 and 6. Relief No. 6 is for issuance of an order to immediately register the property in the complainant's name. Subsequently he filed an application to reintroduce Relief No. 6, however, no order has been passed so far as such a course is not permissible in law. Relief No. 4 in the present claim is for issuance of an order 'directing the respondent to pay to the complainant penal interest at the rate of 18% per annum on Rs. 4,21,95,312/- being the entire price of the villa and plot for the period of delay in handing over and registration of the property starting with 11- 03-2020 to the date of claim settlement. Section 17 of the Real Estate (Regulation and Development) Act, 2016 does not provide for any payment of penal interest for delay in delivery or registration and



this respondent does not admit that any delay has been occurred in the matter of delivery and registration. First of all, payment of penal interest or damage on any claim is a matter which requires strict evidence with respect to the quantum and as well as negligence. As submitted earlier, the complainant had simultaneously approached the Adjudicating Officer on filing CCP No. 137 of 2021. The main claims therein are extracted: -(1) directing the Respondent to pay a sum or Rs. 42,19,531/- as compensation. (2) issue an order or direction to the Respondent to pay a sum of Rs. 10 lakhs as compensation for not registering the property in the name of applicant within 3 months of obtaining occupancy certificate. (3) issue an order or direction to the Respondent to pay a sum of Rs. 17 lakhs as compensation for not providing permanent electricity connection and water connection at the time Sobha claimed completeness and contractually represented the villa as usable and habitable. (Respondent had provided electricity through generator backup till regular electricity connection was obtained), (4) issue an order or direction to the Respondent to pay a sum of compensation Rs. 10 lakhs for not providing documents which demanded by the applicant. (Before entering in to the construction and sale agreements, the Complainant had obtained all land and project related documents including plans and had also provided all such information in the RERA website). (5) issue an order or direction to the Respondent to pay a sum of Rs. 20 lakhs for compensation to the applicant for mental agony and sufferings caused. (6) issue an



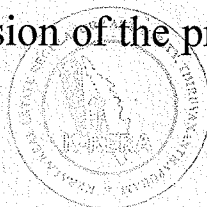
order or direction to the respondent to pay a sum of Rs. 84,39,062+15% p.a. interest for period from 10-07-2021 to date of actual settlement as compensation to delay in handing over the villa in a habitable condition for a period starting from 11-03-2020 to date of actual connection of utilities and rectification of problems identified and intimated to the Respondent. Rs.84,39,062+ 15% p.a. interest for period from 10-07-2021 to date of actual settlement. Based on the above claim, the Adjudicating Officer, passed an order artificially imposing heavy compensation on several heads against the Respondent, that too, without even an iota of evidence with respect to the damage or quantum thereof. The Respondent has filed appeal as REFA No. 41 of 2022 before the Hon'ble Appellate Authority and the operation of the order passed by the Adjudicating Officer stands stayed. Copy of the order of stay in REFA No. 41 of 2022 issued by the Hon'ble Appellate Authority is also produced. The Complainant has not revealed, on the other hand has suppressed regarding the reliefs that he had obtained in the parallel proceedings with respect to the very same cause of action and the alleged delay in deliver of the villa and registration of the same So, the present claim made as per Complaint. No. 180 of 2021 is liable to be rejected with compensatory costs.

6. The Respondents further submitted that with reference to the statement of claim made by the complainant, it contains only artificial and exaggerated figure and he is not entitled



for award of any amount under the present claim. The claimant has not made out any case either by way of pleading or by evidence with respect to the application of Rule 18 of the Rules or calculation of any interest as has been provided in Rule 18. So, the calculation of the claim of interest on the amount of Rs 4,22,03,672.35 quantifying at Rs. 1,27,97,647.77 is only to be rejected as not permissible under the statute: This Hon'ble Authority simply directed the Complainant to file a calculated statement of his claim without making any adjudication with respect to the entitlement of the Complainant or liability of the Respondent and the filing of a calculation statement does not by itself entitle the Complainant to award of any amount as has been claimed by him. This Respondent had arranged registration within the time frame granted by this Hon'ble Authority and as submitted earlier, it had affected delivery before the scheduled time. Merely because the Adjudicating Officer has passed certain illegal orders with respect to the compensation, that will not entitle him for further claim of compensation by way of a parallel proceeding. The order of compensation passed by the Adjudicating Officer has not attained finality and in fact, it stands stayed.

