



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.250/2020

Dated 15th September 2023

Present: Smt. Preetha P Menon, Member

Complainants

1. C K James,
Champanniparambil,
Keezhoor P.O,
Thalayolaparambu,
Kottayam.
2. Jithin James,
Champanniparambil,
Keezhoor P.O,
Thalayolaparambu,
Kottayam.

(By Adv.A.K Haridas)

Respondents

1. M/s Sea Wood Developers Pvt.Ltd.,
1, Ramachandran Niwas, Sector 12-A,
Koparkhairne, Navi Mumbai-400705.
Represented by its Power of Attorney,
M/s Tiknar Homes (P) Ltd.,
1st Floor, Profnet Plaza, Mamangalam Kara,
Edapally South village, Kochi – 682025.

(By Adv.Karthika Maria)



2. M/s Tiknar Homes (P) Ltd.,
1st Floor, ProfNet Plaza, Mamangalam Kara,
Edapally South village, Kochi – 682025.
Having new office at Salt Studio, K.V.19,
5th Cross Road, K.V Colony,
Panampally Nagar, Kochi – 682 036.
Represented by its Managing Director.

3. M. K. Narayanan Kutty,
Managing Director,
M/s Tiknar Homes Pvt Ltd.,
'Rajas' K.S.N Menon Road,
Karithala Desom, Ernakulam Village,
Kochi -682016.

(By Adv. Dipu James)

The above Complaint came up for final hearing on 19/06/2023. Counsel for the Complainants, Counsel for the 1st Respondent and Counsel for the Respondents 2 & 3 attended the virtual hearing.

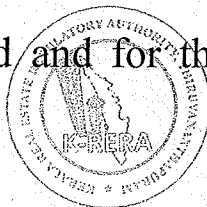
ORDER

1. The Complainants are Allottees of the project named 'Tikner Seawood Voyage' located at Kakkanad village, Ernakulam district developed by the Respondents. The said project is not registered with the Authority under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016').



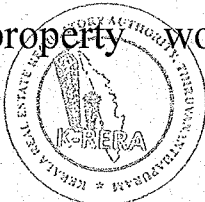
2. The facts of the Complaint are as follows: - The complainants entered into an agreement with the Respondents on 24.6.2009 for construction and purchase of an apartment in the project "TIKNER SEAWOOD VOYAAGE" constructed at Kakkanad village Ernakulam District. The total consideration was fixed as Rs. 36,18,600/-. It was agreed that after construction the apartment will be handed over to the complainants on or before 31st December 2010. The Complainants paid an amount of Rs.1,80,900/- on 19.6.2009. Rs.8,00,000/- on 24.7.2009, Rs.9,80,000/- on 20.11.2012 and Rs.2,00,000/- on 9.2.2013. The total payment is Rs.21,60,900/-. The construction was not proceeded as per schedule and the Respondent was not able to hand over the apartment within the time fixed in the agreement. Hence the 3rd Respondent for and on behalf of other Respondents handed over an affidavit dated 10/11/2012 stating that the construction will be completed on 30.4.2014 and offered compensation for delay.

3. The Complainants further submitted that the 1st Complainant approached the 3rd Respondent several times and informed him that Complainants are ready to pay balance consideration, if the works are completed. The 3rd Respondent informed every time that work will be completed soon. The 1st Complainant agreed for purchase of apartment with an intention to relocate from the village to the town for the convenience of study of his children in one hand and for the medical and other facilities



available to himself and family as an ex-service man who served Indian Navy for 18 years. Due to the delay in handing over of the apartment, Complainants decided to withdraw from the project and demanded the amount paid with interest and compensation. A letter was sent to the 3rd Respondent in registered post with A.D. but he did not respond to it. The acts of the Respondents are violations of Sections 17 and 18 of Act 2016. The reliefs sought by the Complainants are to direct the Respondents to return the amount of Rs.21,60,900/- paid by the Complainants and to pay 18 % interest for the said amount from the date of respective payments till realization. The Copies of agreement for sale cum construction dated 24/06/2009, Affidavit dated 10/11/2012, payment receipts and bank statement, letter dated 27/06/2020 issued by the Complainants are produced by the Complainants.

