



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 245/2021

Present: Sri. M. P Mathews, Member

Dated 8th August 2022

Complainant

Mr. Sanjay Gangadharan Nambiar
Mrs. Usha V R
Flat No. 803, 8th Floor, IIDL Aerie,
ShihabThangal Road, Panampilly Nagar,
Kochi- 682036, Kerala

[Adv. Shameem Ahmed]

Respondents

1. Sobha Limited
Sarjapur Marathahalli Outer Ring Road,
Devarabisanahalli,
Bellandur Post,
Bengaluru-560103

2. Jagadish Sharma,
Managing Director
Sarjapur Marathahalli Outer Ring Road,
Devarabisanahalli,
Bellandur Post,
Bengaluru-560103.

[Adv. Abraham Mathew Vettoor.]

3. M/s Puravankara Ltd.
No.130/1, Ulsoor Road,
Bengaluru-560042.

[Additional 3rd Respondent, Impleaded as per Order in

IA.No.33/2022]



The above Complaint came up for hearing on 23/06/2022. Counsel for the Complainant and Respondent attended the hearing.

ORDER

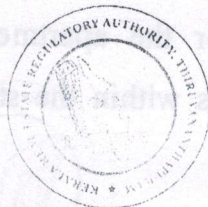
1. The case of the Complainant is as follows:- the Complainant was an allottee of project named 'Marina One' located at Kochi, Ernakulam, developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, 2016. The Complainant had booked a residential apartment bearing number B1-E4141 admeasuring about 30612 square feet (saleable area) ('the Flat "') together with two car parking spaces in the said project for a total consideration of Rs.3,29,05,554/-. Out of the total consideration payable for the said Flat, the Complainants initially paid an agreement amount of INR 63,58,245/- as demanded by the Respondent. The said amount was paid in two tranches, firstly, a sum of Rs.11,20,000/- was paid as a Booking Advance on 04/12/2017 and subsequently a further sum of Rs.52,38,245/-was paid on 03/02/2018. Further, an amount INR 1,00,000/- was paid to the respondent towards booking amount for interior works in the Flat on 30/03/2018. Vide an email dated 13/03/2018, a draft Agreement to Sell in respect of the flat was shared with the Complainants by the respondent and the complainants were called upon to execute the same.

2. This agreement was non-compliant with the provisions of the Real Estate (Regulation & Development) Act, 2016. The complainants informed the respondents that the draft agreement was not acceptable as it was opposed to the law of the land and requested modifications therein. Without addressing the concerns of the complainant, the respondents vide letter dated 05/11/2018, further sought an additional amount of Rs.25,43,299/- in violation of Section 13 of the Act, 2016. The

complainant submits that since the respondent was not willing to change the draft agreement even after repeated requests for a RERA compliant agreement the complainant took a decision to cancel the booking of the flat and withdraw from the project. The complainant wanted to amicably withdraw from the project subject to return of the amounts paid with reasonable interest thereon. It was further clarified by the complainant that he does not intend to reconsider continuing in the project under any circumstance and sought refund of the amounts paid. The refund was fully settled by the respondents from 13/06/2019 to 21/06/2019 but they flatly refused to pay any interest. It was submitted by the complainant that a letter dated 03/07/2019, was sent to the respondents calling upon them to pay the interest for the amount retained by them for more than one year (approximately 18 months).

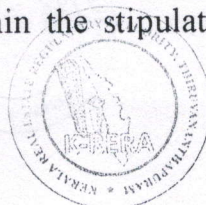
3. The relief sought by the complainant is to direct the Respondents to pay an amount of Rs.8,81,265/- being interest @ 12% per annum on the amount of Rs.52,38,245/ paid by the complainants from 30/03/2018 to 21/06/2019, direct the Respondents to pay an amount of Rs.2,13,582/- being interest @ 12% per annum on the amount of Rs.11,20,000/- paid by the complainants from 04/12/2017 to 13/06/2019, direct the Respondent to pay an amount of Rs.15,093/- being interest @ 12% per annum on the amount of Rs.1,00,000/- paid by the complainants from 30/03/2018 to 21/06/2019.

4. The Respondents 1 & 2 have filed counter stating that the above Complaint is not maintainable and further submitted that the Project 'Marina One' is one being jointly developed in an extent of 16.77 Acres of land jointly held by M/s Puravankara Limited and the Respondent and this aspect is fully known to the Complainant. All payments from the allottees in respect of the Project 'Marina One' are received in the joint escrow



