



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No. 196/ 2022**

Dated 20<sup>th</sup> day of May 2024

Present: Smt. Preetha P. Menon, Member

### Complainant

Sam Tony  
Kallara Chully House  
Sasthamangalam Road  
Kaduval, Perumbavoor  
Ernakulam, Kerala, Pin- 683542.

[By Adv. Litto Varghese Palathingal]

### Respondents

1. M/s Sobha Limited,  
Rep: by its Managing Director,  
Sobha, Sarjapur- Marthahalli Outer Ring Road,  
Devarabisahanahalli, Bellandur Post,  
Banglore, Pin-560103.
2. Mr. Ravi Puthan Naduvakkat Chenthamaraksha Menon,  
Managing Director,  
Sobha Ltd, Sarjapur- Marthahalli Outer Ring Road,  
Devarabisahanahalli, Bellandur Post  
Banglore, Pin-560103.



3. Puravankara Limited (Puravankara Projects Ltd.,)  
No.130/1, Ulsoor Road, Bengaluru, Pin-560042  
Rep: by its Managing Director.
4. Mr. Ashish Ravi Puravankara  
Managing Director,  
Puravankara Limited, (Puravankara Projects Ltd.,)  
No.130/1, Ulsoor Road, Bengaluru, Pin-560042

The above Complaint came up for final hearing on 22/01/2024. Counsel for the Complainant Adv. Litto Varghese Palathingal and Counsel for the Respondents 1 & 3 Adv. Abraham Mathew Vettoor attended the virtual hearing.

### **ORDER**

1. The Complainant is an allottee of the project named 'Marina One-Phase 1' located at Marine Drive, Kochi developed by the Respondents. 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'). Registration No. K-RERA/PRJ/251/2020.

2. The facts of the Complaint are as follows: - The Respondents have made wide publicity through all print and digital media and allured many public to invest in the project 'Marina One' proclaiming that the alternative living space super luxury apartments, they propose to develop, will feature all safety and



other features for their peaceful life and will be equipped with all amenities including those which are required so that the residents do not have to venture out of the project area for any of the basic needs and facilities. Some of the amenities they have offered as part of such alluring were swimming pool, Tennis Court, STP, OWC, Solar lighting, security, gardens and parks, WTP's, firefighting system and Club House, Outdoor Gym, Cricket Pitch, Multi Court, Event Plaza. It is respectfully submitted that the property having an extent of 16.69 Acres situated at Plot No. D-4 and D-5 in Sy. No. 843, having Patta No. L1-57869/02 situated at Ernakulam Village, Kanayannur Taluk, Ernakulam District, Kochi Corporation belongs to Sobha Limited and Puravankara Limited (formerly Purvankara projects Limited). The aforementioned owners have secured a building plan duly approved and sanctioned from the Corporation of Cochin vide building permit vide No. ISOMOP4/COC/0501/14 on 15/03/2016 for the project, the construction of residential apartments including common areas, pathways, roads, swimming pool, club house with other amenities and facilities in the said apartment complex.

3. The Complainants further submitted that the said owners of the property have offered to sell undivided rights in the property and have offered to undertake a residential apartment project consisting of 1141 apartments in the property having an extent of 16.69 acres situated in Plot No. D-4 and D-5 in Sy No.

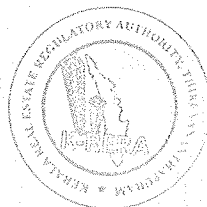


843, having Patta No. L1-57869/02 situated at Ernakulam Village, Kanayannur Taluk, Ernakulam District, Kochi Corporation. The said offers were accepted by the Complainant and consequently an agreement was executed among the Respondents and the Complainant on **20-12-2018**. As per the agreement executed among Respondents and Complainants the Respondents had altogether received an amount of Rs.1,46,44,782/- on various dates from the Complainant for 0.08% of the 16.69 acres corresponding to the apartment bearing No. B3-E4123 to be constructed on the twelfth floor in **Block East wing-01**. The said payments were made by the Complainant through Bank transfers and also directly to the Respondent as cash in accordance with the progress of the works made by the Respondents/Promoters. The Complainant has always been ready and willing to perform his part of obligations under the said agreement, but the Respondents were not ready to perform their part of the obligations under the said agreement. After collecting such huge amounts from the Complainant and from many other prospective buyers, the Respondents have not completed the construction of the residential apartments thus the Complainant suffered irreparable loss and injuries.

4. It was further submitted that the Respondents have started the work to make an impression upon the prospective purchasers that they would complete the project within the time agreed. But they have only completed the structure of the building



agreed to be given to the Complainant and the buildings agreed to be completed for other prospective buyers were not yet completed. Even if they complete the building as agreed, the Complainant may not be able to use it unless and until the basic facilities and amenities offered in entire project namely 'Marina One' are provided. The Respondents have abandoned the site and now there are no workers at the site implying that they have no interest to continue the project. Thus, the project is now not looked after or maintained by the Respondents. It is respectfully submitted that the other facilities like Swimming pool, Tennis Court, STP, OWC, Solar lighting, security, gardens and parks, WTP's, firefighting system, Club House, Outdoor Gym, Cricket Pitch, Multi Court, Event Plaza, Common areas, pathways compound walls, drainage works, water connections and 3 phase connections which were initially offered to the Complainant were also not provided to him and to others. The Respondents have till date not completed the construction of the Apartments and thus failed to give possession of the building. The Respondents have undertaken to complete the construction by the end of 31/12/2021. The Complainant has already transferred Rs.1,46,44,782/- as demanded by the Respondents during the respective periods towards the total agreed amount of Rs.2,44,99,269/- as per the agreements entered into between the Complainant and the Respondents.



5. The Complainant further submitted that he is ready and willing to make the balance payment of Rs.88,45,960/- as against the completion of the work pending as per the schedule issued by the Respondents in the said apartment allotted to the Complainant and shall take into possession for occupancy. But as the Respondents were not at all doing the remaining construction and failed to complete the works as per schedule, the payments from the part of Complainant were held back clearly informing the Respondents that Complainant is ready and willing to pay the amounts if they proceed further in completion and get ready for the transfer of possession and ownership, which the Respondents failed. The Complainant has come to understand that in spite of a valid agreement existing between the Complainant and the Respondent, for sale and purchase of the Apartment bearing No. B3-E4123, 12<sup>th</sup> floor, Block East Wing-01, the Respondents are arbitrarily trying to sell the above property to a third person without the consent of the Complainant. The Respondents are now unilaterally and arbitrarily, forcing this Complainant to take back the already paid amount of Rs.1,46,44,782/- or else to take up another residential apartment in another project at a different location to which this Complainant can never agree. The Complainant is legally entitled to get the sale deed executed. Now Respondents are trying to sell the property to strangers at a higher price for which they have no right. This amounts to misrepresentation, fraud and cheating from their part against which



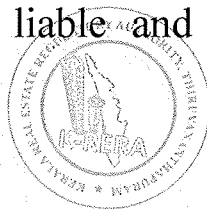
this Complainant has resolved and decided to initiate both Civil and Criminal proceedings to safeguard his interests. The Complainant caused to issue a demand lawyer notice to the Respondents on 15.06.2022, which they received but neither replied nor complied the demands made, hence this Complaint.