4. The 1st Respondent has filed counter affidavit denying all the allegations raised in the Complaint and submitting the following facts: The 1st Respondent is the owner of the property having a total extent of 99.655 cents made up of 11.560 cents (4.68 Ares) in Re Sy. No. 699/1, 84.095 cents (34.03 Ares) in Re Sy. No. 699/15 and 4 cents (1.62 Ares) in Re Sy. No.699/20 in Block No.8 in Kakkanad Village, Ernakulam District and on 31.03.2007, the 1st Respondent entered into a Joint Venture Agreement with the 2nd Respondent whereby it was agreed that the above-described property would be developed by the 2nd



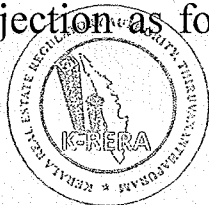
Respondent. As per the terms of the Joint Venture Agreement, it was agreed that the 2nd Respondent shall construct at their expense 33% of the total super built up area pertaining to each floor of the building to be constructed on the above scheduled property other than the floors kept apart for car parking, together with one car park for each apartment consisting the share of the owner, 1st Respondent, and the 2nd Respondent shall be permitted to sell the remaining portion to various individuals. The 1st Respondent permitted the 2nd Respondent to construct and sell 67% of the total super built up area as consideration for constructing 33% of the total super built up area for 1st Respondent.

5. The 1st Respondent further submitted that the only obligation on the part of the 1st Respondent was to cooperate with the 2nd Respondent to sell the undivided share corresponding to 67% super built up area which the 2nd Respondent was selling to third parties. This arrangement and reference to the joint venture agreement is captured in recital No. 6 of the Sale cum Construction Agreement dated 24.06.2009 produced by the Complainants and the said agreement also specifies that the Complainants have engaged the 2nd Respondent as the builder who will construct the apartment for them. In furtherance of the Sale cum Construction Agreement, the amounts that were paid was received by the 2nd Respondent and the receipts were issued by M/s Tiknar Homes, the 2nd Respondent. It is evident from the receipts issued by



the 2nd Respondent that all the amounts have been collected by M/s Tiknar Homes from the purchaser. It is submitted that M/s Seawood, the 1st Respondent has not received any amounts from any home buyer as on date. There is no promoter-allottee relationship between the complainant and the 1st Respondent. In fact, this Respondent, i.e., M/s Seawood is also an allottee who were to be allotted apartments which would have constituted 33% of the super built up area of the apartment complex. M/s Seawood is an aggrieved party who has given 99.655 cents in favour of M/s Tiknar Homes and is still not in a position to use the land nor receive finished apartments from the said joint venture agreement. M/s Seawood should also be construed as an allottee and not classified as a promoter. M/s Tiknar Homes, the 2nd Respondent and its Managing Director have acted against the interest of M/s Seawood, by unauthorizedly using the Power of Attorney executed by M/s Seawood in favour of the 3rd Respondent herein, who is the Managing Director of M/s Tiknar Homes. Any undertaking provided by M/s Tiknar Homes to the purchaser is without the knowledge of M/s Seawood and hence is invalid in as much as it is not authorized by this Respondent. The 1st Respondent requests not to grant any relief against them as they are not the promoter and are in fact an allottee, who is in a same aggrieved position as that of the Complainants.