7. The Complainant has filed reply affidavit by denying the averments in the counter statement of the Respondent and submitted that Section 17 of the Act defines how possession is to be handed over. Mere handing over of keys cannot be construed as handing over of possession of the property. No documents were



handed over, but only the key was handed over by the respondent on 10-07-2022. Earlier the Complainant had approached this Hon'ble Authority for specific performance of the contractual obligation for providing the southern access road for the villa compound or alternatively provide compensation for the incomplete portion of the deliverables as per the contract between the parties. Though this Hon'ble Authority rejected the said claim, against which the Complainant had filed appeal before the Hon'ble Tribunal, the Hon'ble Tribunal through order dated 15-04-2021 dismissed the appeal without prejudice to the right of the Complainant to re-agitate the issue regarding the second access at the right stage after performing my part of the contract. As on 17-10-2019 the villa was not completed. The occupancy certificate was obtained on 27-02-2020 and without the occupancy certificate, it cannot be said that the villa was fit to be handed over. The Complainant had informed the Respondent, vide e-mail dated 09-10-2019, that the status of the project is substantially different from the master plan as the master plan provides two accesses to the villa project one on the southern side and the other on the northern side. But the southern access is not seen in the constructed project. Therefore, it was requested to take corrective action by the Respondent. On 05-03-2020, through e-mail the Complainant had informed the Respondent that he will be making the payment while reserving my right to specific performance over the southern access to the villa. Accordingly, the last instalment plus interest of Rs.



2,80,964.6.35 was paid and receipt was issued by the Respondent. Thereafter, through various communications, the Complainant had requested the Respondent to obtain project completion certificate, registration of property and to handover possession and register the property. But the key of the villa was handed over only on 10-07-2021. Still there was no communication from the Respondent as to when the villa can be registered. That is why the Complainant had approached this Hon'ble Authority by filing the above complaint. It is an admitted fact that the villa was registered only on 21-06-2022 only after extension of time was granted by this Hon'ble Authority. No communication was issued to the Complainant for registration of the property after the Complainant had taken the door keys of the villa on 10-07-2021. The Complainant had issued several communications to grant possession and also to register the property. Villa was registered on 21-06-2022 only after the order was issued by this Hon'ble Authority. The reasons for not paying the last instalment are revealed in letter dated 09/10/2019 & 05/03/2020. The last instalment was paid on 11-03-2020. There is no inordinate delay in paying the last instalment. There was no negligence or laches on the part of the Complainant for not cooperating with process of registration. The Complainant had sufficient money in his account as on the date of payment of last instalment.

8. The Complainant further submits that he had filed an appeal against the order of the Hon'ble Adjudicating Officer

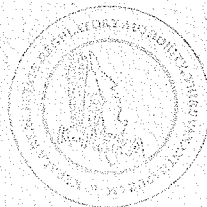


as REFA No. 42/2022 for enhancement of compensation. The claims before the Hon'ble Adjudicating Officer are compensation against non- performance of statutory responsibilities by the Respondent. The Act provides for compensation before the Hon'ble Adjudicating Officer and for interest in delay of registration before this Hon'ble Authority. Only claim for compensation is maintainable before the Hon'ble Adjudicating Officer and the cause of action for interest is separate. The statute permits calculation of interest from the last payment and Rule 18 of the Rules specifically states that the annual rate of interest payable by the promoter to the allottee shall be the State Bank of India's Benchmark Prime Lending rate plus two percent and shall be computed as simple interest Benchmark Prime Lending rate as on the date of submission of The SBI claim statement i.e., as on 03-09-2022 is 12.75%. The statute permits claim for interest for delay in registration as well as claim for compensation before this Hon'ble Authority and Hon'ble Adjudicating Officer respectively. Therefore, it cannot be said that the proceedings are parallel. The factors to be taken into consideration while adjudging compensation are stated in Section 72 of the Act. But Section 18 of the Act does not visualize factors as those are contained in Section 72 of the Act. The admitted facts are as follows: The last instalment was paid on 11-03-2020. The keys of the villa were handed over on 10-07-2021. Sale deed was registered in favor of the Complainant by the Respondent only on 21-06-2022 after time for registration was extended by this Hon'ble



Authority. The contents of affidavit filed by the Respondent show that till that time they did not register sale deeds in favor of any of the allottees and that prior documents for registration were not ready with them. This would further show that no steps were taken earlier by the Respondent for registration of the villa of Complainant. Copy of email dated 17-01-2019 produced by the Respondent states that the villa is ready to handover and that on payment of Rs. 27,22,294/- villa can be handed over. The said statement is false for the reason that occupancy certificate issued by the Panchayat is dated 27-02-2022 and hence it cannot be said that the villa was ready to be handed over.