6. The reliefs sought by the Complainant are as follows:- (1) Pass appropriate orders directing the Respondents to complete the construction of the apartment and common amenities as per the promise; (2) Deliver the physical possession of the apartment and common amenities; (3) Receive the balance sale consideration of Rs.88,45,960/- as per the agreement; (4) Execute the sale deed of transfer of ownership of apartment and common amenities as per the promise immediately; (5) To pay compensation for the delay caused in delivery of physical possession of the apartment, in the manner specified under the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed there under; (6) To perform all the obligations agreed to perform in the Agreement dated 07.01.2013.

7. The Respondents No. 1 and 3 have filed Counter statement, denying entire averments in the Complaint and submitting that the Complainant had booked apartment No. B3-E-4123 in the project named "Marina One-Phase-1" promoted by the Respondents 1 and 3 as a joint venture project on remitting a



booking advance of Rs.11,20,000/- on 31.10.2018. It is a project being executed by the said Respondents in the 16.69 Acres of land in sy.no. 843 of Ernakulam Village. It is a composite development project which consists of 12 separate apartment blocks. The Apartment booked by the Complainant is one being constructed in Block No. 4 of the composite development project. The Complainant was bound and liable to execute the Construction Agreement and Sale Agreement within 30 days of the said booking made by him. However, he executed the sale agreement and construction agreement only on 20-12-2018, causing considerable delay in the same. As per the said agreements, the committed date of completion of the apartment and delivery of the same to the Complainant was 31.12.2021, provided the Complainant complies with the stipulations in the agreements with regard to timely payment of the instalments payable by him towards land value and construction cost. The cost of the undivided share in the land offered to be sold by the promoters and agreed to be purchased by the Complainant, as per the sale agreement aforesaid was Rs.77,14,529/- and the cost of construction of the apartment booked by the Complainant was Rs.1,67,84,740/-, as per the construction agreement. Thus, the total consideration payable by the Complainant was Rs.2,44,99,269/- which was to be paid in accordance with the stage wise progress of the work as stipulated in the payment schedule attached to the agreements. Even though the Complainant was liable and supposed to pay substantial





amount at the time of the agreements aforesaid, he postponed the payment towards land value and construction cost stating that he has approached the Axis Bank for a loan and the payment would be made immediately on sanctioning the loan and unless the agreement for sale and agreement for construction are produced in advance, that the bank would not sanction the loan. He had also offered to pay interest on such belated payment of the amount payable on the date of execution of the agreements. The Respondents 1 and 3 believed such representations made by the Complainant as true and bonafide and accordingly allowed the Complainant to execute the agreements without and before payment of the stipulated amount of Rs.35,78,148/-, including the booking advance, being 20% of the cost towards land value and construction cost. Even after execution of the said agreements, the Complainant paid only Rs.1,05,000/- as remitted on 26-12-2018 and he was justifying the delay in making the stipulated payments on blaming his Bankers. Thereafter, these Respondents received Rs.54,57,408/- towards the account of the Complainant on 28-12-2018, as received from Axis Bank, Rajaji Road, Ernakulam. The next payment received by the Respondents through the bank was Rs.18,79,529/- paid on 19-06-2019 which was also a belated payment attracting interest for late payment. He had also paid a further amount of Rs. 21 lakhs on 16-03-2020 as paid through Axis Bank, though the same was due for payment on 27-11-2019. On 16-03-2020 itself, these Respondents had received a further



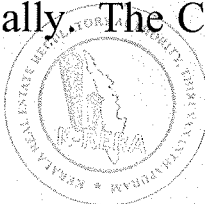
amount of Rs.34,83,115/- from the Axis Bank towards the instalments due on 29-01-2020. The 1<sup>st</sup> Respondent, which is entrusted to maintain the accounts relating to the project, has maintained true and correct accounts with respect to all the amounts received towards the account of the Complainant with reference to the due date and paid date. Thus, the total amount received by the Respondents 1 and 3 from the Complainant is Rs.1,46,44,782/- of which Rs.17,25,000/- has been paid directly by him and Rs.1,29,19,872/- has been paid through Axis Bank. Though the Respondents had informed the Complainant that an amount of Rs.3,46,975.97 is due from him towards interest charged on belated payments, he did not remit the interest demanded.

8. The Respondents 1 & 3 further submitted that the Complainant had agreed to pay the considerations towards land value and cost of construction strictly in accordance with the schedule of the payment incorporated in the construction agreement executed by him. However, he effected payment of the Rs.54 lakhs from the bank only on 28.12.2018, though the same was payable within 30 days of booking of apartment made by him. The Complainant has admitted in his Complaint that the Respondents have completed the structure of the building which has got 28 floors. He was liable to pay Rs.18,29,259/- at the time of completion of the 7<sup>th</sup> floor, Rs.18,96,038/- at the time of completion of the 11<sup>th</sup> floor, Rs.18,96,038/- at the time of

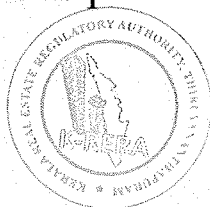


completion of the 15<sup>th</sup> floor, Rs.18,29,259/- at the time of completion of the 19<sup>th</sup> floor, Rs.18,29,259/- at the time of completion of the 23<sup>rd</sup> floor and Rs.18,29,259/- at the time of casting of the terrace slab. Thus, he was liable to pay a total amount of Rs. 2,16,11,479/- by the time of completion of the terrace slab, without applying interest for the belated payments. If a customer regularly pays the stipulated amounts payable by him, that the Respondents 1 and 3 could go ahead with the construction of the apartment booked by him. **Admittedly, the Complainant has paid only a total amount of Rs.1,46,44,782/- as on 16-03-2020.**

