



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No: 256/21

**Present: Sri. P H Kurian, Chairman.
Smt. Preetha P Menon, Member
Sri. M.P Mathews, Member**

Dated 1st day of July 2022

Complainant

Dinkar Radhakrishnan,
Krishnapriya, East Kadungalloor,
Aluva, Ernakulam-683 102

Respondents

1. Jain Housing & Construction Ltd represented by it's
Managing Director Sandeep Mehta
No. 98/99, Habibullah Road, T Nagar, Chennai-600017
2. Sandeep Mehta, Managing Director,
KGEYES Kavery, Flat No. 1, Door No. 1,
1st Floor, Cresnet Street, ABM Avenue, R A Puram, Chennai-600028

The Counsel for the Complainant Adv. Aysha Abraham
and the Counsel for the Respondents Adv. George Cherian appeared for the
hearing.



ORDER

1. The above complaint was posted for final hearing on 14/02/2022 along with other connected complaints but the counsel for the Complainants and the Respondents sought time for filing the argument notes. The argument notes were received on 25/03/22 and the said 7 complaints were taken for orders. In the meanwhile, 11 more connected complaints came up for hearing and more clarifications were required for passing orders in the said complaints. So, all the complaints including fresh ones were posted on 27.05.2022 & 28/05/2022 for further hearing and after hearing all the 18 complaints, it was decided to pass final orders considering each case separately, as per the request of the Counsel appeared for the Complainants.

2. The case of the Complainants in the above complaint is as follows: The Complainants are the allottees in the project named 'Tuffnell Gardens', Kakkanadu, Ernakulam who approached the Respondents, intending to purchase an apartment after seeing their advertisements in which the offer was "apartments in the said project having 8 blocks with 152 flats in each block on 8 acres of property with State-of-the-art living facilities" and the total project would be a township with impeccable design and stylish planning. The Respondent/Builder was willing to help the Complainants with the paperwork for loan from State Bank of India who offered a 10/90 scheme under which the Complainants had to pay only 10% upfront and 90% would be disbursed by the Bank. The builder will pay the EMIs for the first 36 months and the entire loan will be received by the Builder at the time of construction itself. The Respondents assured the Complainant that the property is free from all encumbrances and they have obtained the required approvals from the competent authorities and accordingly completed the construction in all respects and it is ready for occupation. They also



promised that they have obtained necessary completion certificate and occupation certificate. Accordingly, the Complainant paid a sum of Rs. 3,75,000/- as advance payment on 04.06.2013 & 02.07.2013. On 29.06.2013, the Complainant entered into an agreement with the Respondents for the sale of the flat and made a further payment of Rs. 4,27,775/- to the Respondents. The Respondents helped the Complainant with the paperwork for LIC Housing Finance Ltd and sanctioned a housing loan of Rs. 31,10,000/- on 31.07.2013 for the apartment. Thereafter, LIC Housing Finance disbursed an amount of Rs. 29,50,000/- as per the request of the Respondent. After collecting the full payment, the project is still not completed. Though the Builder, in violation of law and in collusion with the Municipal Authorities received a partial occupancy certificate for the first 2 floors of Block 4 in which the apartment of the Complainant is situated. The Complainant directly and by mail communication, contacted the Respondents to complete the construction and to get the flat transferred with occupancy certificate. The Respondents were reluctant even to give any explanation about the probable date on which they can hand over the flat and other common amenities including car parking.

3. Some of the buyers in the Project approached the Hon'ble High Court with regard to the illegal construction where the builder had produced some documents pertaining to Environmental Clearance (EC) and Fire NOC which made out that the entire construction was illegal and unsafe. The Respondent/Builder started construction without environmental clearance and submitted false data for clearance. The EC granted to Respondent was invalid as the Respondent has increased his capacity from 1,39,885.78 sq. mt to 192637.80 sqm. which breached the threshold limits and entered into a different category. The Complainant further submits that the Basic Tax Receipt (BTR) of the project land showed the land as