6. The Respondents 2 & 3 had filed statement of objection as follows: The above Complaint is not



maintainable before the Authority. The Complainants herein entered into a tripartite agreement on 24.06.2009 for construction and purchase of apartment in 'Tiknar Seawood Voyage' constructed at Kakkanand Village, Ernakulam. It is true that the total consideration was fixed for Rs.36,18,600/- on agreement that the construction of the apartment will be handed over to the Complainant on or before 31.12.2010 with grace period of six months. Thereupon, the 2nd Respondent invited allottees and entered into a Tripartite Agreement along with the 1st Respondent land owner. The 2nd Respondent received stage-wise payments from the allottees and started construction work. Initially, the construction went on as per the schedule, but for reasons beyond control of the 2nd and 3rd Respondents, the construction of the said project got halted. Many reasons are attributed to such a situation and most importantly, during that period a worldwide recession occurred and several persons lost their jobs in gulf countries and other western nations. In this context, it is pertinent to note that most of the purchasers/allottees who are genuinely interested in the said project withdrew from the project citing the reasons mentioned above. As a result, there was a sudden halt in the fund flow for the project which resulted in stopping the construction activities. The 2nd Respondent company tried its level best by pumping the whole resources to ensure fund flow, but all efforts went in vain. Huge amount was invested by the 2nd Respondent from its own resources



to somehow carry on with the project. All those efforts boomeranged and has drastically affected the financial position of the company. Therefore, due to the reasons cited above, the whole project came to a standstill much before the commencement of the Real Estate (Regulation and Development) Act, 2016.

7. The Respondents No. 2 & 3 further submitted that they have received a sum of Rs.21,60,900/- from the complainants. It is true that an affidavit stating that the construction will be completed on 30.04.2014 and offering compensation for delay was given by the 2nd and 3rd Respondents to the Complainants. They have given true and correct explanation about the progress of the project to the Complainants and they were in constant touch with the Complainants and mentioned about the deplorable financial position faced by them and on several occasions has informed the Complainants that these Respondents are in search of a new prospective builder for taking over the project as they were unable to finish the project as their financial position has become so grim. It is nothing but the deplorable financial position going through by the 2nd and 3rd Respondents that the project could not be finished and handed over in time. The project can be revived, only if a prospective builder come forward and take over the project. The whole endeavour of the 2nd and 3rd Respondents is to somehow revive the project and the said Respondents are in the process of deliberations with the several prospective builders who have come



forward to take over the project. These Respondents, in unequivocal terms, undertakes that the Complainants' interest will be safeguarded and they will be adequately compensated as and when the project will be revived when the project will be taken over by a new prospective builder. These Respondents had no intention to run away from the liability and the amount invested by the complainants has been already invested in the building. Therefore, these Respondents undertake to safeguard the interest of the complainants, and any delay occurred is unintentional.

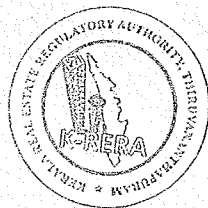
8. Even though the above complaint was filed in early 2021, at that time, the complaints seeking refund of the amount was decided to be entertained by the Adjudicating officer of this Authority through complaints in Form N and hence the Complainants herein were directed to cure the defects in the complaint and resubmit, vide letter dated 12.01.2021 from the Registry. After judgement of the Hon'ble Supreme Court of India in the "Newtech" case dated 11.11.2021, clarifying the jurisdictions of the Authority and the Adjudicating Officer, the Authority, vide public notice dated 22.12.2021, confirmed that the refund cases shall be adjudicated by this Authority through complaints in Form M itself. When the above complaint was received it was noticed that the project in question 'Tiknar Seawood Voyage' was not registered under section 3 of the Act 2016. Then, the Authority issued a show cause notice to the 1st Respondent on 22/01/2022, seeking