Thus, the Complainant was a clear defaulter with respect to the payment of the instalments as has been agreed by him in the agreements executed by him. It is pertinent to mention that all the payments so far made by the Complainant subsequent to the booking have been made much belatedly and therefore these Respondents were compelled to charge interest on such belated payments. Realising the default from the part of the Complainant in the matter of regular payment of the stipulated instalments, the Complainant had issued a letter dated 05.08.2021 to the 1<sup>st</sup> Respondent admitting and acknowledging that he is liable to pay interest charged by the Respondents and undertaking to pay the future instalments promptly without default as per the Payment Request Letter. The said letter also establishes that the Complainant has been receiving Payment Request Letter from the Respondents periodically. The Complainant, who did not care to



clear the interest in respect of the earlier remittances made directly and through bank, had also stopped further payments after the last payment made on 16-03-2020. Having realized that the Complainant is not regular or prompt in the matter of payment of the amounts due from him to the Respondents, the Respondents 1 and 3 had issued several communications to the Complainant through emails and letters, requesting him and reminding him with regard to the payment of amounts defaulted by him. These Respondents had issued a further email on 07-12-2021 and a mail dated 28-01-2022 to the Complainant with attachments intimating him regarding the default and steps being taken for cancellation of the booking. As the Complainant did not care to pay off the outstanding liabilities made in violation of the stipulations for payment in the agreement, the 1<sup>st</sup> Respondent had issued a letter dated 23-03-2022 to the Complainant intimating that unless the amount of Rs.81,91,574/- due from him as on 15-02-2022 is paid within 15 days from the receipt of the letter, the Respondents will be cancelling the booking and the amount due to the bank will be refunded within 45 days after resale of the apartment. On receipt of the said communication, the Complainant has issued email dated 25-04-2022 requesting extension of time by 3 months to make the payments. The 1<sup>st</sup> Respondent had also issued necessary communications with regard to the cancellation of the booking made by the Complainant as per email dated 10-05-2022 wherein



the necessary clause in the agreement with regard to cancellation had also been extracted.

9. The Respondents further submitted that subsequent to the cancellation of the booking made by the Respondents with due notice to the Complainant, the 1<sup>st</sup> Respondent had issued a further communication dated 30-05-2022 to the Manager, Axis Bank, Rajaji Road Ernakulam. This Respondent had received a lawyer notice dated 15-06-2022 from the Complainant, subsequent to the cancellation of the booking. On receipt of the said lawyer notice, the 1<sup>st</sup> Respondent had issued a reply dated 26-07-2022 to the lawyer of the Complainant. The Respondents 1 and 3 had also remitted back amounts to the Axis Bank by way of 4 payments, two payments made by the 1<sup>st</sup> Respondent and two payments made by the 3<sup>rd</sup> Respondent, the amount so paid being Rs.17,41,557.50 as per cheque dated 25-07-2022, Rs.47,18,333.50 as per cheque dated 25-07-2022, Rs.47,18,333.50 as per cheque dated 02-08-2022 and Rs.17,41,557.50/- as per cheque dated 02-08-2022, the total amount so refunded being Rs.1,29,19,782/-. The above aspects would clearly establish that the Respondents 1 and 3 have been acting in accordance with law and as per the agreements executed by them with the Complainant and had accordingly made several request to the Complainant for clearing the defaulted amounts and regularizing the payments, before the cancellation, but the



Complainant was not amenable to clear the defaults and ultimately the Respondents were compelled and constrained to cancel the agreements with the Complainant and the Respondents have also refunded the amounts due to the Axis Bank in view of the undertakings in the NOC issued in favour of the bank. The Complainant is not entitled to make any claim with this Hon'ble Authority pretending ignorance of the above communications and the cancellation of his booking and refund made by these Respondents. Thus, the Complainant is one made without any merit or bonafides, made only to cause unnecessary hardship and difficulty to the Respondents. It is respectfully submitted that the Complainant has no locus standi or sufficient cause of action, much less any justifiable grievance in the matter of approaching this Hon'ble Authority. If at all any such complaint is entertainable, the Axis Bank, Rajaji Road Ernakulam is a necessary party and the Complaint is liable to be rejected on account of non-impleading of necessary party. Subsequent to the cancellation of the booking so made by the Complainant, the apartment earlier booked by the Complainant has been resold on 03-07-2022 to one Sri. Naveen Venugopal and necessary Sale Agreement dated 08-07-2022 has also been executed in the RERA format with the new allottee of the apartment No. B3, E4123. This Respondent was fully competent to effect resale of the apartment as per the terms and conditions in the agreements executed with the Complainant, on cancellation of his booking on the ground of



default. Such action of the Respondents is not under challenge even now and his challenge is pretending ignorance of the cancellation and refunds already effected. The Respondents have received notice in Complaint No. 196/2022 only on 06-08-2022, requiring its appearance for hearing on 05-09-2022.

10. The Respondents 1 & 3 further submitted that even though the committed date of delivery as per the agreements dated 20-12-2018 and 31-12-2021, the said period stands extended by one year in view of the Covid-19 pandemic situations and consequent shut down of the country for several months and inability of the promoters to continue with the construction on account of non-availability of labour force and construction materials. Thus, the present Complaint has been filed quite prematurely, even if the Complainant is entitled to file a Complaint of the present nature. The payments so far made by the Complainant as on 05-10-2020 were not in accordance with the progress of the works made by the Respondents/promoters based on which the payment schedule has been formulated. He was liable to pay a total amount of Rs1,59,73,704/- as on 29-07-2020 when the Respondents had completed the 15<sup>th</sup> floor of the tower of which the apartment of the Complainant is situated. He was liable to pay a further amount of Rs.18,79,259/- on completion of the 19<sup>th</sup> floor which was completed by 17-12-2020, had the remittance been proper. It is respectfully submitted that after payment of the



amount received by way of bank loan, the Complainant got exhausted in his resources and thereafter, he has remitted only an amount of Rs. 5 lakhs made on 05-10-2020. Therefore, he did not bother to enquire even regarding the payments to be made on completion of the 23<sup>rd</sup> floor and the terrace slab. Therefore, his 3<sup>rd</sup> prayer to direct the Respondents to receive balance sale consideration of Rs. 88,45,960/- as per the agreement cannot be entertained at all. The Complainant was fully aware that if the purchasers of the various apartments fail to pay the stipulated amounts as per the payment schedule, the promoters will have to drop the project. Therefore, in the case of chronic defaulters like the Complainant, the promoters have to terminate the agreements with such defaulters and reallocate the respective apartments to new investors. The Complainant, who admittedly have defaulted payment of various instalments cannot normally have any legitimate Complaint against the Respondents who are the promoters of the project. The various units of this project under Marina One are having different dates of completion and the date of completion of the project as per the RERA certificate is 30-06-2025. So, the Complainant cannot be heard to say that the Respondents have not completed the construction of the residential apartments after collecting huge amounts from the prospective buyers and consequently the Complainant also suffered irreparable loss and injuries. Despite the adverse situations like the flood that occurred in the year 2018 and 2019 and the Covid Pandemic which