'nilam'/'paddy land'. The Respondent/builder submitted before the Hon'ble High Court that the Kerala Municipality Building Rules (KMBR) were not applicable when he started construction before 2006 but the division bench held that KMBR is applicable and no vested rights accrued on a builder to build in violation of the Rules. However, the builder managed to obtain Fire NOC in violation of law in August 2020 and also obtained an occupancy certificate in October 2020 for Block 4 of the building even though the work was not completed. The Complainants directly and by email communication, contacted the Respondents asking to complete the construction and to get the flat transferred with an occupancy certificate. The very foundations on which the occupancy certificate was granted are serious violations of law for which the only consequence seems to be the same fate as the "Coral Cove" project of the same builder in Maradu. The Complainants were not willing to put their life or that of their family members at risk by entering a building that does not have the minimum required Fire Safety measures. The relief sought by the Complainant is a refund amount of Rs. 37,52,775/- along with interest at the rate of 14.15% from the date of payment to the date of actual repayment. The copies of agreement for sale, letter dated 18/09/2021 showing the loan details and repayment schedule issued by LIC Housing Financial Ltd. are produced by the Complainant.

4. The Respondents filed written statement and submitted that the complaint is not maintainable either in law or on facts of the case against the respondents. The Respondents submitted that the Complainant has received the title deed of apartment No. 4048, taken possession and in occupation of apartment No. 4048, and enjoying all the amenities in the Project. The Block 4 was a completed apartment project as of 25.05.2013. As per the agreement for sale dated 29.06.2013, it is mentioned that the construction is completed in all aspects and is ready for occupation. and the



promotor has obtained the necessary completion certificate from the valuer. Thus, as per the Respondents, it was evident that apartment No. 4048 is a completed apartment even at the time of agreement for sale. It was submitted that even today the Complainant is a defaulter. On 06.02.2015, the complainant was requested to pay the arrear amount of Rs. 4,23,255/- and to get registration of the apartment. In spite of repeated reminders so far, the complainant has not paid the arrear amount of Rs. 4,23,255/, taken registration and legal possession of apartment No. 4048. The Complainant is in illegal possession of apartment No. 4048. They submitted that even today they are providing all the amenities including free water, electricity, lift services, housekeeping, and security on the strength of the interim order dated 18.02.2019 in I A No. 151/2019 in CC No. 59/2018 obtained by the Complainant from the Hon'ble Consumer State Commission, Thiruvananthapuram. The maintenance charges are in arrears and due from the Complainant to the first Respondent. Even today the complainant and his family are occupying the apartment No. 4048.

5. The Respondents submitted that when the first Respondent builder was trying hard to obtain the statutory sanctions, the complainant and other allottees were trying to stall the same by filing false cases before the Hon'ble High Court of Kerala and the Kerala State Human Rights Commission, Thiruvananthapuram by impleading all the statutory Authorities and scaring them from processing the application and granting the necessary approvals. The Respondents submitted that since the two towers 4 and 5 were in the completed stage, after site inspection and since due to non-availability of Fire NOC, the Municipality numbered GF + 2 Floors and the Respondent obtained the partial occupancy certificate dated 26.07.2016. The allottees of the Project approached the Hon'ble High Court of Kerala through writ petition Num. 26935/2019 regarding the sanctions



