



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 192/2022

Dated - 20th February 2023

Present: Sri. M. P. Mathews, Member

Complainants

1. Bindhu Nair,
T C 18/840, KRA 64-2,
Kongalam, Aramada,
Thirumala, Trivandrum – 695 032.
2. D .K.Nair,
T C 18/840, KRA 64-2,
Kongalam, Aramada,
Thirumala, Trivandrum – 695 032.

Respondents

1. M/s Sowparnika Projects & Infrastructure Pvt Ltd.,
C Block, 1st Main Road, AECS Layout,
Kudalahalli, Bangalore-560037.
2. Ranji Subrahmanian,
Managing Director,
M/s Sowparnika Projects & Infrastructure Pvt Ltd.,
No.750, Vettakulam Arcade,
Oppo.Mar Ivanious Collage Main Gate,
Nalanchira, Thiruvananthapuram -695015.



3. Meenakshi Ramji,
Chairperson,
M/s Sowparnika Projects & Infrastructure (p) Ltd,
No.750, Vetticulam Arcade,
Opp. Mar Ivanios College Main gate,
Nalanchira, Thiruvananthapuram -695015.
4. Subramaniam Sreenivasan,
Director,
M/s Sowparnika Projects & Infrastructure Pvt Ltd.,
No.750, Vettakulam Arcade,
Oppo.Mar Ivanious Collage Main Gate,
Nalanchira, Thiruvananthapuram -695015.
5. Joji Joseph,
State Head,
M/s Sowparnika Projects & Infrastructure Pvt Ltd.,
No.750, Vettakulam Arcade,
Oppo.Mar Ivanious Collage Main Gate,
Nalanchira, Thiruvananthapuram -695015.
6. Sampath S,
Manager (documentation),
M/s Sowparnika Projects & Infrastructure Pvt Ltd.,
No.750, Vettakulam Arcade,
Oppo.Mar Ivanious Collage Main Gate,
Nalanchira, Thiruvananthapuram -695015.

The above Complaint came up for final hearing 04/01/2023. Counsel for the Complainant Adv. Thomas Kochenayil & Counsel for the Respondents Adv. V Ajakumar attended the hearing.

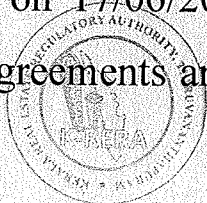


ORDER

1. The Complainant is an allottee of the project named 'Sowparnika Vaishnavam' located at Sreekaryam, Thiruvananthapuram District, developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred as 'the Act 2016'). (Registration No.K-RERA/PRJ/109/2021).

2. The case of the Complainant is as follows:- Complainants are one of the apartment owner in the said project bearing door No.A on the 6th Floor, having plinth area of 1479 sq.ft. and 31.62 sq.m. of undivided share. The Respondents 2 to 4 approached the Complainant to sell an apartment in their project along with amenities and facilities. The Respondents made believe the Complainant that they had obtained plan sanctioned as per No.ZUE2/BA-224/2014 dated 24/09/2014 for the construction of the multi-storeyed building with 12310.89 sq.mts.

3. The Respondents had commenced construction of the said building in the year 2014. Believing the words and assurance from the part of the Respondents, the Complainant had entered into agreement for construction on 17/06/2017 and agreement for sale on 17/06/2017 with the 1st Respondent. True copies of the said agreements are produced. The Respondents have



agreed to construct a residential apartment No.A on the 6th Floor having super built up area of 1479 sq.ft in the said project and hand over the possession of same along with one car park, undivided share, amenities and facilities by December 2018 with a grace period of 6 months. The total consideration for the same was fixed as Rs.60,98,252/-. But the Respondents have not completed the construction as represented in the agreement and the materials used in the construction are of poor quality and there are many defects in the said construction. Still many works are yet to be completed and not handed over the apartment till now.

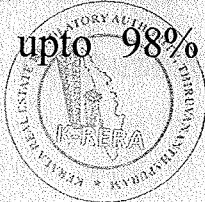
4. The Complainant further submitted that the Complainant had paid an amount of Rs.11,24,880/- on 12/06/2017, Rs.12,00,000/- on 10/07/2017 Rs.5,00,000/-on 07/08/2017 Rs.10,00,000/- on 31/08/2017 Rs.5,00,000/- on 06/03/2018 Rs.5,00,000/- on 20/06/2018 and Rs.5,00,000/- on 22/10/2018 Rs.3,00,000/- on 21/10/2019 and Rs.2,10,000/- on 05/02/2021 . Thus the Complainant had paid a total consideration of Rs.58,34,880/-. After paying 95% of the total value of the apartment, the Respondents have not delivered the title or executed the sale deed till now. Hence the Complainant is entitled to claim interest for the delay as stated in the Act. Even though the Complainant made repeated requests and demands to make good the loss caused to her, the Respondents have not paid any heed to the same. Hence the above Complaint is filed.