started by March 2020, the Respondents could achieve considerable progress in the construction and the Complainant alone has developed such feelings that the Respondents failed to achieve the target and accordingly, Respondents have abandoned the site and they have no interest to continue the project. The Complainant has no case that he has been making the payments as per the schedule of payment agreed upon by both the parties. Admittedly, he did not make any payments apart from the last payment of Rs. 5 lakhs made on 05-10-2020. Such a person is now making false accusations against these Respondents. The amount of Rs.88,45,960/- is one stated without taking into consideration the interest paid for delayed payment and the interest payable on the still defaulted amounts. The Respondents have already returned the amounts paid by the bank on account of the loan availed by the Complainant. Thus, the entire situation has been changed and the Complainant cannot aspire for allotment of an apartment in his favor. The termination of the agreement is one made on sufficient grounds and with due notice to the Complainant and he had correctly understood it as the same has been stated in the lawyer notice sent on his behalf. He is also fully aware of the fact that these Respondents have already returned a total amount of Rs.1,29,19,782/- received from the Axis Bank under the loan facility extended to the Complainant. The amount remains with the Respondent is only Rs. 17,25,000/- out of which Rs. 11,20,000/- is the booking amount. The remaining amount left with the



Respondent will not be sufficient to compensate for the statutory payments made by the promoters in the account of the Complainant and the interest legitimately recoverable from him for belated payments of the instalments. The termination of the contract has been made strictly observing the provisions of the Real Estate Regulation and Development Act, 2016 and the Kerala Real Estate Regulation and Development Rules, 2018. The total amount admittedly paid by the Complainant apart from the loan amount is Rs.17,25,000/- which is not even 10% of the cost of the apartment being the contractual amount even if the parties go by the mutual agreements executed by them. None of these Respondents have even suggested the Complainant to take back the already paid amount of Rs.1,46,44,782/- and no such amount is now remaining with the Respondents. None of the Respondents have offered any other residential apartment in any other project at a different location as has been claimed by the Complainant. The Complainant is not entitled to get any sale deed executed in his favour much less to deliver physical possession of the apartment and common facilities as has been wishes and prayed by him. These Respondents had duly replied to the lawyer notice dated 15-06-2022 and the statement that the Respondents did not reply to the same is quite false and the reply so issued by the Respondents. The Complainant is not entitled for any of the reliefs sought for in the Complaint and he has no right or authority to seek an order



from this Authority directing the Respondents to complete the apartment and common amenities.

11. The Complainant has submitted rejoinder stating that the agreement between Complainant and Respondent entered for the purchase of the Flat is subsisting as it was never legally terminated or concluded by fulfilling the mutual contractual obligations. The Complainant has evidence to prove his contention that the lapses in the delay in the construction is the real cause for this dispute. Now the Respondent has colluded with a third party who is interested to buy the scheduled premises for a higher price. Misusing the clauses in the agreement now the Respondents misrepresenting the delay in the payments and trying to commit fraud on this Complainant and trying to make unlawful profit and gain, which amounts to criminal cheating. The Respondents do not have the power to deviate from the original agreed contract for sale and construction and to sign a new sale agreement with a third party fully knowing that the Complainant is ready and willing to perform his obligations, hence, the alleged agreement entered between the Respondent and third party in respect of the flat already allotted to the Complainant is disputed, and said unregistered agreement even if entered is illegal, invalid, sham and void, and it is not binding on this Complainant. The alleged new agreement is in clear violation of transfer of property act, registration Act, Stamp Act and Rules. **On 05.10.2020 the**



**Complainant had remitted Rs.5,00,000/-.** It is necessary to consider an important fact that since March 2020, the India was gripped by Covid-19 situation. Even by suffering the hardships, the Complainant remitted Rs.5,00,000 in October 2020. It may be noted that even before the commencement of Covid-19 pandemic, the scheduled work as promised in the agreement was not at all completed by the Respondents. There were no restrictions on construction activities except for the first few weeks of Covid-19 restrictions. But now the Respondents are pleading that the delay was caused due to Covid-19 pandemic situations and this Complaint has been filed quite prematurely. On the contrary, the Respondents are attempting to terminate the agreement prematurely. Hence, the malafide intention of the Respondents are very clear. Further the Respondent claims that the apartment earlier booked by the Complainant has been resold on 03.07.2022 to one Naveen Venugopal and necessary sale agreement was executed on 08.07.2022. It is important to note that, the Complainant had issued registered notice intimating his readiness and willingness on 15.06.2022 and this Complaint was filed on 30.06.2022. This Complainant hereby denies the execution and existence of the above said alleged agreement. The Respondents were aware of all these proceedings and fully knowing these details only to circumvent the situation, they fabricated a sham document to deny the rights to the Complainant. From their pleadings it is evident that they issued cheques to return the bank loan only on 25.07.2022



and 02.08.2022. So, it is very clear that even if they have entered into a new sale agreement on 08.07.2022, that was done without the return of the money which was the primary requirement for cancellation of the agreement and moreover no payment was effected for return of money to the Complainant. This Complainant hereby denies the above said return of money by the Respondents to Axis Bank loan account of the Complainant. As per the bank statements produced by the Complainant here with, it is evident that the Complainant never defaulted any EMI to the loan accounts till date and the said bank loans are still valid and operational and bank is receiving the EMI. From these above said actions, it can be concluded that the alleged sale agreement newly entered between the Respondent and third party is fabricated only to create legal hurdle to the Complainant. Even if it is true that the alleged delay was caused due to so many factors, the benefit of the delay has to be interpreted and considered judiciously and justifiably equally to all stake holders. As per the agreement, the work has to be completed as per the schedule by the end of **31.12.2021**. But even at the time of filing of this Complaint many critical areas of the project were incomplete hence there is no reason or right for the Respondent to demand money from the Complainant as duties and obligations are reciprocal. In the Counter statement, the Respondents are pleading for one year extension of period due to Covid-19 situation. But they are not ready to apply the same standard and reasoning in favour of the Complainant. These types



of double standards are highly unethical and illegal. Now also, the common area, playgrounds, pathways, roads, swimming pool, club house with other amenities and facilities in the said apartment complex and basic infrastructure for providing water, electricity to the residents and ensuring safety and security in premises are not complete. It is not fit for occupation. Even then, the Complainant expressed his readiness and willingness to remit the balance amount if the Respondents are ready to execute the sale deed in his favour. There is no reason or ground to rescind, terminate or end the already executed contract between the parties. If any party is intending to rescind, terminate or end the contract the said party is legally bound to follow the clause No. 18 and 19 of the contracts which enable them to initiate the Arbitration proceedings. In this case no party done so till date. Without proper adjudication of the dispute by legal means, it has to be concluded that the original agreement is subsisting. Hence, the Complainant is legally entitled for the specific performance of the contractual obligation from the part of the Respondents.