explanation for non-registration within 15 days from the date of receipt of this notice. The complaint came up for first hearing on 07.02.2022 on which date only the Complainant and counsel for the complainants were present. As it was noticed that the Respondents failed to comply with the direction given on 22.01.2022, the Authority issued another notice dated 25/04/2022 to the Respondents 1 to 3 to submit their contentions immediately with regard to non-registration of the project with warning of initiation of penal proceedings u/s section 59(1) of the Act, 2016 in case of further failure from their part. During the hearing on 24.03.2022 both parties were absent and on the next hearing on 23.05.2022, only the complainants and their counsel had appeared. As it was noticed that the notices were returned unserved the Complainants were directed to take steps for service of notices in the correct addresses of the Respondents. On the next posting date on 21.07.2022, the Complainants and their counsel and the counsel for Respondents No. 1-3 attended and the Respondents' counsel requested time for counter statement. On that day, the Respondents were directed to complete the process of registration of the project, as early as possible. On the next hearing day on 08.11.2022, the Counsel appearing for the Respondent sought further time for filing counter statement. As it was noticed that the Respondents have not registered the project or submitted any explanation in this regard, interim order dated 08/11/2022, issued directing the Respondents

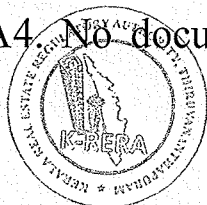


again, to submit explanation as to why the project named 'Tinker Seawood Voyage' has not been registered under section 3 of the Act, 2016 within 15 days from the date of receipt of this order. On 06.12.2022, the Complainant, counsel for 1st Respondent and Counsel for the 2nd & 3rd Respondents appeared. Even after many posting dates, none of the Respondents filed their counter statements to the complaint or explanation for non-registration of the project and during the hearing, this Authority expressed its displeasure on such negligent attitude from the part of the Respondents and their counsels causing undue delay in the proceedings of this Authority. The counsel for the Respondents No. 2&3 submitted that he filed counter statement as well as reply to the show cause notice with respect to violation of Section 3 of the Act 2016. But it is noticed that no such statements have been filed before this Authority. Counsel appeared for 1st Respondent also requested again short further time for filing their statement. The case was posted to 06.02.2023 for final hearing and disposal directing the Respondents to complete the pleadings as early as possible. On that day, the Complainants and their counsel, and Counsel for 1st Respondent appeared online but a counsel representing the counsel for Respondents No. 2&3 appeared in person with the statement of objection to the complaint and explanation with regard to non-registration of the project. As the Counsels for the Complainants and 1st Respondent complained that they were not served with



copies of the said statements, the counsel appeared for Respondents No. 2& 3 was directed to serve copies. On 27.02.2023, counter statement was filed by the 1st Respondent. On the next posting date on 03.04.2023, Counsel for the Respondents No. 2&3 explained the financial crisis facing by his clients and requested for one more opportunity to settle the matter with the complainants. With respect to registration of project, it was also submitted that they are trying to hand over the project to some other party due to their financial crisis and they will apply for permission of this Authority as provided under Section 15 of the Act 2016 after finding out a new buyer. Consequently, one more posting was given on 19.06.2023 and all the parties attended the hearing on that day. The Counsel for Respondents No. 2&3 again requested time till 15.07.2023 for settling the matter and refund the amount which was objected strongly by the Complainants. Then both parties were directed to argue the case. The Counsels appeared for the Respondents were not ready/prepared to argue the case and hence after hearing the complainants, the case was taken for orders, giving time to the Respondents to file their argument notes, if any, within 2 weeks. But no argument notes have been filed by any of the parties, despite giving ample time and it has been decided to pass orders as follows:

9. Heard both parties in detail. The documents produced from the part of the Complainants are marked as Exbts.A1 to A4. No documents have been produced by the



Respondents. After hearing both parties and examining the documents produced from the part of the Complainants following points came up for consideration: -

1) Whether the above Complaint is maintainable before this Authority?

2) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants, in accordance with the terms of the agreement or duly completed by the date specified therein or not?

3) Whether the Complainants herein is entitled to withdraw from the project and claim refund of the amount paid with interest as provided under Section 18 (1)(a) of the Act 2016 or not?