account maintained in the name of SLPPL- Marina One. The applicant who is fully aware of the above aspect and has chosen to file the above complaint impleading the respondent alone as a party thereto and accordingly the above claim petition is bad for non-joinder of necessary parties. The Complainant had executed an Expression of Interest (EOI) dated 30.12.2017 followed by a confirmed application dated 30.12.2017 requesting to accept the booking of the residential apartment bearing No. B1- E4141 together with 2 car parking spaces in the Project by the name ' Marina One' and accordingly the promoters have also received the stipulated amount of Rs. 11,20,000/- payable on booking of the apartment. On such acceptance of booking and allotment of the apartment chosen by the applicant, the respondent was bound to comply with all the terms and conditions agreed upon by him as per the booking form dated 30/12/2017. It is in acceptance of such terms and conditions attached along with the said booking form that the Complainant had made a subsequent payment of Rs.52,38,244/- on 03/02/2018. The Complainant had also remitted an amount of Rs.1,00,000/- in the joint escrow account on 30/03/2018 as advance payment with the Interior Division for doing the interior design and interior works of the apartment allotted to them. The refund of the amounts received is also governed by the terms and conditions attached along with the said booking form and there is no provision in the said agreement for payment of any interest while returning the booking advance or other amounts received and the return of amount so received is subject to the above conditions.

5. The Respondents further submitted that as per Clause 4 of booking form dated 30/12/2017, the Complainants have specifically agreed to execute the Agreement for sale of undivided share in the land and Construction agreement for the apartment unit in the standard format prescribed by the promoters within the stipulated period of 30 days since



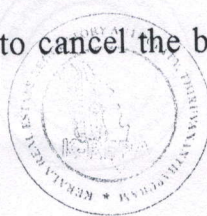
booking dated 30/12/2017. The said clause further provides that failure to execute agreement for sale and construction agreement within the prescribed period as above amounts to acceptance of the terms and conditions of the standard format of agreement prescribed for the customers. The Respondent is not having the practice of making variance from the standard agreement format from customers to customer as the same will result in inconsistency in the rights, duties, and commitments from and towards customers in a particular Project. Since booking form dated 30/12/2017 is one executed before the introduction and implementation of the Real Estate(Regulation & Development) Act in the State of Kerala, both the parties were governed and bound by the terms and conditions of the same. The Respondent was not bound to accept the request made by the applicant seeking to review the agreement, made as per the email dated March 21, 2018 since the Kerala Real Estate (Regulation & Development) Rules came into force in the state only by notification No. G O (P) No. 46/2018/LSGD dated 14.06.2018. The Kerala Real Estate Regulatory Authority(K- RERA), for regulation and promotion of Real Estate sector in the State of Kerala , was formed in the State of Kerala, was formed in the state only wide Notification No. G O(P) No. 65/2019/LSGD dated 5th October,2019. The Respondent is following the RERA format ever since the registration of the Project under the Act and it will be following the prescribed format while executing the final documents. It is clearly evident that the applicant had withdrawn from the agreement insisting on execution of agreement in RERA format at a time when the same was not being implemented in the state.

6. It was argued by the Complainant's Counsel, that the objective of the Act is to protect the interest of consumers in real estate sector and hence a purposive interpretation of RERA is to be applied. The Respondents had collected more than 10 % before the sale agreement was



executed, which is a direct contravention of the provisions of section 13(2). Similarly, the draft agreement shared by the Respondents were in contravention of the RERA provisions in many respects. Thus, the Complainants were forced to withdraw from the project on account of these violations, they are entitled to refund with interest and section 38 of the RERA gives specific Powers to the Authority to impose interest for contraventions. The Authority has power to direct payment of interest in situations not covered by the Act, as held by the Rajasthan RERA Authority in *Ravi Kanth Gupta & Others V. GRJ Distributors & Developers Pvt.Ltd.* it was also stated that *the Act does not provide for a situation where an allottee wishes to withdraw from the project at pre agreement stage, except, in cases where there is an incorrect or false statement made by the promoter at the booking stage, causing a loss or damage to any person and for which remedy is provided in section 12 of the Act. In such situation i.e., where there is no agreement for sale executed between the parties, and the Allottee wishes to withdrawn from the project, the issue of interest will be decided by the Authority in the facts and circumstances of each case.*

7. The Authority heard the learned counsels on either side, gave careful consideration to their submissions, and perused the material documents available on record. The documents produced from the part of the Complainant are marked as Exbt.A1 to A7. No documents were produced by the Respondents. The case of the Complainant is that vide an E-mail dated 13/03/2018 a draft Agreement to sell in respect of the flat was shared with the Complainants by the respondent and the complainant was called upon to execute the same. Since the agreement was not in conformity with the provisions of the Act, 2016 the Complainant was not willing to execute it. After communication with the officials of the Respondent company, the Complainants finally decided to cancel the booking and claim refund of the



amount paid together with interest from the Respondent. The Respondents refunded the entire amount paid by the Complainant and cancelled the allotment. However, the Respondent refused to pay any interest / compensation on the said amount as demanded by the Complainant. The Complaint is filed to obtain interest on the amount paid by the Complainant to the Respondent which was refunded. According to the Respondents the Complainants have opted to withdraw from the contract on personal reasons and not on the reasons stated in the Complaint. The Respondents submitted that they are following the RERA format ever since the registration of the project under the Act and shall be executing the agreements for sale in the prescribed format only.

