



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No: 260/2021

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

Dated 1st day of July 2022

Complainants

Jijo P John,
Parappurath House,
Pallam P.O, Kottayam

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, Crescent Street, ABM Avenue, R A Puram, Chennai-600028

The Counsels for the Complainant Adv. Yeshwanth Shenoy
& 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 facts of the Complaint are 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. On 27.05.2008, the Complainant entered into an agreement for Sale of Property with the Respondents along with the



Memorandum of Agreement for construction of the apartment. Thereafter, the Bank disbursed the balance amount of Rs. 27,43,000/- on 11.07.2008. As per the agreement, the Respondents agreed to hand over the possession of the apartments within 36 months from the date of starting of the construction with a grace period of 3 months. It was submitted by the complainant that 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. 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 the car park. However, the Respondents have not so far been able to receive proper Occupancy Certificate and the Respondents have not given possession of the apartment. The Complainant had paid a sum of Rs.50,000/- by DD on 19/05/2008. On 22/05/2008, the Complainant made another payment of Rs.5,59,539/- by DD. Thereafter State Bank of India, RACPC Branch disbursed the balance amount of Rs.27,43,000/- on 11/07/2008.

3. The Complainant further submitted that some of the buyers in the Project approached the Hon'ble High Court regarding the illegal construction and the builder produced some documents pertaining to Environmental Clearance (EC) and Fire NOC which clearly makes the entire construction illegal and unsafe. The Respondent/Builder started construction without clearance and submitted false data for clearance. The EC granted to Respondent is invalid as the Respondent has increased his capacity from 1,39,885.78 sq. mt to 192637.80 sqm. So, the buyers were worried and sought to know the status of the land in the land register and



records. The Basic Tax Receipt (BTR) of the land on which the construction was made was taken and it showed the land as 'nilam'/ 'paddy land' and therefore an allottee wrote a complaint to the Agricultural Officer which was forwarded to RDO through the officer.

4. It is further stated that the Respondent/builder submitted before the Hon'ble High Court that the Kerala Municipality & Building Rules (KMBR) were not applicable as he started construction before 2006 on which KMBR was notified to be applicable. The division bench held that the KMBR is applicable and no vested rights accrue on a builder to build in violation of the Rules. The Respondent managed to obtain the 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 Complainant directly and by email communication, contacted the Respondents to complete the construction and to get the flat transferred with 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 Complainant was 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. Even assuming the Municipality or State Authorities grant them the permissions based on any 'technicality', the Complainant was unwilling to move into an apartment that is known to be a Fire Hazard. The copies of Agreement for Sale dated 27.05.2008, Receipts of payments made, letter showing payment of Rs.27,43,000/- made by SBI to the Respondent Dated 28/02/2014, are produced from the side of the Complainants.



5. 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 Complainant had filed this Complaint by suppressing the material facts and only as an attempt for fraudulently extracting money from the Respondents, and the Complaint is prima facie not maintainable. It was submitted that this Authority has no jurisdiction to entertain this complaint in view of Section 18 of the Act,2016. This Authority 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 terms of the agreement for sale and that the allottee wishes to withdraw from the project. It was submitted that block -4 of the Jains Tufnell Garden was completed apartment project as on 25.05.2013. Even today the Complainant is a defaulter. On 14.10.2016, the Complainant was requested to pay the arrear including Rs. 17,717/- as the charges for extra work done at the request of the Complainant and to get registration of the apartment. In spite of repeated reminders so far, the Complainant had not taken the legal possession of the apartment No. 4043. Even today, the Complainant is enjoying all the amenities in Jain Tufnell Gardens including free water, electricity, lift service, housekeeping and security on the strength of the interim order dated 18.02.2019 in I.A No. 157/2019 in CC NO. 74/2018 obtained by the Complainant from the Hon'ble Consumer State Commission. The maintenance charges are in arrears and due from the Complainant to the first Respondent.