12. Heard both parties in detail. The documents produced from the part of the Complainants are marked as **Exbts.A1 to A8** and the documents produced from the part of Respondents are marked as **Ext.B1 to B10**. After hearing both parties and examining the pleadings and documents placed on record, following points came up for consideration: -



1) Whether the cancellation dated 23/03/2022 made by the Respondents/Promoters was in accordance with the provision of law on the basis of failure from the part of the Complainant/allottee?

2) Whether the Complainant herein is entitled to get executed the sale deed in his favour and interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?.

13. **Point No. 1&2** : The project named ' Marina One-Phase 1 ' is found registered before the Authority under section 3 of the Act 2016, vide Registration No. K-RERA/PRJ/251/2020 and the proposed date of completion is shown as 30/06/2025. The documents produced from the part of the Complainant is marked as **Exbts. A1 to A8**. **Ext.A1** is the copy of brochure of the project. **Ext.A2** is the copy of agreement for sale dated 20/12/2018 executed between the Complainant and 1<sup>st</sup> Respondent represented by its authorised signatories and the 3<sup>rd</sup> Respondent. As per the said agreement the Respondents agreed to sell 0.08 % undivided share over A Schedule property, equivalent to 569.90 sft. for the purpose of constructing an apartment No. B3-E4123 on the 12<sup>th</sup> floor in block east wing-01 of the project with a carpet area of 1852.81 sq.ft, balcony area of 90.2 sft, and 568.23 of proportionate share in common areas, totalling to super built up



area of 2511.24 sq.ft along with one car parking for a total consideration of Rs.77,14,529/-. **Ext.A3** is the copy of agreement for construction dated 20/12/2018 executed between the Complainant and 1<sup>st</sup> Respondent represented by its authorised signatories and the 3<sup>rd</sup> Respondent. As per the said agreement the 1<sup>st</sup> Respondent agreed to construct a 3.5 bed room apartment bearing No. B3-E4123 on the 12<sup>th</sup> floor in block east wing-01 of the apartment building to be constructed in the Schedule A property with a carpet area of 1852.81 sq.ft, balcony area of 90.2 sft, and 568.23 sft. of proportionate share in common areas, totalling to super built up area of 2511.24 sq.ft along with one car parking for a total consideration of Rs.1,32,59,347/-. It was also stated in the said agreement that the Respondents shall complete and deliver possession of the apartment by the end of **31/12/2021**. **Ext.A4** is the copy of payment schedule. **Ext.A5** is the copy of client ledger summery Report for a period from 31/10/2018 to 03/06/2022. **Ext.A6 series** are the copies of statements issued from the Axis Bank for a period from 27/12/2018 to 19/04/2023 and 13/03/2020 to 19/04/2023. **Ext.A7** is the copy of Lawyer's notice dated 15.06.2022, calling upon the Respondents to complete the construction of apartment and common amenities as per the promise and to deliver physical possession and to execute sale deed in favour of the Complainant by receiving the balance sale consideration. **Ext.A8** is the copy of letter issued by the Axis Bank to the Complainant, informing him that the builder has refunded





the loan amount disbursed from the loan account and the refunded amount is insufficient to close the loan accounts since the Complainant availed life insurance coverage and the premium amount was transferred to the insurer.

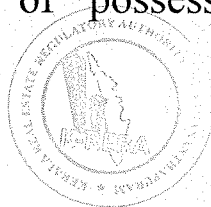
14. The documents produced from the part of the Respondents 1 & 3 are marked as **Exbts. B1 to B10**. **Ext. B1** is the copy of letter dated 05/08/2021 issued by the Complainant to the 1<sup>st</sup> Respondent, admitting and acknowledging that he is liable to pay interest charged by the Respondents and undertaking to pay the future instalments promptly without default as per the payment request. **Ext.B2** is the copy of email dated 11/01/2021 issued by the 1<sup>st</sup> Respondent to the Complainant along with client ledger summary report, intimating the Complainant that the payment is overdue from him and reminding him with regard to the payment of amounts defaulted by him. **Ext.B3** is the copy of email dated 07/12/2021 & 28/01/2022 issued by the 1<sup>st</sup> Respondent to the Complainant along with resale application, intimating him regarding the default and steps being taken for cancellation of booking. **Ext.B4** is the copy of letter dated 23/03/2022 issued to the Complainant, intimating that unless the amount of Rs.81,91,574/- due from him as on 15/02/2022 is paid within 15 days from the date of the letter, the Respondents will be cancelling the booking and the amount due to bank will be refunded within 45 days after resale of the apartment. **Ext.B5** is the copy of email dated



25/04/2022 issued by the Complainant and along with 1<sup>st</sup> Respondents reply. The Complainant vide email dated 25/04/2022 requested time for balance payment due to unexpected financial emergency. In its reply the Respondents informed that they were not able to proceed with another extension. **Ext.B6** is the copy of email dated 10/05/2022 issued by the 1<sup>st</sup> Respondent to the Axis bank, stating that since the Complainant has not been making payments as agreed they are forced to cancel his allotment as per the terms of the contract. **Ext.B7** is the copy of NOC dated 12/03/2020 issued by the 1<sup>st</sup> Respondent to the Axis Bank stating that the 1<sup>st</sup> Respondent has no objection in giving a loan of Rs.1,82,05,371/- to the Complainant on mortgaging Flat No.B3-E4123 with you by way of security for repayment. It was also stated in the said letter that in case of cancellation of the allotment of the above flat, the amount remitted by Axis bank towards instalment will be refunded to Axis bank directly. **Ext.B8** is the copy of letter dated 30/05/2022 issued by the 1<sup>st</sup> Respondent to the Axis Bank, stating that they have issued cancellation notice to the Complainant and based on the NOC issued by them, expressing their willingness to refund the amount received from the Axis Bank directly agreed through NOC and requesting to furnish the amount disbursed from the loan account. **Ext.B9** is the copy of reply to the lawyer's notice issued by the Complainant dated 26/07/2022. **Ext.B10 series** are the copies of cheques issued by the Respondents 1 & 3 to the Axis Bank.