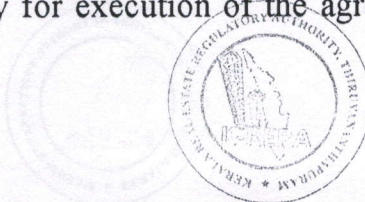
8. The respondents are bound by the Act, 2016 and the Kerala Rules 2018 ever since the Act was made applicable. The agreement should have been executed by the respondent in the prescribed format under Rule 10 of the Kerala Rules, 2018 after it was notified by the government of Kerala. In this case the Complainant had unilaterally cancelled the agreement without approaching the Authority for obtaining agreement for sale in the prescribed format executed. The Kerala Real Estate (Regulations and Development) Rules, 2018 was in force from 14/06/2018. The notice of cancellation of booking of flat and refund of the amount paid till date was produced by the Complainant and is marked as Exbt.A4. The above notice was submitted on 20/03/2019 after the Kerala Real Estate Regulation and Development Rules 2018 was in force. The reason stated in the notice for cancellation was non execution of the agreement in the prescribed format. The allottee had the freedom to approach the Authority to ensure execution of the agreement in the prescribed format.

9. In Annexure A which is the prescribed format for



executing agreement for sale, under Rule 10 of the Kerala Real Estate (Regulations and Development) Rules, 2018 Clause 21, it is stated that if the allottee fails to execute and deliver to the Promoter the Agreement within 30 (thirty) days from the date of its receipt by the Allottee, the application of the allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.

10. Annexure A, under Rule 10, prescribed agreement for sale Clause 21 of the Kerala Real Estate (Regulations and Development) Rules, 2018 is extracted below *“Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules along with the payments due as stipulated in the Payment Plan within 30 (thirty) days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub Registrar as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and/or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 30(thirty) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.”*. It is therefore clear that the Complainant is not entitled to get any interest or compensation for cancelling the booking without executing the agreement or approaching the Authority for execution of the agreement in the prescribed format.



11. Upon cancellation and obtaining the entire amount paid from the promoter, the Complainant ceases to be an allottee as defined under section 2(d). Section 2(d) stipulated that "*allottee*" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter. Upon cancellation and return of the entire consideration paid, the application form dated 30/12/2017 is no longer valid and the Complainant cannot be considered as an allottee under the Act, 2016.

12. As per section 31 of the Act "Any aggrieved person can file a Complaint with the Authority for any violation or contravention of the provisions of the Act or the Rules and Regulations made thereunder. The Violation / contravention of any of the provisions of the Act has not been established by the Complainant. The Complainant referred to the case of *Ravi Kanth Gupta & Others V. GRJ Distributors & Developers Pvt. Ltd* of Rajasthan RERA, which has no application in the present case, as the issues involved in that case was as to the delayed interest on handing over possession. Here it is the claim for interest alone after obtaining refund of the entire amount paid, after cancellation of the allotment initiated by the allottee.

13. It is true that the Promoter has violated section 13(2) of the Act by collecting more than 10% of the cost of the apartment without first entering into a written agreement for sale and registering the same. This was made possible through the act of the Complainant in deciding to pay before the execution of the agreement as required under the Act, 2016. The Promoter was also dutybound to execute the agreement for sale in the prescribed format under the Rules, 2018. It is to be noted that the booking was made after the Act, 2016 was in force. There is serious violation noticed on the part of the Promoter and these violations shall be considered seriously



and appropriate action shall be initiated by the Authority as per law. It is the duty of the promoter to abide by the Act, Rules and regulation made there under and upload all the documents required in the prescribed formats on the website of the Authority to ensure that everything is transparent. Based on the facts and circumstances of the case and taking into consideration Clause 21 in the prescribed format of the agreement for sale under R.10 of Kerala Real Estate Regulation and Development Rules, 2018, the Authority is of the opinion that the Complainant is not entitled to get any interest on the payments made, after receiving refund of the amount paid in full from the promoter and cancellation of allotment. Hence there is no merit in the above Complaint and the same is dismissed.

AP
No order as to costs.

Sd/-

Sri. M.P. Mathews
Member

True Copy/Forwarded By/Order
NO
Secretary (legal)



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

- Ext.A1 - Copy of booking form dated 30/12/2017.
- Ext.A2 series - Copy of payment receipts.
- Ext.A3 series - Copy of E-Mail communications.
- Ext.A4 - Copy of Legal Notice dated 20/03/2019.
- Ext.A5 - Copy of draft construction agreement.
- Ext.A6 - Copy of letter dated 3/07/2019.
- Ext.A7 - Copy of reply dated 23/07/2019.