6. It was submitted further 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 No. 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 of Kerala through writ petition no. 6581/2020 regarding the Environmental clearance. 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 builder/promoter started construction in the terms of the NOC plan. No prior permission is required for any construction in Panchayat areas. Since the construction was made in terms of the NOC, K MBR 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 Tufnell Garden. The Occupancy certificate was issued on 07/10/2020 by the Local



Self Government, Thrikkakara Municipality. All the averments and allegations mentioned in the Complaint are false and hence denied. It was submitted by the Respondents that Complainants have suppressed material facts and none of the prayers in the Complaint are allowable. The prayer for refund of Rs. 33,52,539/- along with interest at the rate of 14.15% is not tenable in the facts and circumstances of the case. 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 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 dated 23/01/2020 in Writ Petition No. 26935 of 2019, NOC from Thrikkakkara Grama Panchayat dated 31/08/2006, Certificate issued by Thrikkakkara Grama Panchayat dated 09/09/2008, Fire NOC dated 06/08/2020 in the name of the Promoter, Occupancy Certificate dated 07/10/2020, Certificate dated 05/03/2022 are produced from the side of the Respondents.

7. 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. It was argued by the Complainant's Counsel, that the Complainants, have executed an agreement for the sale of undivided share of the property on 19.05.2008 along with an agreement for construction of the apartment No. 4043 on 4th Block after payment of 10% of the agreed amount. All payments are admitted by the Respondents. At the time when the Builder executed the agreement, the project started, and as such, the project was to be completed by December 2010. As per the agreement, the Respondent agreed to hand over the flat on completion of the entire project. The Respondent does not have a case that they have



completed the entire project. The Complainant was not ready to occupy the apartment and the Sale Deed was also not executed in his favor. Therefore, the possession of the apartment/ flat has not been given to the Complainant. The Complainant's Counsel 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. Therefore, even in the 'Agreement for sale' when the word 'possession is mentioned', the possession should always be 'legal'. Under 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. Attention was invited 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 the objective of the RERA Act was pointed out and was also specifically pointed out that the primal position of the Regulatory Authority is "to protect the interest of consumers in the Real Estate Sector".

8. It was also argued by the learned counsel for the Complainant that the Authority cannot ignore the operation of the provisions of Sec 14 of the RERA Act just because the complaint is made under Sec 18. The moment the buyer makes an application for refund and interest, he has made a decision to move out. However, the builder takes the stand that the building is complete. Therefore, 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 is true 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 Complainant is settled in Dubai with the family. In his absence, one Mr. Sarath Chandran, a politician, instructed Adv. Shihabudeen to file case before the consumer state commission and along with other cases, the advocate obtained stay from the commission. The Complainant never taken illegal possession of the apartment. It was submitted that Ext B1 produced by the Builder is fake and fraudulent and has no value. Thereafter, the builder in his application to RERA Authority itself gave a different completion date. He stated in affidavit before the Hon'ble High Court that the building completion date was March 2020. Therefore, he 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 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". It was submitted by the Complainants, that the Authority cannot be blind to the serious violations & illegalities brought to their notice, and cannot ignore the difficulties of home buyers who have made their lifetime investments into a Project for more than a decade and still not got possession.



9. 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 counsel for the Respondents also argued that the Complainant who is in possession of apartment No. 4043 and enjoying all the facilities in Jain Tuffnell Garden cannot maintain this complaint in view of Section 18 of the Act 2016.

10. 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?



11. **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 B9. The Agreement for sale dated 27/05/2008 executed between Landowner represented by the 2nd Respondent who has signed as authorized signatory for the promoter of the 1st Respondent company and the Complainant is produced and marked as **Exhibit A1**. In the agreement, the landowners offered to sell 267.55 sq. ft of undivided share in Schedule A land more fully described in Schedule B to the Allottees/Complainants for a consideration of Rs, 1,84,260/- free from all encumbrances. It is mentioned in Clause 4 of the agreement for Sale that "it is subject to the condition that the Purchaser shall construct the said Flat No. 4043 in Block 4 on the 4th floor, by engaging the Promoter/Respondent only for the practical purpose of common construction along with the Purchasers of the other undivided Co-shares of the Schedule A land referred to in the agreement for which a separate Agreement shall be entered into between the Purchaser and the Promoter/Respondent". However, no such agreement is seen produced along with the Complaint and the Complainant has not mentioned any reason for not producing the construction agreement said to have been executed. In the Complaint, it is stated that the Respondents agreed as per the Construction agreement, to hand over the possession of the apartments within 36 months from the date of starting of the construction with a grace period of 3 months, and the same has been seen denied by the Respondents in their written statement. But the Respondents have no case that such a construction agreement has not been executed. 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.B8 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. 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.B8 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.B7 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" is found to be false. Here, the sale deed is also not seen registered in favour of the complainant till date even after obtaining the Occupancy certificate on 07.10.2020.