15. As mentioned above, the project in question is a registered project under Section 3 of the Real Estate (Regulation & Development) Act 2016 before this Authority and the proposed date of completion is given by the promoter as 30.06.2025. The learned counsel for the Complainant contended that and based on the assurances given by the Respondents the Complainant had booked an apartment bearing No. B3-E4123 to be constructed on the 12<sup>th</sup> floor in Block East wing-01. The Respondents have undertaken to complete the construction by the end of 31/12/2021. The Complainant has already transferred Rs.1,46,44,782/- as demanded by the Respondents during the respective periods towards the total agreed amount of Rs.2,44,99,269/- as per the agreements entered into between the Complainant and the Respondents. According to the Counsel the Complainant was ready and willing to make the balance payment of Rs.88,45,960/- as against the completion of the work pending as per the schedule issued by the Respondents in the said apartment allotted to the Complainant and shall take into possession for occupancy. But the Respondents were not at all doing the remaining construction and failed to complete the works as per schedule and hence the payments from the part of Complainant was held back clearly informing the Respondents that he was ready and willing to pay the amounts if they proceeded further in completion and got ready for the transfer of possession and ownership, which the



Respondents failed. The Complainant alleged that he has come to understand that inspite of a valid agreement existing between the Complainant and the Respondent for sale and purchase of the Apartment bearing No. B3-E4123, the Respondents were arbitrarily trying to sell the above property to a third person without the consent of the Complainant. The Respondents now unilaterally and arbitrarily forcing this Complainant to take back the already paid amount of Rs.1,46,44,782/- or else to take up another residential apartment in another project at a different location to which this Complainant can never agree. According to the Complainant he is legally entitled to get the sale deed executed but the Respondents are trying to sell the property to strangers at a higher price for which they have no right.

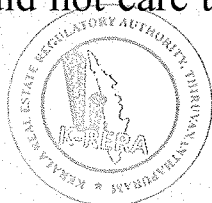
16. In reply the learned counsel for the Respondents 1 & 3 argued that and that the Complainant had booked apartment on remitting a booking advance of Rs.11,20,000/- on 31.10.2018. However, the Complainant executed the sale agreement and construction agreement only on 20-12-2018, causing considerable delay in the same. As per the said agreements, the committed date of completion of the apartment and delivery of the same to the Complainant was 31.12.2021, provided the Complainant complies with the stipulations in the agreements with regard to timely payment of the instalments payable by him towards land value and construction cost. The cost of the undivided share in the land



offered to be sold by the promoters and agreed to be purchased by the Complainant, as per the sale agreement aforesaid was Rs.77,14,529/- and the cost of construction of the apartment booked by the Complainant was Rs.1,67,84,740/-, as per the construction agreement. Thus, the total consideration payable by the Complainant was Rs.2,44,99,269/- which was to be paid in accordance with the stage wise progress of the work as stipulated in the payment schedule attached to the agreements. Even after execution of the said agreements, the Complainant paid only Rs.1,05,000/- on 26-12-2018 and he was justifying the delay in making the stipulated payments on blaming his Bankers. Thereafter, the Respondents received Rs.54,57,408/- towards the account of the Complainant on 28-12-2018, as received from Axis Bank, Rajaji Road, Ernakulam. The next payment received by the Respondents through the bank was Rs.18,79,529/- paid on 19-06-2019 which was also a belated payment attracting interest for late payment. He had also paid a further amount of Rs.21 lakhs on 16-03-2020 as paid through Axis Bank, though the same was due for payment on 27-11-2019. On 16-03-2020 itself, the Respondents had received a further amount of Rs.34,83,115/- from Axis Bank towards the instalments due on 29-01-2020. **Thus, the total amount received by the Respondents 1 and 3 from the Complainant is Rs.1,46,44,782/- of which Rs.17,25,000/- has been paid directly by him and Rs.1,29,19,872/- has been paid through Axis Bank. However,** he effected payment of Rs.54 lakhs



from the bank only on 28.12.2018, though the same was payable within 30 days of booking of apartment made by him. The Complainant was liable to pay a total amount of Rs.2,16,11,479/- by the time of completion of the terrace slab, without applying interest for the belated payments. Thus, the Complainant was a clear defaulter with respect to the payment of the instalments as has been agreed by him in the agreements executed by him, according to the Counsel for the Respondents. All the payments so far made by the Complainant subsequent to the booking have been made much belatedly only and therefore these Respondents were compelled to charge interest on such belated payments. The Counsel for the Respondents pointed out that after realising the default from the part of the Complainant in the matter of regular payment of the stipulated instalments, the Complainant had issued Ext.B1 letter to the 1<sup>st</sup> Respondent admitting and acknowledging that he is liable to pay interest charged by the Respondents and undertaking to pay the future instalments promptly without default as per the Payment Request Letter. According to the Respondents the Complainant who did not care to clear the interest in respect of the earlier remittances made directly and through bank had also stopped further payments after the last payment made on 16-03-2020. The Respondents had issued Ext.B3 emails to the Complainant with attachments intimating him regarding the default and steps being taken for cancellation of the booking. As the Complainant did not care to pay off the outstanding liabilities



made in violation of the stipulations for payment in the agreement, the 1<sup>st</sup> Respondent had issued Ext.B4 letter dated 23-03-2022 to the Complainant intimating that unless the amount of Rs.81,91,574/- due from him as on 15-02-2022 is paid within 15 days from the receipt of the letter, they will cancel the booking and the amount due to the bank will be refunded within 45 days after resale of the apartment. On receipt of the said communication, the Complainant has issued Ext.B5 email dated 25-04-2022 requesting extension of time by 3 months to make the payments. Subsequent to the cancellation of the booking made by the Respondents with due notice to the Complainant, the 1<sup>st</sup> Respondent had issued Ext.B8 letter to the Manager, Axis Bank, Rajaji Road Ernakulam expressing their willingness to refund the amount disbursed from the Bank. Thereafter, the Respondents received a lawyer's notice dated 15-06-2022 from the Complainant, subsequent to the cancellation of the booking. On receipt of the said lawyer notice, the 1<sup>st</sup> Respondent had issued, Ext.B9 reply notice dated 26-07-2022 to the lawyer of the Complainant. The Respondents 1 and 3 had also remitted back amounts to the Axis Bank by way of 4 payments, two payments by the 1<sup>st</sup> Respondent and two payments made by the 3<sup>rd</sup> Respondent, the total amount so refunded being Rs.1,29,19,782/-. Copies of the cheques also produced and is marked as Ext.B10 Series. Subsequent to the cancellation of the booking so made by the Complainant, the apartment earlier booked by the Complainant has been resold on 03-07-2022 to one Sri.