obtained for the construction and the Hon'ble High Court of Kerala on 23/01/2020 cautioned the petitioners that if they are proceeding with this writ, the same will be dismissed with compensatory cost and hence the petition was dismissed as withdrawn. Further, the allottees again approached the Hon'ble High Court through no. 6581/2020 regarding the Environmental clearance. The Respondents submitted that the then Thrikkarkara Grama Panchayat had issued a construction NOC A4-1/2000 dated 31.08.2006 for developing the property in the name of landowners. The plan approved was for 8 blocks of G + 19 floors with 2 level car parking, common area facilities, and a total of 1217 units. It was also submitted that before the Municipality Building Rules came into force builders started construction in the terms of the NOC plan. No prior permission was required for any construction in Panchayat areas. Since the construction was made in terms of the NOC, KMBR Rules are not applicable. Thrikkakara Grama Panchayat issued a certificate No. A1-1/08 dated 09.09.2008 to the builder that the NOC is in compliance with the terms of Circular No. 23548/RD2/08/LSGD dated 03.04.2008. Due to the pendency of the cases filed by the allottees of the project, the issuance of NOC was delayed and after persistent follow-up, they acted on the said circulars and certificate of approval No. F2-13396/2018 dated 06/08/2020 was issued certifying that all Rules and Norms pertaining to the fire safety arrangement are satisfied in Jains Tuffnell Garden. The Occupancy certificate was issued on 07/10/2020 by the Local Self Government, Thrikkakara Municipality. The Respondents submitted that the Complainants have no cause of action against the Respondents in the facts and circumstances of this case. Complainants have suppressed material facts, none of the prayers in the Complaint are allowable. The prayer for refund of Rs. 37,52,775/- along with interest at the rate of 14.15% is not tenable in the facts and circumstances of the case. Hence the Respondents submit that the Complaint which is bereft of any bonafide and



an abuse of the process of the Authority, is liable to be dismissed with the compensatory cost of the Respondents. The copies of Completion Certificate dated No. 25.05.2013 issued by Chartered Engineer, Order passed by Consumer State Commission Thiruvananthapuram dated 18/02/2019, Partial Occupancy Certificate dated 26/07/2016, Order in Writ Petition No. 26935 of 2019 dated 23/01/2020, NOC from Thrikkakkara Grama Panchayat dated 31/08/2006 & 09/09/2008, Fire NOC dated 06/08/2020 in the name of the Promoter, Occupancy Certificate dated 07/10/2020, email communication dated 02/12/2014 are produced from the side of the Respondents.

6. Heard both parties in detail and perused the documents produced by them. The Project in question 'Jain Tuffnel Garden' is registered under Sec 3 of the Act 2016, vide Certificate No. 201K-RERA/PRJ/ERN/011/2022. During the hearing, it was argued by the learned Counsel appearing for the Complainant that the Complainants have executed an agreement for sale of a flat on 29.06.2013 for the apartment No. 4048 in the 4th Block after payment of 10% of the agreed amount. All payments are admitted by the Respondents. The Promoter misled the Complainant and executed the Agreement and the Complainants was under the bonafide belief that the building is completed and is having required approvals from competent Authorities. After making full payment, the Complainant came to know that the construction is not completed and the Promoter without obtaining necessary approvals, started the construction. The Complainant demanded the money back in early 2018 and the completion date mentioned by the builder in the registration application is 23.03.2020. Regarding the contention of the Respondents in their objection that the Complainants have received the title deed of the apartment 4048, taken possession and in occupation of apartment No. 4048 and enjoying all the amenities in the Project, it is the responsibility of the Respondent to



produce the documents to support the said pleadings. It was submitted that Sec 18 speaks about 'Possession' in accordance with the 'agreement for sale' 'possession would mean only 'legal possession'. Law cannot recognize 'illegal possession. The Kerala Municipality Building Rules categorically provide that no building or apartment can be occupied without an 'occupancy certificate' and therefore any 'occupation' prior to the grant of 'occupancy certificate' is always illegal. Similarly, when it comes to 'Agreement for Sale", it is governed by contract law and therefore the Authority cannot ignore the basics of contract law. As per Sec 23 of the Contract Act, parties to an Agreement cannot agree to an object that is unlawful. Therefore, the parties to an agreement here cannot agree to take any illegal possession, only legal possession would be recognized. The Authority cannot ignore the provisions of Sec. 23 of the Contract Act while interpreting the Agreement for sale mentioned in Sec. 18 of the Act, for the simple reason that Sec 23 of the Contract Act mentions "The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral or opposed to the public policy". The Counsel for the Complainant invited attention of the Authority to the judgment of the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd Vs. State of UP 7& Others* (C.A No. 6745 of 2021) wherein one of the objectives of the RERA Act was pointed out as "to protect the interest of consumers in the Real Estate Sector".

