



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No. 239 /2022**

Dated -20<sup>th</sup> February 2023

Present: Sri. M. P. Mathews, Member

## **Complainant**

A.O George Kutty,  
Adoor House, SKRA B-26,  
Sreekaryam, Trivandrum – 695 017.

## **Respondents**

1. M/s Sowparnika Projects & Infrastructure Pvt Ltd.,  
C Block, 1<sup>st</sup> 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 on 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:- Complainant and his son are the owners of an apartment in the said project bearing door No.K in the 1<sup>st</sup> Floor, having plinth area of 1072 sq.ft. and 22.93 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 sanctioned plan 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 sale cum construction on 29/03/2018 with the 1<sup>st</sup> Respondent. True copy of the said agreement is produced. The Respondents have agreed to construct a residential apartment No.K on the 1<sup>st</sup> floor having super built up area of 1072 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.43,23,485/-. 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.12,97,000/- on 20/10/2017, Rs.8,03,000/- on 16/02/2018 Rs.4,90,000/-on 28/03/2018 Rs.4,10,000/- on 28/03/2018 Rs.2,00,000/- on 21/06/2018 Rs.1,00,000/- on 29/08/2019 and Rs.92,000/- on 26/09/2019 Rs.2,00,000/- on 31/01/2019 Rs.1,20,000/- on 05/02/2020 Rs.1,77,245/- on 06/10/2020 Rs.1,66,131/- on 17/02/2021 and Rs.2,00,424/- on 24/04/2022 . Thus the Complainant had paid a total consideration of Rs.42,56,200/-. 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.20,85,067/- to the Complainant for the delay of non handing over the apartment on the agreed date.

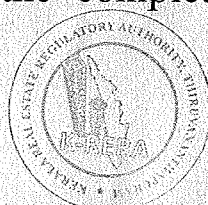
6. The Respondents 1 & 5 have submitted written statement stating that the above Complainant is not maintainable either in law or on facts. The agreement for sale and construction



dated 29/03/2018 was entered into by the parties with full knowledge of all facts including the obligation to pay the interest. 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 agreement the Complainant has to pay Rs.43,23,485/- along with other charges before handing over of the apartments. This has not taken place. So, it is an admitted fact that the payments were not made in accordance with the terms of the agreement and possession was handed over as per mutual agreement.

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 36 months as stipulated in the 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 and his son are chronic defaulter in payment of instalments and she has admittedly not made the complete payments due to the 1<sup>st</sup>



Respondent as per the agreement. Unless due payments are paid as promised no claim for delay interest for delayed delivery could be sustained. Even as per the agreements the 1<sup>st</sup> Respondent has to complete the construction in June 2019 subject to prompt payment by the allottee on due dates in advance. The 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 the agreement dated 29/03/2018 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.4,70,880/- is pending from the Complainant.

9. The Respondents 1 & 5 further submitted that 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 & B2**.

11. **Exbt.A1** is the copy of agreement for sale & construction dated 29/03/2018 entered into between the 1<sup>st</sup> Respondent represented by the 6<sup>th</sup> Respondent and the Complainant. As per the said agreement the 1<sup>st</sup> Respondent agreed to sell and transfer 22.93 sq mts of undivided right and interest in the property with an apartment unit bearing No.K in the 1<sup>st</sup> floor of the building having super built up area of about 1072 sq.ft along with common area and one car park for a total consideration of Rs.43,23,485/-. 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.

12. **Exbt.A2** is the copy of statement issued to the Complainant regarding handing over of apartment No.K in the 1<sup>st</sup> floor of the Project to the Complainant. Hence it is clear that the Respondents have handed over possession of the said apartment to



the Complainant only on 04/03/2021, even though the stipulated date of handing over as per the agreement was June 2019, with a grace period of six months (which is inclusive of grace period). Hence the Complainant is eligible to get interest for the delay in handing over of possession.

13. **Exbt.B1** 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.42,56,201/-. **Exbt.B2** is the copy of acknowledgement for receipt of application for occupancy issued by corporation.

14. As per **Exbt.A2** & **Ext.B2** the Respondents have handed over the possession of the apartment to the Complainant only on 04/03/2021 even though the stipulated date of handing over as per the agreement was June 2019 (which is inclusive of grace period). Hence the Complainant is eligible to get interest for the delay in handing over of the possession.

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 24/04/2022 and the same is scheduled below.





Sl.no	Date of payment	Days	Amount paid	Applicable rate of interest	Interest payable for the period.
1.	26/10/2017	992	12,97,000.00	14.15	4,97,354.00
2.	16/02/2018	992	8,03,001.00	14.15	3,07,922.00
3.	28/03/2018	992	9,00,000.00	14.15	3,45,118.00
4.	21/06/2018	992	2,00,000.00	14.15	76,693.00
5.	31/01/2019	992	2,00,000.00	14.15	76,693.00
6.	30/08/2019	962	1,00,000.00	14.15	37,214.00
7	26/09/2019	936	92,400.00	14.15	33,470.00
8.	05/02/2020	809	1,20,000.00	14.15	37,525.00
9.	06/10/2020	533	1,77,245.00	14.15	36,617.00
10.	17/02/2021	432	1,66,131.00	14.15	27,738.00
11.	24/04/2022		2,00,424.00		
Total			42,56,201/-		14,76,344.-
<b>Total interest payable</b>			<b>Rs.14,76,344/-</b>		

16. It is seen from the above statement that the amount paid before the promised completion date of June 2019 was Rs.34,00,001/-. 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”*. Based on Exbt.A2 & Ext.B2 the Respondents have handed over the possession of the apartment to the Complainant on 04/03/2021. In the above statement produced by the Complainant the

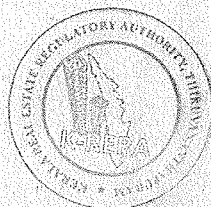


date of handing over was mentioned as 24/04/2022. Since the Respondents have handed over the possession of the apartment to the Complainant on 04/03/2021 he is entitled to get delayed interest for a period from 01/07/2019 to 04/03/2021 as per Section 18 of the Act, 2016.

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.34,00,001/- 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 04/03/2021. 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 he 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 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 1<sup>st</sup> Respondent Company. The 2<sup>nd</sup> 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.34,00,001/- @ 14.75 % from 01/07/2019 to 04/03/2021.

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.34,00,001/- @ 14.75 %** simple interest per annum to the Complainant for the period of delay from 01/07/2019 to 04/03/2021, under Section 18 of the Act, 2016.



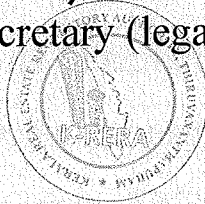
2. If the Respondents fail to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & 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 sale & Construction dated 29/03/2018.

Ext.A2- Copy of statement issued by the Respondents.

**Exhibits marked from the side of Respondents 1 & 5**

Ext.B1- Copy of statement showing the calculation of interest for the  
Delayed payments of instalments.

Ext.B2- Copy of the acknowledgement for receipt of application for  
Occupancy issued by corporation.