9. The documents produced from the part of the Complainants are marked as Exbts.A1 to A15. The documents produced from the part of the Respondents are marked as Exbts.B1 to B8. Out of the reliefs sought by the Complainant, the remaining ones to be adjudicated is the 1st one for "*direction to the Respondent to pay penal interest @ 18% per annum on Rs. Rs. 4,21,95,312/- being the entire price of the villa and plot for the period of delay in handing over and registration of the property from 11-3-2020 to the date of claim settlement*" and 3rd one for costs of the proceedings because 2nd prayer became redundant as the sale deed has already been executed in compliance of an interim direction of this Authority. After hearing both parties in detail and examining all the documents placed on record, following points came up for consideration: -

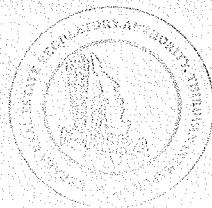


- 1) Whether the Respondent/Promoter failed to complete or unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement duly completed by the date specified therein or not?
- 2) Whether the Complainant herein is entitled to get interest for delay as claimed by him, as per Section 18 of the Act, 2016?
- 3) What order as to costs?

10. **Points No. 1 & 2:** The documents produced from the part of the Complainants are marked as Exbts.A1 to A15. **Exbt.A1** is the copy of agreement for sale executed between the Complainant and Respondent. As per the said agreement the Respondents agreed to sell and the Complainant agreed to purchase 4.386 Ares for the purpose of constructing villa bearing No. A2-70 for a total consideration of Rs.75,83,337/-. **Exbt.A2** is the copy of construction agreement executed between the Complainant and the Respondents. As per the said agreement the Respondents agreed to construct a 4 BHK Villa having super built up area of 4811.28 sq.ft. on the basement, ground and first floors of the building known as 'Sobha Bela Encosta'. It was also stated in the agreement that the possession of the villa will be delivered by July 2021. **Exbt.A3** is the Copy of order dated 04/09/2020 passed by the Authority in



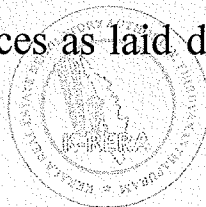
Complaint No.19/2020 filed by the Complainant herein. **Ext.A4** is the Copy of judgement in REFA No.01/2021 passed by the Kerala Real Estate Appellate Tribunal. **Exbt.A5-** Copy of email dated 09/10/2019 issued by the Complainant stating that the current status of the project is substantially different from the master plan attached to the sale agreement, the plan shows entry and exit at two sides of property whereas the completed project has only one exit and entry. **Exbt.A6** is the copy of receipt dated 11/03/2020 issued by the Respondent, stating that the Respondents have received an amount of Rs.2,809,646.35 from the Complainant. **Exbt.A7** is the copy of email dated 05/03/2020 issued by the Complainant, intimating the Respondents, regarding the payment of Rs.27,22,494/- made by him. **Exbt.A8** is the copy of email dated 16/11/2020 issued by the Complainant stating that even after the final instalment was paid by him the registration and handing over of the villa is pending and requested the Respondent to take immediate action to handover the villa and register the same in favour of the Complainant. **Exbt.A9** series are the copies of email dated 18/11/2020 & 13/01/2021 issued by the Complainant requesting the Respondents to register the property in favour of the Complainant and handover the same without any further delay. **Exbt.A11** is the copy of Occupancy Certificate dated 27/02/2020 issued by the Peruvayal Grama Panchayath. **Exbt.A14** is the copy of ledger statement issued by the Respondent evidencing the payment made by the Complainant for



a period from 30/12/2017 to 29/02/2020. **Exbt.A15** is the copy of sale deed dated 15/06/2022, executed in favour of the Complainant.