5. The reliefs sought by the Complainant is to direct the Respondents to pay interest of Rs.28,39,356/- to the Complainant for the delay of non handing over the apartment on the agreed date.

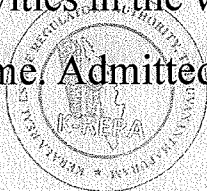
6. The Respondents 1 & 5 have submitted written statement stating that the above Complainant is not maintainable either in law or on facts. The agreement for construction and agreement for sale dated 17/06/2017 stood novated at the mutual consent of the parties by agreement for handing over possession dated 06/02/2021. Copy of the said agreement also produced. The liability of the promoter will arise only if the promoter fails to hand over possession in accordance with the terms of the agreement for sale. As per the said agreements dated 17/06/2017 and 06/02/2021 the Complainant has not pay the balance consideration of Rs.11,30,424/- before December 2018 and shall take the sale deed at his cost on completion of payments due under the agreement. But this has not taken place. The Complainant has to pay Rs.60,98,252/- along with other charges before handing over of the apartment. This has also not taken place.

7. The Respondents 1 & 5 further submitted that in case of a contract constitution reciprocal promises, the promoter is not bound to perform his obligation of completing the construction, if the allottee fails to pay the consideration / cost of land and construction at first upto 98% as agreed in the construction



agreement and in full before December 2018 as stipulated in the sale agreement. So it is an admitted fact that the Complainant has not paid the agreed payments in accordance with the agreements and he is estopped from making any application for compensation. The Complaint is bad for mis-joinder of unnecessary parties, as the Respondents 2 to 6 in the application are not promoters as evident from the agreements.

8. It was further submitted that the Complainant is a chronic defaulter in payment of instalments and she has admittedly not made the complete payments due to the 1st Respondent as per the agreements. Unless due payments are paid as promised no claim for delay interest for delayed delivery could be sustained. Even as per the agreements the 1st Respondent has to complete the construction in June 2019 subject to prompt payment by the allottee on due dates in advance. Clause 7 of the construction agreement clearly stipulated that the resultant delay in time in handing over of the unit by the vendor consequent to the delayed payment by the purchaser shall not be reckoned for arriving at time stipulation for handing over commitment given by the vendor. In clause 13 of the agreement for construction dated 17/06/2017 it is mentioned that the vendor shall not be liable for the delay in completion of construction or delay in handing over due to unavailability of materials and force majeure clause mentioned in the same agreement. The Covid-19 pandemic has paralysed industrial activities in the whole nation and it took two years to recover from the same. Admittedly the Complainant had not



paid the full payment. As per section 19(7) of the Act, the allottee shall be liable to pay the interest at such rate as may be prescribed for any delay in payment towards any amount or charges to be paid under section 19(7). As of now with regard to delay in payment of instalments an amount of Rs.6,45,328/- is pending from the Complainant.

9. The Respondents 1 & 5 further submitted that the Complainant admitted in agreement dated 06/02/2021 that they have received the possession of the apartment on 06/02/2021. The application with regard to the non completion of amenities are false and misleading. the amenities provided in the project are of superior quality than promised ones. The Respondents have not compromised in the quality of construction or the materials used in construction. The Respondents have completed the project in all respects and occupancy has been applied for on 15/12/2021 even though the completion date as per the RERA registration is 03/12/2022. The acknowledgement for receipt of application for occupancy issued by corporation is also produced.

10. The Authority heard the learned counsel for both the parties and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 & A2. The documents produced from the part of the Respondents are marked as Exbt.B1 to B3.



11. **Exbt.A1** is the copy of construction agreement dated 17/06/2017 entered into between the 1st Respondent represented by the 6th Respondent and the Complainant. As per the said agreement the 1st Respondent agreed to sell and transfer 31.62 sq. mts. of undivided right and interest in the property with an apartment unit bearing No.A on the 6th floor of the building having super built up area of about 1479 sq. ft. along with common area and one car park for a total consideration of Rs.60,98,252/-. It was also stated in the agreement that the Builder shall deliver the apartment to the Complainant by December 2018, with a grace period of six months. Hence the date of completion as per the agreement can be considered as 30/06/2019.

12. **Exbt.A2** is the copy of sale agreement dated 17/06/2017 executed by the Complainants and 1st Respondent represented by the 6th Respondent.

13. **Exbt.B1** is the copy of undertaking for acquiring possession of apartment before completion of the project dated 06/02/2021 executed between the Complainant and 1st Respondent represented by one Ms.Ambily Balakrishnan. It is confirmed that through Exbt.B1 that the Complainant had paid 95% of the agreed full cost of the flat and the amenities as stipulated in the agreement and the possession is being taken over pending completion of the project including all the amenities stipulated in the brochure and the agreement. It is further stated that the balance cost will be paid either



based on the order from K-RERA or at the time of final settlement, upon the completion of remaining works in the project.