7. It was further argued by the Complainants that the Authority cannot ignore the operation of the provisions of Sec 14 of the RERA Act just because the complaint is made under Sec18. The moment the buyer makes an application for refund and interest, he has made a



decision to move out. As the builder claims that the building is complete a dispute arises and therefore the RERA Authority cannot ignore the provisions of Sec. 14 of the RERA Act to find out if the building is completed in accordance with the approved plans. In this case, the common areas and amenities can never be used by the complainant because the project is not complete in accordance with Sec 14 of the RERA Act. It was submitted that the Complainant has not taken possession of the flat, legal or illegal, or even sale deed is not registered in his name as the flat was not completed as agreed between the parties. The order from the Consumer Court was obtained by playing fraud. The Complainant asserts that he was in Bangalore and then in Canada and never signed or instructed the concerned advocate to represent his matter in the Consumer Commission and never took possession of the flat. The Respondents stated in affidavit before the Hon'ble High Court that the building completion date was March 2020. Therefore, he now cannot take a stand that the building was completed in 2013 and even if he takes such a contention, the Authority cannot accept the contention because they had voluntarily declared before the Authority and also in the High Court on Affidavit wherein the Authority was a party that the completion date was March 2020. The complainants counsel also invited our attention to the Judgement of the Hon'ble Supreme Court in *Fortune Infrastructure & Anr v. Trevor D'Lima & Ors*(2018) 5 SCC 442 in which it was held that " a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek a refund of the amount paid by him, along with compensation".

8. In the reply arguments, the learned counsel appeared for the Respondents submitted that this Authority has no jurisdiction to entertain these complaints in view of Section 18 of the Act 2016 and it can take cognizance only when the Promoter fails to complete or is unable to give



possession of an apartment, plot or building in accordance with the agreements for sale and that the allottee wishes to withdraw from the project. The Respondents produced copies of Completion certificate dated 25.05.2013 given by the Chartered Engineer for the project, Injunction order dated 18.02.2019 passed by the Consumer State Commission, partial and final Occupancy Certificates obtained for the project, mail communication dated 02.12.2014 to the Complainant. According to the Respondents, the Complainant was requested on 06.02.2015 to pay arrear amount of Rs. 4,23,255/- and to get registration of the apartment. But in spite of repeated reminders, the Complainant has not paid the balance amount, taken registration and legal possession of the apartment. The Counsel for the Respondents strongly argued that the Complainant who is still a defaulter of Rs. 4,23,255/- is illegally occupying the apartment and enjoying facilities in the project Jains Tuffnel Garden for which reason the said complaint is not maintainable in view of Section 18 of the Act 2016 and hence the complaint is liable to be dismissed. Copy of an email dated 02.12.2014, seemed to be sent to the complainant by a customer care employee of the Respondent is also produced by the Respondent's Counsel.

9. We heard the learned counsels on either side, gave careful consideration to their submissions, perused the material documents available on record. After detailed hearing and perusal of pleadings and documents submitted by both the parties, following points were came up for consideration:

1) Whether the Respondent/Promoter failed to complete or unable to hand over possession of the apartment to the Complainants in accordance with the terms of the agreement for sale or duly completed by the date specified therein or not? &



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

3) What order as to costs?

10. **Points No. 1&2:** The relief sought in the Complaint is for direction to refund the amount paid by the Complainant along with interest as provided under Section 18(1) of the Real Estate (Regulation & Development) Act 2016. Section 18(1) of the Act 2016 specifies that *“If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, 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 the 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.”* As per Section 19(4) of the Act 2016, *“the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, 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 the agreement for sale”*. It is obvious that Section 18(1) is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for