11. The documents produced form the part of the Respondents are marked as Exbt.B1 to B8. **Exbt.B1** is the copy of email dated 17/10/2019 issued by the Respondent. **Exbt.B2** is the copy of order dated 18/05/2023 in REFA No.41/2022. **Exbt.B3** is the copy of Complaint No.19/2022 filed by the Complainant. **Exbt.B4** is the copy of order dated 04/09/2020 in Complaint No.19/2020. **Exbt.B5** is the copy of order dated 04/05/2022 passed by the Adjudicating officer in CCP No.137/2021. **Exbt.B6** is the copy of order dated 15/04/2021 passed by the Appellate Tribunal in REFA No.1/2021. **Exbt.B7** is the copy of lay out approval issued by the CTP; Thiruvananthapuram dated 11/03/2014. **Exbt.B8** is the copy of development permit dated 19/09/2014.

12. Here, the Complainant is seeking penal interest from the Respondent/Promoter @ 18% per annum on the entire amount of consideration for the period of delay in handing over and registration of the property, from 11-3-2020 to the date of realization of the amount. According to the Complainant, 11.03.2020 is the date of last payment by him. He also seeks interest for delay in handing over possession as well as registration of sale deed. We know that the law confers entitlement of an allottee to claim interest for delay from the Promoter, only in the manner and circumstances as laid down in Section 18 of the Act



2016. So, the subsidiary question to be answered here is “whether Section 18 of the Act 2016 offers provision for interest for delay occurred in registration of the conveyance deed in favour of the allottee from the date of last payment by him?” 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 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”. So, it is clear from the above proviso that the allottee can claim interest for every month of delay till handing over possession only in case the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or duly completed by the date specified therein.



13. The learned counsel appeared for the Complainant argued that only the keys of the villa was handed over on 10-07-2021. He contended that Section 17 of the Act defines how possession is to be handed over and mere handing over of keys cannot be construed as handing over of possession of the property. He admits that the villa was registered in favour of the Complainant on 21-06-2022. According to the Complainant, there is no inordinate delay in paying the last instalment and the reasons for not paying the last instalment are revealed in letter dated 09/10/2019 & 05/03/2020 and the last instalment was paid by him on 11-03-2020 and he had sufficient money in his account as on the date of payment of last instalment. But, he admits that the last payment was done along with interest for delay. The Complainant argued that the statement in the email dated 17-01-2019 from the Respondent that the villa is ready to handover and that on payment of Rs. 27,22,294/- villa can be handed over was not correct as the occupancy certificate issued only on 27-02-2020. According to the learned counsel for the Complainant, the statute permits claim for interest for delay in registration as well as claim for compensation before this Hon'ble Authority and Hon'ble Adjudicating Officer respectively and therefore, it cannot be said that the proceedings are parallel.

14. In reply, the learned counsel appeared for the Respondents raised contentions that the claim for interest on the



ground of delay in registering the villa is made on artificial grounds and it is not sustainable. According to him, the villa was completed in October, 2019 itself and intimated the Complainant and requested him to make the final payment of Rs.27,22,494/- and take possession of the property and to make arrangements for registration, but the Complainant, instead of taking possession and making arrangements for registration approached this Hon'ble Authority by way of complaint No. 19 of 2020 stating that there were 2 accesses provided to the project and only the north side exit/entry access road has been provided and accordingly the project is not completed with an interim relief that "delay the taking possession of the villa A-70 without any charge to the complainant and allow 12% interest on the compensation claim amount till the date of settlement of the claim, pending final decision on the complaint". The learned counsel submitted that after dismissal of the said complaint by this Authority as per the order dated 04-09-2020, the Complainant filed appeal as REFA 1/2021 before the Hon'ble Kerala Real Estate Appellate Tribunal which was also dismissed as per the judgment dated 15-04-2021. According to the Respondent, the delay in delivery and registration of sale deed was thus the contribution of the Complainant himself and he is not entitled for any interest or any other benefit on account of such delay. The learned counsel for the Respondent contended that subsequent to the dismissal of REFA No. 1/2021, the Complainant approached the Respondent and took delivery of



the Villa on 10-07-2021. They argued that the handing over date as promised as per the agreement executed by the complainant was July 2021 and the handing over has been done on 10-07-2021 and since then the Villa was under his possession and enjoyment. From the Respondent's part it was also argued quoting the principle 'res ipsa loquitor' that the complainant who willfully delayed the registration of the villa on one ground or other cannot claim for interest, as one cannot take advantage of his own willful latches and negligence and no reason has been mentioned in the complaint for the inordinate delay in arranging the last payment and the registration charges of about Rs. 40 lakhs when the Respondent had offered to deliver the villa and the Complainant is trying to take advantage of his own faults which is not permissible in law or equity.