12. 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.

13. (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. Even if the Respondent alleges that the Complainant is a defaulter in payments and some amount is still due from him, no documents such as copies of communication demanding the balance amount and to pay the registration charges for execution of sale deed have been produced from the part of the respondents. So, the said acts of the Respondents amount to clear violation of the above-mentioned provision under Section 17 of the Act 2016. 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 counsel for the Complainant strongly denied and argued that the Complainant is settled in Dubai with the family and in his absence, one Mr. Sarath Chandran, instructed one Adv. Shihabudeen to file cases before the consumer state commission and along with other cases, the advocate obtained stay from the Commission and the Complainant never taken illegal possession of the apartment, as alleged by the Respondents. 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. The Respondents themselves allege that the Complainant has taken "illegal possession" of the apartment.

14. 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 and it is admitted by the Respondent that the Complainant has not taken registration or legal possession of apartment No. 4043. 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.B8 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 as promised 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.

15. 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. B7 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

16. With respect to the payments, the Complainant has produced 2 Receipts of payments for Rs. 50,000/- and Rs. 5,59,539/- made to the Respondents which are marked as Exhibits A2 Series and a certificate dated 28/02/2014 from the SBI stating that the loan of Rs. 29,12,000/- has been sanctioned and an amount of Rs. 27,43,000/- has been disbursed as on date" which is marked as Exbt.A3. But details of disbursements are not available. Anyhow the Respondents have not raised any objection on the said documents. The certificate produced by the Respondents has confirmed the fact that the complainant had availed the loan amount of Rs. 27,43,000/ for paying the sale consideration and that the Respondent had remitted 33 EMI's amounting to Rs. 9,06,016/ in their loan account. Details of payments made, as confirmed by the Authority based on the above documents are as detailed below.



<u>Date</u>		<u>Amount</u>
19/05/2008	-	Rs.50,000/-
22/05/2008	-	Rs.5,59,539/-
28/02/2014	-	Rs.27,43,000/-
Total	-	Rs. 33,52,539/-

17. Hence, the Complainant herein is entitled to get the refund of the amount along with interest and the Respondent is liable to refund the amount to the complainant 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. The Complainant had claimed refund of Rs.33,52,539/- paid by him along with interest at the rate of 14.15% per annum from the date of each payment to the date of actual repayment. Hence it is found that Respondents 1 and 2 are liable to pay Rs.33,52,539/- Lakhs along with 14.15 % (12.15 current BPLR rate +2) simple interest from the date of each payment as scheduled above.

18. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions: -

1) The Respondents 1& 2 shall return the amount of Rs.33,52,539/- to the Complainant along with interest @ 14.15% simple interest 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 their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act 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

/True Copy/Forwarded By/Order/


Secretary
(Legal)



EXHIBITS**Documents Produced from the part of the Complainants.**

- Exhibit A1 - True copy of the Agreement for Sale dated 27.05.2008.
Exhibit A2 series - True copy of the Receipts of payments made.
Exhibit A3 - Copy of letter showing payment of Rs.27,43,000/- made by SBI to the Respondent Dated 28/02/2014.

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 dated 23/01/2020 in Writ Petition No. 26935 of 2019
Exhibit B5 - True copy of the NOC from Thrikkakkara Grama Panchayat dated 31/08/2006
Exhibit B6 - True copy of Certificate issued by Thrikkakkara Grama Panchayat dated 09/09/2008
Exhibit B7 - True copy of the Fire NOC dated 06/08/2020 in the name of the Promoter.
Exhibit B8 - True copy of the Occupancy Certificate dated 07/10/2020.
Exhibit B9 - True copy of Certificate dated 05/03/2022.

