



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 236/2022

Dated 13th February 2023

Present: Sri. M.P Mathews, Member

Complainant

1. Kiran Cyrus Ken
Arackanattail Apartments,
D108, 3rd Floor, Thoppumpady,
Kochi – 682005

Respondents

1. M/s Sanroyal Builders and Contractors (P) Limited,
TC 2/118,KDPMRA- 01 Sydney Lane,
Kesavadasapuram, Trivandrum – 695004
2. Sanjudas N.S
The Managing Director
M/s Sanroyal Builders and Contractors (P) Limited,
Rohini Bhavan, Indira Nagar,
Peroorkada, Trivandrum - 695005

The Complainant and the authorized representative of the Respondent attended the virtual hearing today.

Facts of the Case

1. The project is registered under Sec 3 of the Kerala Real Estate Regulatory Authority with registration No. K-RERA/PRJ/032/2020. The Complainant had booked Flat No. 3B in the project “Sanroyal Adonia” promoted by the Respondents. The complainant had entered into an agreement on 10-07-2020, as per the agreement executed between the Complainant and the 1st Respondent represented by the 2nd Respondent for transferring of 1.59 % undivided right title and interest in Schedule A property having an extent of 20.40 Ares and a Residential apartment having a super built-up space



measuring 830 Sq. ft bearing Flat No. 3B on the 3rd Floor, of the Multi Storied building comprising in the project called “ Sanroyal Adonia” with one covered car park. The consideration as per the agreement was Rs. 26,97,500 (Twenty Six Lakhs Ninety Seven Thousand Five hundred only) inclusive of Rs. 800000/- being cost of 0.32 Ares of undivided share of land. According to the agreement the Respondents had agreed to complete the construction of the apartment and deliver the same on 31.12.2021 with a grace period of Six months. Hence the date of completion as per the agreement was 30.06.2022. The special amenities as specified in Annexure- 1 was promised to be handed over to the allottees within 6 months from the date of completion of entire project.

2. According to the Complainant he had paid an Amount of Rs1,50,000/- on 09-06-2020 as booking charges. Subsequently, the complainant had cancelled the booking by email dated 31/05/2021 and amount of Rs.50,000/- was refunded on 05-11-2021.
3. Reliefs sought by the Complainant: -
 - (i) For refund of Rs.122786.78 with interest.
4. The 1st Respondent filed an affidavit through the 2nd Respondent stating that the Complainant had approached the Respondents in early 2020 and remitted an advance amount of Rs 1,50,000/-. The complainant was orginally bound to remit Rs 2,69,750 towards the booking amount but sought time to pay the advance amount. Though the work was stalled due to the covid 19 pandemic the officials whole heartedly tried their level best to communicate and extend their support and service to the Complainant. However, on 09-12-2020 the Complainant requested cancellation of the booking.
5. The complaint was posted to 08-12-2022 and on that date the Respondent submitted receipts showing that a further amount of Rs.1,00,000/- was



repaid. The Complainant had insisted on repayment of Interest portion as claimed in the complaint.

6. The case was finally heard on 13-03-2023 and after hearing both the parties this Authority framed the following issues.

(i) Is the complainant entitled to interest on the amount paid after cancellation before the promised date of completion.

7. Documents produced by the Complainant are marked as **Exhibit A1** to **A4** document produced by the Respondent is marked as **Ext B1**. **Exhibit A1** is the Construction Agreement dated 10-07-2020 entered into between the Complainant and the 1st Respondent represented by the 2nd Respondent in which the Respondent had agreed to transfer 1.59 % undivided right title and interest in Schedule A property having an extent of 20.40 Ares and a Residential apartment having a super Built-up space measuring 830 Sq. ft bearing Flat No. 3B on the 3rd Floor, of the Multi Storied building comprising in the project called “ Sanroyal Adonia” with one covered car park to the Complainant. As per the agreement the consideration for the apartment was Rs.2697500/- and the promised completion date was 30-06-2022. **Exhibit A2** is the Payment acknowledgement receipt dated 05-06-2020 for an amount of Rs.1,50,000/- issued by the 1st Respondent. **Exhibit A3** is the statement of account dated 16/06/2020 from 01-05-2020 to 16-06-2020 issued by HDFC Bank showing advance payment made by the Complainant on 09.06.2020 to the Respondent. **Exhibit A4** is the email dated 31-05-2021 of the Complainant to the Respondent cancelling the booking and claiming refund of the booking advance paid along with the lawyer fee and the expenses involved as mentioned in the lawyer notice sent five months back. The reason stated in the email for cancellation is as extracted “ there is a lot of difference in date of project completion that you promised and mentioned in the agreement and the document you registered with respective government bodies”. The lawyer notice said to have been



sent five months back is not seen produced by the Complainant. There is nothing in the cancellation mail to justify withdrawal from the project under section 18 and claim return of amount received with interest. **Exhibit B1** is the ledger Account of the Complainant from 1st April 2016 to 08-12-2022 produced by the Respondent.

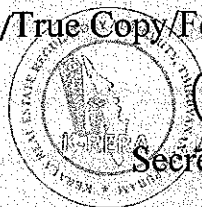
8. The agreement for construction was executed on 10-07-2020 in violation of section 13 (2) by the promoter. As per the prescribed format under rule 10 of the Kerala Real Estate (Regulation and Development) Rules 2018, the failure on the part of the allottee to sign the agreement in the prescribed format can be considered as a reason for cancelling the allotment and returning the amount received including the booking amount. However, the promoter has not followed the procedure as required under clause 21 in annexure A, Agreement for sale. The allottee has cancelled the agreement on 31-05-2021 while the actual date of completion as per the agreement he had executed was 30-06-2022 including the grace period of six months. Section 18 is applicable only in the case of the promoter failing to complete or is unable give possession of the apartment in accordance with the terms of the agreement for sale. Considering the fact that the promoter has refunded the entire amount received from the allottee by 04-12-2022, the complainant is not entitled to interest on the amount paid after cancellation before the promised date of completion.

The complaint filed is therefore dismissed. Parties shall bear their own cost.

Sd/-

Sri. M P Mathews
Member

/True Copy/Forwarded By/Order/



Secretary (Legal)

Annexure**Exhibits on the side of the Complainant.**

Exhibit A1- copy of the construction agreement dated 10-07-2020

Exhibit A2- Copy of Payment Acknowledgment Receipt

Exhibit A3- Copy of the Bank Statement Showing payment processed on 09.06.2020

Exhibit A4- Copy of the email cancelling the booking dated 31-05-2021

Exhibits on the side of the Respondent.

Exhibit B1 - ledger Account of the Complainant the from 1st April 2016
to 08-12-2022.



MEMORANDUM

TO : SAC, NEW YORK

FROM : SAC, NEW YORK (100-100000)

SUBJECT: [Illegible]

Reference is made to [Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]