15. During the hearing conducted on 23/03/2022, the Complainant submitted that the Respondents failed to execute the sale deed till date though he was ready to pay the registration charges at any time. The counsel for the Respondent informed that they are ready to register the sale deed in favour of the complainant within one month, if the complainant pays charges for the said registration process. After hearing both sides, this Authority on the same day directed the Respondents *“(1) to arrange for registration of the sale deed and coordinate with the Complainant and forward the draft of the Sale Deed to the Complainant and get it approved within 2 weeks from the date of receipt of this order. (2) The*

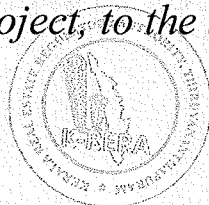


Registration process of the sale deed shall be completed within one month from the date of receipt of this order, without fail for which the registration expenses/charges have to be borne by the Complainant. Then the Respondents filed an IA.No.98/2022 seeking extension of time for compliance of the abovesaid order for two months in which they submitted in detail that they were not able to execute the Deed due to nonavailability of the Executants/Developers who are abroad and it being the first sale deed registration in the project, consequent issues faced from the office of Sub-Registrar. After hearing both parties the petition was allowed. During the next hearing on 18/07/2022, both the parties submitted that sale deed was executed in favour of the Complainant on 15/06/2022.

16. In the Complaint No.19/2020 dated 13/01/2020 filed by the Complainant before this Authority, he sought only “remedial action to provide the south access road for the villa compound or alternatively to provide compensation for the incomplete portion of the deliverables as per the contract” but he has not raised any other allegation with respect to completion of any works in the project in question. The Authority, vide order dated 04/09/2020, dismissed the above Complaint as the Complainant could not prove violation of contract by the Respondent or the damage / inconvenience sustained or that may be sustained in the absence of southern access shown in the plan.



The said order is marked as Exbt.A3 from the side of Complainant. The Complainant had preferred appeal against the said order dated 04/09/2020 before the Kerala Real Estate Appellate Tribunal as REFA No.1/2021 and the Appellate Tribunal, vide order dated 15/04/2021, dismissed the appeal without prejudice to the right of the appellant to agitate the issue regarding the second access at the right stage, after performing his part of contract. The said order is marked as Exbt.A4. The Complainant herein had also approached the Adjudicating officer of the Authority vide CCP No.137/2021 seeking 1) compensation of Rs.42,19,531/- for the failure on the part of the Promoter to provide the second access 2) to refund of Rs.87,152/- as interest wrongly received by the promoter, 3) compensation of Rs.10 Lakhs for the delay in executing the sale deed after obtaining Occupancy Certificate, 4) Compensation for Rs.17 Lakhs for not providing permanent electricity connection and water connection 5) Compensation of Rs.10 Lakhs for not handing over the documents in time, 6) compensation of Rs.20 Lakhs for the mental agony suffered by the allottee and 7) an amount of Rs.84,39,062/- with interest @ 15% interest from 10/07/2021 as compensation for the delay in handing over the villa in a habitable condition and cost of proceedings on the grounds enumerated therein. The Adjudicating officer of the Authority, vide order dated 04/05/2022, directed the Respondents (1) to pay compensation to the Complainant with respect to non-opening of the second access to the project, to the tune of Rs.21,09,765/-with



simple interest @ 14% from 11/03/2020 till the date of actual payment or realization. (2) to pay compensation to the complainant with respect to non-execution & non registration of conveyance deed in favour of the Complainant to the tune of Rs.25,000/- per month from 27/05/2020 till the date of execution and registration of conveyance deed. If the said compensation so due is not paid to the Complainant within one month from today, the Complainant shall pay interest at 14% for the aggregate sum so due from today till the date of actual payment, to the Complainant. (3) to pay Rs.10,000/- to the Complainant as cost of the proceedings. The said order is marked as Exbt.B5. Both the parties have preferred appeal against the said order dated 04/05/2022 before the Appellate Tribunal as REFA No.41/2022 & 42/2022. The Appellate Tribunal, vide Exbt.B2 order dated 18/05/2023 set aside the aforementioned order passed by the Adjudicating officer and remanded the matter again to the Adjudicating officer to decide afresh and it is still pending consideration of the Adjudicating officer.