10. **Point No. 1:** Though the Respondents No. 2 & 3 simply stated in their statement of objection that the complaint is not maintainable before this Authority, no contentions or not even a statement has been put forwarded by them in support of the said statement. After conducting multiple hearings as detailed above, and perusing the documents produced by the Complainants herein, it is found that the project in question is not yet completed and the Occupancy certificate is not obtained so far and hence the said project comes under the purview of the Act 2016 and requires to



be registered under section 3 of the Act, 2016. Moreover, the Respondents No. 2&3 admitted that they could not complete the project as promised to the Complainants as per the terms of the agreement. As per the Proviso to Section 3 of the Act 2016, it specifies that the *“projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”* The corresponding Rule 3(2) of the Kerala Real Estate (Regulation & Development) Rules,2018 stipulates that *“In the case of ongoing projects on the commencement of the Sec 3 of the Act,2016 and for which the occupancy certificate has not been issued, the promoter shall make an application to the Authority for Registration of the project”*. So, the said project in question here is undoubtedly an ongoing project required to be registered under section 3 of the Act, 2016. Admittedly, the Complainants are allottees and Respondents No. 2&3 are Promoters and the Complainants are aggrieved by the acts of the Respondents/promoters. Hence, the above Complaint is maintainable before the Authority. Point No.1 is answered accordingly. As the Respondents/Promoters have failed to register the project under section 3 of the Act 2016, the penal proceedings initiated by this Authority against the Respondents/Promoters under section 59(1) of the Act 2016 are



going on.

11. **Point No.2 & 3:-** The documents produced from the part of the Complainants are marked as Exbts.A1 to A4. **Exbt.A1** is the copy of agreement for sale cum construction dated 24/06/2009 executed between the Complainants, 1st Respondent represented by its constituted attorney the 2nd Respondent and the 3rd Respondent. As per the said agreement the Respondents 2 & 3 agreed to construct Apartment No. B having super built up area of 157.21 sq.metres in the 11th floor and proportionate share in the common areas and common facilities and covered car park for a total consideration of Rs.36,18,600/-, out of which Rs.34,68,600/- is the construction cost of the said apartment (inclusive of the consideration for the said undivided share in the land) and Rs.1,50,000/- is the value of the car park. As per the said agreement the Respondents 2 & 3 shall construct the apartment **on or before 31/12/2010** with a grace period of 6 months. **Exbt.A2** is the copy of affidavit dated 10/11/2012 signed by both the Complainants and the Respondents. It was stated in the said affidavit that “Both the parties mutually agreed that the Completion of the project will be on 30/04/2014”. **Exbt.A3 series** is the copies of payment receipts issued by the 2nd Respondent and bank statement. As per Exbt.A3, the total amount paid by the Complainant is Rs.21,60,900/-. **Exbt.A4** is the copy of letter dated 27/06/2020 issued by the Complainants to the Respondents stating that due to non-



completion of the project even after 10 years has lapsed, the Complainants are withdrawing from the project and claiming refund of the amount paid by them along with interest. No documents were produced from the part of the Respondents.

12. The 1st Respondent has contended that in furtherance of the Sale cum Construction Agreement, the amounts that were paid by the Complainant was received by the 2nd Respondent and the receipts were issued by M/s Tiknar Homes, the 2nd Respondent and is evident from the receipts produced by the Complainant. The 1st Respondent has not received any amounts from any home buyer as on date. They are only land owners and there is no promoter-allottee relationship between the complainant and the 1st Respondent. The Respondents 2 & 3 contended that the construction went on as per the schedule initially, but for reasons beyond their control the construction of the said project got halted. According to them many reasons are attributed to such a situation and most importantly, the worldwide recession occurred and several persons lost their jobs in gulf countries and other western nations and the purchasers/allottees genuinely interested had withdrawn from the project resultantly, the fund flow was affected. It is stated that the project became standstill much before the commencement of the Real Estate (Regulation and Development) Act, 2016. However, the Respondents 2 & 3 admitted that they have received a sum of Rs.21,60,900/- from the



complainants and they could not complete the project as per the terms of the agreement. The only contention taken by the Respondents No.2&3 is that they informed the Complainants about their deplorable financial position and inability to complete the project and they were in search of a new prospective builder for taking over the project. The Respondents/Promoters stated that the delay was not intentional and they have no intention to run away from the liability on the amount invested by the complainant and they undertake to safeguard the interest of the complainant.