14. **Exbt.B2** is the true copy of the statement showing the calculation of the interest for the delayed payment of instalments. It is evident from Exbt.B2 that the payments were made and acknowledge on the dates shown in the statement and the total amount received is Rs.58,34,880/-. **Exbt.B3** is the copy of acknowledgement for receipt of application for occupancy issued by corporation. The partial occupancy certificate dated 16/12/2022 has been uploaded in the website maintained by the Authority.

15. The Complainants had produced a statement showing the details of amount paid and the interest claimed as delay interest from 01/07/2019 till 06/02/2021, and the same is scheduled below.

Sl.no	Date of payment	Days	Amount paid	Applicable rate of interest	Interest payable for the period.
1.	12/06/2017	555	11,24,880.00	14.75	2,52,198.00
2.	10/07/2017	555	12,00,000.00	14.75	2,69,040.00
3.	07/08/2017	555	5,00,000.00	14.75	1,12,100.00
4.	31/08/2017	555	10,00,000.00	14.75	2,24,200.00
5.	06/03/2018	555	5,00,000.00	14.75	1,12,100.00
6.	20/06/2018	555	5,00,000.00	14.75	1,12,100.00
7.	22/10/2018	555	5,00,000.00	14.75	1,12,100.00
8.	21/10/2019	463	3,00,000.00	14.75	55,755.00
9.	05/02/2021	1	2,10,000.00	14.75	84



Total	58,34,880.00	12,49,677/-
Total interest payable	Rs.12,49,677/-	

16. It is seen from the above statement that the amount paid before the promised completion date of June 2019 was Rs.53,24,880/-. Section 18(2) of the Kerala Real Estate (Regulation & Development) Rules 2018 stipulates that *“In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale”*. Since the Respondents failed to complete the project and handover possession of the apartment as per the agreement, the Complainants are eligible to get interest for the delay from the Respondents as per section 18 of the Act, 2016.

17. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount*



received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed". Here, in this case the Allottee is entitled to claim interest for delay in handing over possession of the apartment as the promoter failed to handover possession of the apartment within the time stipulated in the agreement.

18. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below *"The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund*



the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed". On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to claim interest for the delay in handing over possession of the apartment as provided under the Act, 2016.

19. Hence, the Complainant herein is entitled to get interest for the delay on Rs.53,24,880/- which is the amount paid by the Complainant to the Respondents before the promised date of completion and the Respondents are liable to pay interest to the complainant according to section 18 of the Act, 2016 for the period from 01/07/2019 to 06/02/2021. The allottee is liable to pay interest on delayed payment of instalments, only in cases where the project is progressing as per the schedule promised to the allottee. Here the project is still not complete, as the occupancy certificate is still awaited. However the allottee has taken possession of the apartment and she can claim delay interest only up to the date of taking possession of the apartment. The Hon'ble Supreme Court has observed that where the allottees are on the wrong side of law by



taking possession of their respective flats without the completion certificate, whatever might be the compulsion, they are not inclined to direct the NCDRC to decide on the compensation component (Civil Appeal No.3343/2020). In another decision where the flats were demolished in Maradu, the Hon'ble Supreme Court refused to consider the request for interest on the amounts paid by the allottees to the builders as it was found that the allottee had taken possession and the market value of the plot has increased substantially (2022 KHC 6547).

20. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of handing over of possession, but the Complainant limited her claim to 14.75 % interest. From the Master data available in the portal of the Ministry of Corporate affairs it is seen that the Respondents 2 to 4 are the directors of the 1st Respondent Company. The 2nd Respondent as per the above master data it is Ramji Subramaniam where as in the Complaint it is wrongly shown as Ranji Subrahmanian. The Respondents 1 to 4 and 6 are jointly and severally liable to pay delayed interest to the



Complainant on Rs.53,24,880/- @ 14.75 % from 01/07/2019 to 06/02/2021 as per the above schedule.

21. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions: -

1. The Respondents 1 to 4 & 6 shall pay interest on **Rs.53,24,880/- @ 14.75 %** simple interest per annum to the Complainant for the period of delay from 01/07/2019 to 06/02/2021, under Section 18 of the Act, 2016.

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

Sd/-

Sri M.P Mathews
Member

/True Copy/Forwarded By/Order




Secretary (legal)

Exhibits**Exhibits marked from the Side of Complainants**

Ext.A1- Copy of agreement for Construction dated 17/06/2017.

Ext.A2- Copy of agreement for sale dated 17/06/2017.

Exhibits marked from the Side of Respondents 1 &5

Ext.B1- Copy of undertaking for acquiring possession of apartment
Before completion of project dated 06/02/2021.

Ext.B2- Copy of statement showing the calculation of interest for the
Delayed payments of instalments.

Ext.B3- Copy of the acknowledgement for receipt of application for
Occupancy issued by corporation.