17. On an exhaustive consideration of Section 18 of the Act, 2016, it can be ascertained that if the Promoter fails to complete or unable to hand over possession of an apartment, plot or building in 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, an allottee is provided with two options viz; 1) to withdraw from the project and get refund of the amount with interest including compensation or 2) to continue with the project and get interest for delay from the Promoter. The Proviso to Section 18(1) makes it clear 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”*.

According to Section 18(2), *“The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.”*

As per Section 18(3), *“If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act”*.

18. Hence, on perusal of the above provision, it is evident that only Section 18(1), 18(2) & 18(3) specify the liability of the promoter to give ‘compensation’ to the allottees whereas the proviso to Section 18(1) does not speak about right of ‘compensation’ to the allottee. The proviso says that “the allottee is entitled to get interest for every month of delay till handing over

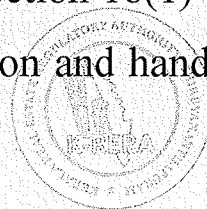


possession” While passing judgment in M/s Imperia Structures Ltd. vs. Anil Patni, the Hon’ble Supreme Court of India made certain remarks in this regard as follows: *“In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).”* It will not be out of place to mention the remarkable observations in this aspect made by the Hon’ble Supreme Court of India, in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP & Others, while discussing the objects and reasons of the Act 2016, 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/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.” At the same time, it is worthy to note here that Section 18(3) as reproduced here above, bestowed upon the allottees, the right to claim compensation from the Promoter ‘if he fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale.’”

19. However, in the instant case, only point to be considered is “whether the Complainant is eligible to get interest for delay as he claimed in the above complaint, as per Section 18(1) of the Act 2016. As discussed above in detail, the promised date of completion and handing over as per Exbt. A2 agreement here was in July 2021 and the Respondent handed over the possession of villa to the Complainant on 10/07/2021, within the period as promised as per the terms of Exbt.A2 agreement which is admitted by the Complainant. Hence, the Respondent/Promoter herein shall not be alleged with any failure to complete and hand over possession to the Complainant/allottee and as such Section 18(1) of the Act 2016 shall not be attracted here in this case. Moreover, as detailed in pre paras, Section 18(1) of the Act 2016 deals only with the delay in completion and handing over possession of the



apartment/plot/villa purchased by the allottee and it does not speak about the circumstances when delay occurred in execution of conveyance deed by the Promoter. Likewise, the proviso to Section 18(1) specifies that the allottee, in such circumstances, shall be entitled to get interest for every month of delay, not from the date of last payment, as claimed by the Complainant. It is also pertinent to note that the Complainant has no allegation of any failure on the part of the Respondent in completion of common amenities or any other works in the project, as per the terms of the Exbt. A2 agreement. The Complainant herein has admittedly paid the last instalment on 11-03-2020 with interest only after obtaining the Occupancy Certificate on 27.02.2020. Nevertheless, it is true that the Respondent has executed sale deed in favour of the Complainant only on 15/06/2022, in compliance of the direction given by this Authority. Section 17 of the Act specifies that *“conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall*



handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate". Anyhow, as per Exbt.A11, Occupancy Certificate has been obtained for the building on 27.02.2020 and the Respondent was bound to execute conveyance deed in favour of the Complainant within three months from date of obtaining occupancy certificate. Even though physical possession was handed over to the Complainant as per the terms of the agreement, the Respondent failed to execute deed in favour of the Complainant on time as per the provisions of the Act 2016. However, this Authority cannot appreciate the contentions raised by the learned counsel for the Respondent in this regard that the delay was caused by the Complainant himself who initiated a series of legal proceedings against them from Complaint No. 19/2020 dated 13.01.2020 because the Respondent/Promoter has the bounden duty to call upon the Complainant/allottee to execute the conveyance deed within three months from the date of obtaining occupancy certificate. Here, with respect to the grievance of the Complainant as to the delay occurred in registering the conveyance deed in his favour, the only remedy available to him is to seek compensation from the Promoter, as prescribed under Section 18(3) of the Act 2016 as mentioned above. But it is found that the Complainant herein has already availed the said remedy which is revealed from Exbts. B2 and B5.