sale duly completed by the date specified therein. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. The documents produced from the part of the Complainant are marked as **Exbts.A1 to A3** and the documents produced from the part of the Respondents are marked as **Exbt.B1 to B8**. Here, the agreement for the sale of the flat dated 29/06/2013 executed between the 1st Respondent/Promoter, Landowners represented by the 2nd Respondent as Power of Attorney Holder, and the Allottee/Complainant shows that the Promoter was desirous of developing multi-storied residential building in the scheduled A property regarding which they entered into necessary agreements with the landowners. The true copy of the Agreement to sale of Flat dated 29/06/2013 is produced and marked as **Exhibit A1**. It is also mentioned in the above agreement that the promoter had obtained the required approvals from competent authorities and had completed the construction in all respects and the building was ready for occupation. As per Clause 6 of the said Agreement, “ the Promoter undertakes to hand over possession of the flat to the Purchaser within one month after receipt of the entire amount due from the allottee in terms of the agreement provided all necessary papers for acknowledging delivery of Schedule C property are signed by the Allottee”. The total consideration was fixed as Rs.37,52,775/- and the promoter had also promised to sell to the Complainant/allottee through the landowners 268.68 sq.ft undivided share in the land described in schedule A referred to in the Agreement. It was also agreed by the promoter that one covered car parking is described in the schedule D referred to in the agreement and the Allottee had agreed to pay towards maintenance charged Rs. 1.50 per sq. ft per month for the period of 24 months to the promoter before taking over possession of the flat along with the cost of the



installments payable by the allottee. Here, no construction agreement is seen produced and it is stated in the Exbt. A1 agreement for sale that “the promoter had obtained the required approvals from competent authorities and had completed the construction in all respects and the building was ready for occupation”. In the Exbt. B1 Completion Certificate dated 25.05.2013, it is certified that “construction of the residential project “Jains Tuffnell Park Block 4” has been completed as per the approved plan and NOC No. A4-1/2000 dated 15.05.2013” which lacks clarity in the name of the project, date mentioned etc. The copy of Partial Occupancy Certificate dated 26.07.2016 produced by the Respondents cannot be acceptable because the Partial Occupancy certificate issued only for some floors of a high-rise building cannot be considered as the ‘Occupancy Certificate’ (mentioned as ‘Completion Certificate’ in the Act 2016) proclaiming completion of the real estate project as envisioned under the Real Estate (Regulation & Development) Act 2016 and the corresponding Rules 2018 which has been made clear many times by the Authority through its earlier orders. But in the final Occupancy Certificate dated 07.10.2020 produced by the Respondent and marked as **Exbt.B7** the details of permit are shown as TP. 959/12 /Reg/2016/17 dated 15.06.2016 and the date of completion is written as 23.03.2020. Exbt. A1 Agreement for sale and Exbt. B1 Completion Certificate of the Chartered Engineer show that the project/Block 4 was completed before 25.05.2013 itself. Surprisingly, the partial occupancy certificate issued for one or two floors of the building, shows that the date of completion is 30.06.2016 and the **Exbt B3**, final Occupancy Certificate dated 07.10.2020 states that the date of completion is 23.03.2020. The copy of Final Fire NOC produced by the Respondents and marked as Exbt. B6 is issued by the Fire department only on 06.08.2020. So, it is to be concluded that the project was completed as per the approved plans only by 07.10.2020, the date of issuance of final Occupancy Certificate. Hence, the contention



raised by the Respondent/Promoter that "the project was completed in 2013 itself and they intimated the Complainant by email dated 02.12.2014, copy of which is produced and marked as **Exbt.B8** that the flat is ready for handing over and requested thereby to register the sale deed", is found to be worthless. Hence it is clear that the Respondent/Promoter has misled the Complainant/allottee by stating in the Exbt. A1 agreement executed in 2013 that "he had obtained the required approvals from competent authorities and had completed the construction in all respects and the building was ready for occupation" without obtaining Fire clearance or Occupancy certificate from the local authority.

11. Even though the Respondent has stated in his written statement that "the Complainant has received title deed of the apartment 4048" he failed to produce copy of the title deed and during the argument, the counsel appeared for him admitted that no title deed has been executed till date. According to Section 17 of the Act 2016, *"(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand-over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents



and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate." But in this case, after obtaining the occupancy certificate on 07.10.2020, no attempt has been done by the Respondent till date to execute the Sale deed in favour of the Complainant and no documents have been placed on record by the Respondent to prove the contrary. So, the Respondent has clearly violated the above-mentioned provision under Section 17 of the Act 2016. Even if the Respondent claimed during the argument that the Complainant was requested on 06.02.2015 to pay arrear amount of Rs. 4,23,255/- and to get registration of the apartment, he failed to produce copies of such communication to prove his claim. To prove the contention of the Respondent that the Complainant is in possession of the apartment, copy of an interim order of Hon'ble State Consumer Disputes Redressal Commission dated 18.02.2019 is produced by the Respondent and marked as **Exbt.B2** as per which the Respondents/Promoter and the Landowners were directed "not to block/cut off the basic amenities like water and electricity connections provided with residential flat No. 4048 and not to discontinue the services like lift facility, cleaning, and security services provided to the complainant and his family in the complex until further orders". But the Complainant's counsel strongly objected the said document and argued that the Complainant and his family is settled in Canada and his aged mother who only resides in their hometown never met the Respondents or taken possession of the apartment. According to the Complainant, by the middle of 2017, 4 to 5 allottees were misled by the Respondent/builder and started occupying their flats and after knowing that there is no water or electricity, lifts who initiated to file few complaints before the consumer commission through an Advocate who filed some complaints without knowing the status of the Complainant. He asserts that he was in Bangalore and then in Canada and never signed or instructed the Advocate to represent his matter in the



Consumer Commission and never took possession of the flat. After hearing the said argument of the Complainant, though the Authority specifically asked the Respondent's Counsel to produce all the details and documents submitted before the Consumer Commission in connection with the said Exbt.B2 interim order, he failed to produce any document in this regard. So, only on the basis of the copy of said interim order, we cannot come to a conclusion that the Complainant has taken possession of the apartment.

12. For the reasons stated above, it is evident that the sale deed has not been executed even after the receipt of occupancy certificate and no correspondence has been produced by the Respondents to prove that they intimated the issuance of occupancy certificate and requested for balance payment/registration charges for the sale deed registration. The Respondent also failed to hand over possession of the apartment as per the terms of the agreement in which it was undertaken that the apartment should be handed over to the Complainant after receipt of the entire amount due from him. The Complainant affirmed that he settled the full amount of consideration after which he contacted the Respondent several times for getting handed over the apartment. Even though the Respondent denied it and contended that an amount of Rs. 4,23,255/- is due from the Complainant, no document has been produced by the Respondent to substantiate his claim. Moreover, the **Exbt.B8** email communication dated 02.12.2014 produced by the Respondent is regarding the registration of the apartment requesting to payment of the cost of registration of Rs, 1,60,000/-. It is also admitted by the Respondent that the Complainant has not taken registration or legal possession of apartment No. 4048. The Complainant has a specific case that the promised facilities have not been completed by the builder till date and he was not ready to take possession of the apartment because he did not want



to suffer the consequences of not having the common amenities and also of the noise and air pollution caused by the ongoing construction activities. At the same time, apart from the **Exbt.B1** completion Certificate given by an engineer and the **Exbt.B7** occupancy certificate issued by the local authority certifying that the construction has been completed as per the approved plans/Permit/NOC, nothing has been produced by the Respondent to prove that the project is completed in all respects with all the common amenities as promised to the Complainant. 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 in accordance with the terms of the agreement for sale and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest. Points No. 1&2 are answered accordingly in favour of the Complainant herein.

13. It is to be pointed out that the contentions and allegations raised by the Counsel for the Complainant with regard to the genuineness of the statutory sanctions and approvals obtained for the project have no significance in this case because the said issues of violations alleged by the complainant are to be considered by the concerned local body which is the competent authority to issue occupancy Certificate. According to Kerala Municipality and Building Rules the secretary shall on receipt of the completion certificate and on being satisfied that the construction is in conformity with the permit given, issue occupancy certificate in the form in Appendix H and the Occupancy certificate issued by the Secretary certifies that the work executed is in accordance with the permit and the building is fit for occupation/use. As per the definition in the Real Estate Regulation and Development Act,2016, occupancy certificate issued by the competent