Naveen Venugopal and necessary Sale Agreement dated 08-07-2022 has also been executed in the RERA format with the new allottee of the apartment No. B3, E4123. **The termination of the agreement is one made on sufficient grounds and with due notice to the Complainant and he had correctly understood it as the same has been stated in the lawyer notice sent on his behalf.** The termination of the contract has been made strictly observing the provisions of the Act, 2016 and Rules, 2018. The Complainant is not entitled to get any sale deed executed in his favour much less to deliver physical possession of the apartment and common facilities as prayed by him.

17. Admittedly, the payments have been made by the Complainant as per the table below.

PAYMENTS BY OWN CONTRIBUTION

Date	Amount
05.11.2018	Rs.11,20,000/-
26.12.2018	Rs.1,05,000/-
05.10.2020	Rs.5,00,000/-
<b>Total</b>	<b>Rs.17,25,000/-</b>

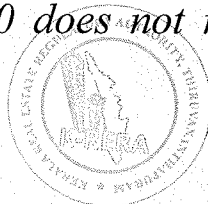




PAYMENT MADE BY BANK LOAN

Date	Amount
28.12.2018	Rs.54,57,408/-
19.06.2019	Rs.18,79,259/-
16.03.2020	Rs.21,00,000/-
16.03.2020	Rs.34,83,115/-
<b>Total</b>	<b>Rs.1,29,19,782/-</b>

18. It is a registered project before this Authority and on verification of data uploaded by the Respondents/Promoter in the registration web page, it is seen that the project still remains incomplete and majority works including that of common areas are yet to be started. The proposed date of completion given in the registration web page is 30.06.2025. It is a settled position of law that the date of promise for completion and handing over given to the allottees of ongoing projects through previous agreements shall not be affected by the new timeline obtained by the Promoter through registration as per the proviso to Section 3 of the Act 2016. While considering the same aspect, the Hon'ble Supreme Court of India in its judgement in M/s Imperia Structures Ltd. vs. Anil Patni & another, observed as follows: *"The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the*



*concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration."*

19. However, the Counsel for the Complainant herein has strongly argued that the Complainant was ready and willing to make the balance payment of Rs.88,45,960/- as against the completion of the work pending as per the schedule issued by the Respondents in the said apartment allotted to the Complainant and shall take into possession for occupancy, but the Respondents had abandoned the site and even now there are no workers at the site implying that they have no interest to continue the project and the facilities like Swimming pool, Tennis Court, STP, OWC, Solar lighting, security, gardens and parks, WTP's, firefighting system, Club House, Outdoor Gym, Cricket Pitch, Multi Court, Event Plaza, Common areas, pathways compound walls, drainage works, water connections and 3 phase connections which were initially offered to the Complainant were also not provided in the project. To substantiate these contentions, the Complainant has filed **IA No.49/2023** requesting to appoint an advocate commissioner to inspect the project site and to file a report. The same was allowed and Adv. Biju Abraham was appointed as Advocate Commissioner. The Commissioner has filed a report dated 24/08/2023 submitted as follows: - (1) The work of the apartment is fully completed and finished. The said apartment is in a



condition of ready to occupy. (2) a) – present condition, nature and finishing work of the common area – the common area in the apartment complex of Block East Wing-01, “Marina One” Phase I, Ernakulam. GIDA Road – is completely finished inside and front side with lift facilities electric and water connections. b)- Playgrounds – playground is not completely finished -according to the Respondent an area of 5 Acres on the top floor of the club house is set apart as playground of which construction activities of the club house with other activities are going on. Only an extent of about 85 cents is completed as play area/ Garden area. c)- Swimming pool – is not completed d)- Pathway and roads leading to the apartment complex scheduled is completed – but to the common area such as club house, swimming pool are not completed e)- Facilities and basic infrastructure for providing water, electricity, sewage systems are completely finished f)- Safety and security measures – Respondents provided strict security measures in the area for ingress and egress. g)- Club house and other amenities – are not completed. h)- Common area is not completed as stated above, but the access to the apartment complex in which the apartment is situated (the common area) is completely finished. (3) The apartment bearing No. B3 – E4123, 12<sup>th</sup> floor, Block East Wing-01, “Marina One”, Phase I, Ernakulam, GIDA Road-Queens way, Marine Drive, Kochi is completely finished, the apartment complex Block East Wing-01 –“Marina One” is also completely finished with lift, generator backup, common facilities,



electric water and sewage connections. The said apartment is at present in a condition of ready to use and occupy”.

20. The Complainant has filed objection to the Commission Report filed by the Advocate Commissioner stating that the Commissioner did not verify whether the Promoter has completed the project in its all aspects as per the promises/terms of the agreement executed with the allottee or not, and at the time of inspection not even a single apartment in this huge multi-storeyed building was occupied, which was not reported even though it was specifically noticed during inspection. Only for the purpose of making false evidence during this inspection the work of this particular apartment was rushed to complete, even neighbouring the apartments in the same building was not finished. The averments in the report are contrary to the above reality, hence they are absolutely wrong. The advocate-commissioner failed to conduct proper and systematic enquiries to report on the construction as directed by this Authority and the assumptions and conclusions by the Advocate -Commissioner are not based on any scientific or technical foundations.

21. Anyhow, on perusal of Ext.B1 to B3 it can be found that the Complainant was a defaulter in paying the instalments as per the payment schedule and the Complainant itself admitted to pay interest charged by the Respondents. As per



Ext.B3 it is clear that the Respondents intimated the Complainant regarding the steps being taken for cancellation of booking. Even after receipt of the Exbt.B3 emails dated 07/12/2021 and 28/01/2022 no steps were seen taken from the part of the Complainant to clear the payments due to the Respondents. No documents were seen produced from the part of the Complainant to show that he had paid the instalments on time as per the terms of the Exbt. A3 agreement. At the same time the documents reveal that the Complainant had stopped payment after the payment made on 16/03/2020 and since the Complainant did not pay off the outstanding liabilities the Respondent has issued Ext.B4 notice dated 23.03.2022 to the Complainant by post intimating him that unless the amount of Rs.81,91,574/- due from him as on 15/02/2022 is paid within 15 days from the date of the letter, they will cancel the booking and the amount due to bank will be refunded within 45 days after resale of the apartment. Exbt. B4(1) is the copy of a mail (date not seen) seemed to be a reply to the mail from the Complainant in which the Respondents' Manager, Sales/Finance informed that they would not be able to proceed with another extension and requested to arrange the funds by the end of April 2022 to continue the booking. Thereafter the Complainant had given a reply mail dated 25/04/2022, marked as Ext.B5, in which he requested 3 months' time to make payments stating that he couldn't make the payments due to some unexpected financial emergency. Here, the Complainant can be seen admitting that he