20. In view of the above facts and findings, I hold that the Complainant herein is not entitled to get interest for delay as claimed by him, as per Section 18(1) of the Act, 2016, as it has been established beyond doubt that the Respondent/Promoter has completed and handed over possession of the villa to the Complainant within the period prescribed as per the terms of the Exbt.A2 agreement. The points No.1 and 2 are answered accordingly in favour of the Respondent.

21. In the result, the above Complaint is hereby dismissed. Both parties shall bear their respective costs.

Sd/-
Smt. Preetha P Menon
Member

True Copy/Forwarded By/Order


Secretary (legal)

Exhibits

Documents marked from the side of Complainants

Exbt.A1- Copy of agreement for sale.

Exbt.A2- Copy of construction agreement.

Exbt.A3- Copy of order dated 04/09/2020 passed by the Authority
In Complaint No.19/2020.

Exbt.A4 - Copy of judgement in REFA No.01/2021 passed by the
Kerala Real Estate Appellate Tribunal.

Exbt.A5- Copy of email dated 09/10/2019 issued by the Complainant

Exbt.A6-Copy of receipt dated 11/03/2020 issued by the Respondent

Exbt.A7-Copy of email dated 05/03/2020 issued by the Complainant.

Exbt.A8-Copy of email dated 16/11/2020 issued by the Complainant.

Exbt.A9 series-Copy of email dated 18/11/2020 &13/01/2021 issued
by the Complainant.

Exbt.A10 series-Copy of email communications issued by the
Complainant.

Exbt.A11- Copy of Occupancy Certificate dated 27/02/2020.

Exbt.A12 series -Copy of email communications dated 09/06/2021
& 24/06/2021.

Exbt.A13- Copy of email dated 04/06/2021 & 24/06/2021.

Exbt.A14-Copy of ledger statement issued by the Respondent for a
period from 30/12/2017 to 29/02/2020.

Exbt.A15-Copy of sale deed dated 15/06/2022.



Documents marked from the side of Respondents

Exbt.B1- Copy of email dated 17/10/2019 issued by the Respondent.

Exbt.B2- Copy of order dated 18/05/2023 in REFA No.41/2022.

Exbt.B3- Copy of Complaint No.19/2022 filed by the Complainant.

Exbt.B4- Copy of order dated 04/09/2020 in Complaint No.19/2020.

Exbt.B5- Copy of order dated 04/05/2022 passed by the Adjudicating officer in CCP No.137/2021.

Exbt.B6 - Copy of order dated 15/04/2021 passed by the Appellate Tribunal in REFA No.1/2021.

Exbt.B7 - Copy of lay out approval issued by the CTP, Thiruvananthapuram dated 11/03/2014.

Exbt.B8 - Copy of development permit dated 19/09/2014.



THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change, from a small collection of colonies to a global superpower.

In the early years, the colonies were largely self-sufficient, but they began to look towards Britain for goods and protection.

The American Revolution was a turning point, as the colonies declared their independence from British rule.

The new nation faced many challenges, including the struggle to create a strong central government.

The Constitution was written to address these challenges and to provide a framework for the new government.

Over time, the United States has expanded its territory and its influence, becoming a major world power.

The Civil War was a defining moment in American history, as the nation grappled with the issue of slavery.

The Reconstruction era followed, as the nation sought to rebuild and reunite after the war.

The Industrial Revolution brought rapid economic growth and technological advancement to the United States.

The Progressive Era saw the rise of social reform movements and the expansion of government's role in society.

The World Wars further solidified the United States' position as a global superpower.

The Cold War era was characterized by a tense rivalry between the United States and the Soviet Union.

The Vietnam War and the Civil Rights Movement were significant events in the latter half of the 20th century.

The end of the Cold War brought a new era of global cooperation and challenges.

The 21st century has seen the United States continue to shape the world through its economic and cultural influence.

The future of the United States remains uncertain, but its history provides a rich context for understanding the present.