13. As per the Exbt.A1 the Respondents 2 & 3 shall construct and handover the apartment **on or before 31/12/2010** with a grace period of 6 months. As per Exbt.A2 the copy of affidavit dated 10/11/2012 the date of Completion of the project was changed to 30/04/2014. Even then, the Respondents No. 2&3 could not complete and hand over the apartment to the Complainants. Since the Respondents No. 2& 3/Promoters failed to complete and hand over possession of the apartment as per the terms of the agreement, the Complainants herein are eligible to withdraw from the project and claim refund of the amount paid by them as per Section 18(1) of the Act, 2016.

14. 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*

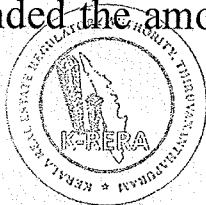


building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand 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". The Section 19(4) of the Act also specifies that *"The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".* The Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/S Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., also observed as follows: *"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/home buyer, 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”.

15. Here, the promised date of completion was 31/12/2010 and the Respondents No. 2 & 3 admitted that they failed to complete the project and hand over the apartment to the Complainants as per the terms of the Exbt. A1 agreement. They also admit that the amount claimed by the Complainants has been received by them and even if the date of completion was extended with consent of the Complainants through Exbt. A2, they could not honour their promise and undertaking given to the Complainants. Hence, it is evident that the Respondents No. 2&3/Promoters have failed to complete and hand over possession of the apartment to the Complainants/allottees as promised and therefore the Complainants/allottees are entitled to withdraw from the project and to get refunded the amount paid by them to the Respondents



No. 2&3 /Promoters along with interest as provided under Section 18(1)(a) of the Act, 2016. Points No.2 &3 are answered accordingly in favour of the Complainants.

16. As per the Complaint, the details of the payment made by the Complainants to the Respondents/Promoter are as follows: -

<u>Date</u>	<u>Amount</u>
19/06/2009	Rs.1,80,900.00
24/07/2009	Rs.8,00,000.00
20/11/2012	Rs.9,80,000.00
09/02/2013	Rs.2,00,000.00
Total	Rs.21,60,900.00

17. 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 14.85% with effect from 15/06/2023. The Complainants are entitled to get 16.85% simple interest on the amount paid, from the respective dates of payments as detailed above in the payment schedule, till the date



of refund as provided under the above Rule. Since the Respondents 2 & 3 have received the amount paid by the Complainants, they were liable to repay the same with interest. Hence it is found that the Respondents 2 and 3 herein are liable to pay Rs.21,60,900/- to the Complainants along with 16.85 % simple interest from the date of receipt of each payment as per the above schedule till the date of realization.

18. 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 2 & 3 shall return the amount of Rs.21,60,900/- to the Complainants with simple interest @ **16.85% per annum** from the date of receipt of each payment, as shown in the schedule above, till the date of realization of the total amount.

2. If the Respondents No.2 & 3 / 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 Complainants are at liberty to recover the aforesaid sum from the Respondents No.2 & 3 and their assets by



executing this decree in accordance with Section 40 (1) of the
Real Estate (Regulation & Development) Act and Rules.

Sd/-
Smt. Preetha P Menon
Member

True Copy/Forwarded By/Order



Secretary (legal)

KJ1

Exhibits marked from the side of Complainants

Ext.A1- Copy of agreement for sale cum construction dated 24/06/2009.

Ext.A2 - Copy of Affidavit dated 10/11/2012.

Ext.A3 series - Copies of payment receipts and bank statement.

Ext.A4 - Copy of letter dated 27/06/2020 issued by the Complainants.