could not make the payment dues for his flat and it corroborates the contentions of the Respondents that the Complainant was a defaulter in paying the instalments as per the agreement. After that the Respondents sent Exbt. B6 e-mail to the Axis Bank referring the discussion with respect to the cancellation of allotment to the Complainant and informing that they were forced to cancel the booking as per the terms of the contract as the Complainant/allottee has not been making payments as agreed in the contract and requesting to do the needful to clear the formalities of loan availed by the Complainant. It can also be seen that after cancellation the Respondent has issued Ext.B8 notice to the Axis bank and based on the undertaking in Ext.B7 “that in case of cancellation of the allotment of the above flat, the amount remitted by Axis bank towards instalment will be refunded to Axis bank directly”. Exbt. B9 is the reply to the Lawyer Notice from the Complainant. Ext.B10 Series, the copies of cheques would reveal that the Respondents 1 & 3 had refunded an amount of Rs.1,29,19,782/- to the Axis bank. Thereafter, the Axis Bank has intimated the same to the Complainant through Ext.A8 letter which is produced by the Complainant himself, in which the Bank specifically states that “they had received the DD for an amount equivalent to the disbursement from the loan and this amount is insufficient to close the loan accounts since the Complainant had availed insurance coverage and the premium amount was transferred to the insurer and also he had availed moratorium as per the RBI Guidelines on



Covid-19 regulatory package and the unpaid interest during moratorium got added to the principal.” The Bank made it clear therein the said letter that “the Complainant will be liable for the balance amount due along with future interest, cost and charges as per the terms of contract.” Even though it is evident from the said letter sent by the Bank that the Complainant was still liable to make payment towards the amount availed by him for insurance and moratorium as specified therein, the counsel for the Complainant kept on arguing that the Complainant was the one who has been repaying the loan amount to the Bank and he was not intimated these facts by the Bank, etc. which are found contrary to the facts as well as the documentary evidence placed on record before this Authority.

22. It is obvious that the Respondents/Promoters have the right to cancel the allotment to an allottee who defaulted payments as per the terms of the agreement, after serving clear notice of cancellation to the allottee, as embodied in the various provisions of the law. Moreover, the project in question being a registered project, the Respondents are bound to follow the agreement format prescribed as Annexure A to the Rules 2018 and the cancellation of allotment by the promoter can be done only as per clause 9.3 of the said agreement. Clause 9.3 (ii) of ‘Annexure ‘A’ under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018, specifies as follows: ..... *“In case of Default by Allottee under the condition listed above continues*



for a period beyond .....consecutive months after notice from the Promoter in this regard, the Promoter shall cancel the allotment of the [Apartment/Plot] in favour of the Allottee and refund the amount money paid to him by the allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated...” Here there is a valid notice issued by the Respondents to the Complainant regarding cancellation of allotment and from the documents produced by both the sides, it is clear that Complainant is a defaulter with respect to the payment of instalments.

23. Section 19(6) stipulates that *“Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.”* Section 19(7) stipulates that *“The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*





24. Hence, point No.1 & 2 is answered accordingly in favour of the Respondents. Since the above cancellation is valid the Complainant is not eligible to get executed the sale deed in his favour.

25. The total amount paid by the Complainant is Rs.1,46,44,782/- out of which Rs.17,25,000/- has been paid directly by him and Rs.1,29,19,872/- has been paid through Axis Bank. Since the Respondents No. 1 & 3 have already returned the amount of Rs.1,29,19,782/- to the Axis Bank, the remaining amount is only Rs.17,25,000/-. Hence the Complainant is only eligible to get back only the amount of Rs.6,05,000/- after deducting the booking amount of Rs.11,20,000/- from Rs.17,25,000/-, paid directly by him, as per Clause 9.3 of Annexure 'A' under Rule 10 of the Rules 2018.

26. On the basis of the above facts and findings, and invoking Section 37 of the Act, this Authority hereby directs as follows: -

1) The Respondents/Promoters shall return the amount of Rs.6,05,000/- to the Complainants with simple interest @ 17% per annum (Current SBI BPLR Rate plus two) from 23/03/2022 which is the date of cancellation till the date of realization of the said amount.



2) If the Respondents / Promoters fails to pay the aforesaid sum with interest as directed above, **within a period of 60 days** from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

Sd/-  
Preetha P Menon  
Member

True Copy/Forwarded By/Order

Secretary (legal)



## **EXHIBITS**

### **Documents produced from the side of Complainants.**

- Exhibit A1: - Copy of Brochure
- Exhibit A2: - Copy of Agreement for sale
- Exhibit A3: - Copy of Agreement for Construction
- Exhibit A4: - Copy of Schedule of Payment
- Exhibit A5: - Copy of client ledger summary Report.
- Exhibit A6 series : - Copy of Statement issued from Axis Bank.
- Exhibit A7: - Copy of Lawyer's notice dated 15.06.2022 along with Acknowledgement.
- Exhibit A8 :- Copy of letter issued by the Axis Bank to the Complainant.

### **Documents produced from the side of Respondents 1 & 3.**

- Exhibit B1: - Copy of letter dated 05/08/2021 issued by the Complainant to the 1<sup>st</sup> Respondent.
- Exhibit B2: - Copy of email dated 11/01/2021 issued by the 1<sup>st</sup> Respondent to the Complainant along with client ledger summary report.
- Exhibit B3: - Copy of email dated 07/12/2021 & 28/01/2022 issued by the 1<sup>st</sup> Respondent to the Complainant along with resale application.
- Exhibit B4: - Copy of letter dated 23/03/2022 issued to the Complainant.



Exhibit. B4(1) :- Copy of mail (date not seen) issued by the Respondents' Manager, Sales/Finance to the Complainant.

Exhibit B5: - Copy of email dated 25/04/2022 issued by the Complainant and along with 1<sup>st</sup> Respondents reply.

Exhibit B6: - Copy of email dated 10/05/2022 issued by the 1<sup>st</sup> Respondent to the Axis Bank.

Exhibit B7: - Copy of NOC dated 12/03/2020 issued by the 1<sup>st</sup> Respondent to the Axis Bank.

Exhibit B8: - Copy of letter dated 30/05/2022 issued by the 1<sup>st</sup> Respondent to the Axis Bank.

Exhibit B9: - Copy of reply to the lawyers notice issued by the Complainant dated 26/07/2022

Exhibit B10 series: - Copies of cheques issued by the Respondents 1 & 3 to the Axis Bank.

Exhibit.X1 :- Report dated 23/08/2023 filed by the Advocate Commissioner.