authority permits occupation of building as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity. Section 14(1) of the Act 2016 stipulates that "The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans, and specifications as approved by the competent authorities". Once the occupancy certificate is issued by the local body, it is to be confirmed that the section 14(1) stands complied with and it presupposes that all the required statutory approvals and sanctions such as Fire NOC, Environmental clearances, etc. have been obtained. Here, Copy of Fire NOC dated 06.08.2020 obtained for the project is also produced by the Respondent which is marked as Exbt. B6 In the reply arguments, the learned counsel for the Respondent/Promoter also pointed out that the allottees approached the Hon'ble High Court of Kerala through writ petition No. 26935/2019 regarding the veracity of sanctions obtained for the construction and the Hon'ble High Court of Kerala on 23/01/2020 cautioned the petitioners that if they are proceeding with that writ, the same will be dismissed with compensatory cost and subsequently the petition was dismissed as withdrawn. The copy of said order is produced and marked as Exbt.B4.

14. As per the Exbt. A1 Agreement, the total consideration payable was Rs. 37,52,775/-. An amount of Rs. 3,75,000/- paid by the Complainant which is acknowledged by the promoter in the agreement for sale. The letter received from the LIC dated 18.09.2021 is produced by the Complainant and marked as **Exhibit.A2** in which it is stated that LIC housing finance had disbursed an amount of Rs. 29,50,000/- on 31.08.2013 as per the request of the Respondent. There is no documentary evidence for payment of the balance amount of Rs. 4,27,775/- by the Complainant. It is



also noted that according to the Respondent, there is an amount of Rs. 4,23,255/- due from the Complainant.

15. Details of payments made as per the above documents are as below.

<u>Date of payment</u>		<u>Amount</u>
29/06/2013	-	Rs. 3,75,000/-
18/09/2021	-	Rs. 29,50,000/-
Total		Rs. 33,25,000/-

16. Hence, the Complainant herein is entitled to get the refund of amount along with interest and Respondent is liable to refund the amount along with the interest. 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. However, the Complainant herein prayed for a refund of the amount of Rs. 37,52,775/- along with interest at the rate of 14.15% from the date of each payment in the complaint. But the documents produced before us show that the Complainant paid only Rs. 33,25,000/- Hence it is found that Respondents 1 and 2 are liable to pay Rs. 33,25,000/- along with 14.15 % (12.15 current BPLR rate +2) simple interest from the date of each payment.

17. In view of the above, invoking Section 37 of the Act, this Authority hereby issues the following directions:

1. The Respondents 1& 2 shall return the amount of Rs.33,25,000/- to the Complainant along with simple interest @ 14.15% per



annum from the date of each payment as per the payment schedule above, till the date of realization.

2. If the Respondent fails 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 Respondent's 1 & 2 and its assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act 2016 and Rules.

Both parties are directed to bear their respective costs.


Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. M. P. Mathews
Member

Sd/-
Sri. P H Kurian
Chairman

That
/True Copy/Forwarded By/Order/

OU
Secretary
(Legal)



EXHIBITS

Documents Produced from the part of the Complainants.

- Exhibit A1 - True copy of the Agreement for Sale dated 29.06.2013.
- Exhibit A2 - True copy of the letter dated 18.09.21 showing the loan details and the repayment schedule issued by the LIC Housing Finance Ltd.
- Exhibit A3 - Copy of Power of Attorney.

Documents Produced from the part of the Respondents.

- Exhibit B1 - True copy of the Completion Certificate dated 25.05.2013 issued by Chartered Engineer.
- Exhibit B2 - True copy of the Order passed by Consumer State Commission, Thiruvananthapuram dated 18/02/2019
- Exhibit B3 - True copy of the Partial Occupancy Certificate dated 26/07/2016.
- Exhibit B4 - True copy of the Order No. 26935 of 2019 in Writ Petition dated. 23/01/2020
- Exhibit B5 - True copy of the NOC from Thrikkakkara Grama Panchayat dated 31/08/2006 & 03/04/2008.
- Exhibit B6 - True copy of the Fire NOC dated 06/08/2020 in the name of the Promoter
- Exhibit B7 - True copy of the Occupancy Certificate dated 07/10/2020.
- Exhibit B8 - True copy of the email communication dated 02/12/2014.



