



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.292/2021

Present: Sri. P H Kurian, Chairman.
Sri.M.P.Mathews, Member

Dated 9th February, 2022

Complainants

Geetha Sivadasan
No.12/1, 10th Main,
100 Feet Road, HRBR Layout,
Banaswadi Kalyan Nagar,
Bangalore, Karnataka-695005.

Respondents

1. M/s Sanroyal Builders & Contractors Private Ltd.
Represented by its Managing Director Sri. Sanju Das N.S
Building No.2/589/23, 1st Floor,
Laloor Road, Outpost, Elthuruth P.O,
Ayyanthole, Thrissur-680611
Having registered office at
5/417, Rohini Bhavan, Indira Nagar, Peroorkada P.O,
Thiruvananthapuram- 695 005.
2. Sri. Sanju Das N.S
Managing Director,
M/s Sanroyal Builders & Contractors Private Ltd.
Building No.2/589/23, 1st Floor,
Laloor Road, Outpost, Elthuruth P.O,
Ayyanthole, Thrissur-680611.



3. Bijo Babu,
 Manager,
 M/s Sanroyal Builders & Contractors Private Ltd.
 5/417, Rohini Bhavan, Indira Nagar, Peroorkada P.O,
 Thiruvananthapuram- 695 005.

ORDER

1. The case of the Complainant is as follows:- The Complainant is an Allottee of project named 'Sanroyal Jivanta' located at Chittalapilly village, Thrissur District developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, 2016 vide Registration No. K-RERA/PRJ/239/2020. The Complainant had booked a Flat No.3G on the 3rd Floor of multi storied building named as 'Sanroyal Jivanta' and an agreement was also executed between the Complainant and the Respondent on 06/02/2019. The total consideration for the same was fixed at Rs.30,00,000/-, out of which the Complainant had paid Rs.20,50,000/- on various dates as detailed below.

| Sl.No. | Date of Payment | Amount Paid |
|--------|-----------------|----------------|
| 1. | 06/02/2019 | Rs.10,001/- |
| 2. | 02/03/2019 | Rs.10,000/- |
| 3. | 02/03/2019 | Rs.9,30,000/- |
| 4. | 04/03/2019 | Rs.10,00,000/- |
| 5. | 03/06/2020 | Rs.1,00,000/- |
| | Total | Rs.20,50,000/- |



2. The Respondent has promised to handover possession by December 2019, which was extended to April 2020. As per Email dated 14/05/2020, the Respondent had again promised the Complainant that he will handover the possession of the flat by the end of September 2020. Due to non handing over possession of the said Flat, the Complainant couldn't shift from Bangalore to Thrissur in September 2020. Due to failure in completion and handing over of the project , the Complainant had applied for refund along with interest through mail dated 26/02/2021, which was duly acknowledged and accepted by the Respondent dated 04/03/2021. But he had had not paid the said money till date. Hence this Complaint.

3. The relief sought by the Complainant is refund of Rs.20,50,000/- along with interest at SBI PLR rate + 2% per annum.

4. When the case was posted for hearing on 17/01/2022, the Respondent was absent after which a notice was issued to him again directing to appear on 09/02/2022 failing which the order shall be passed in his absence. When the case was taken up on 09/02/2022, again the respondent was absent and after hearing the Complainant and perusing the documents produced, the Authority decided to order return of money to the Complainant under section 18 of the Act.

5. Copy of agreement for sale dated 06/02/2019 executed between the Promoter / Respondent and the Complainant is



produced and marked as Exbt.A1, Copy of construction agreement dated 06/02/2019 is produced and marked as Exbt.A2, Copy of payment details is produced and marked as Exbt.A3 Series, Copy of letter dated 24/02/2021 addressed to the Complainant by the Builder is produced and marked as Exbt.A4, Copy of letter dated 08/09/2021 addressed to the Complainant by the Promoter is produced and marked as Exbt.A5, and Copy of mail dated 10/02/2022 is produced and marked as Exbt.A6. The project is registered with RERA vide Registration No. K-RERA/PRJ/239/2020. In the registration certificate the date of the permit is shown as 25/08/2017 and its validity was up to 24/08/2020. Agreements for sale referred to under section 13(1) shall be as prescribed under R.10 of the K-RERA Rules 2018. However the Promoter has refused to execute the agreement in the prescribed format. On going through the agreement, the date of completion is within a period of 36 months from the date of commencement of works. Taking into consideration, the fact that the permit was obtained on 25/08/2017, the date of commencement of work can be assumed as the date of obtaining the permit and the date of completion as 24/08/2020. According to A6 document produced by the Complainant, it is confirmed by the Respondent that he had completed 'Sanroyal Jivanta' works on September 2020.

6. 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 be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed". 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". Here, in this



case the Promoter has not refuted the payment made as stated in the Complainant and the receipt submitted by the Complainant.

7. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below "The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

8. 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 12.30% as of the date of the Order. The Complainant is entitled to get 14.30% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. However the Complainant herein prayed for refund of the amount of Rs.20,50,000/- Lakhs paid by him along with interest Hence it is found that the Respondent's 1 and 2 are liable to pay Rs.20,50,000/- Lakhs along with 14.30 % (12.30 (current BPLR rate) +2%) simple interest from the date of receipt of payment by the Respondents.

9. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order: -

1. The Respondents 1 & 2 shall return the amount of **Rs.20,50,000/-** to the Complainant with simple interest @ 14.30% per annum from the date of receipt of payment, till 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 No.1 and its assets & Respondents No.2 and his assets by



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

Dated this the 16th day of February 2022

SP

Sd/-
Sri.M.P.Mathews
Member

Sd/-
Sri. P H Kurian
Chairman



True Copy/Forwarded By/Order

[Signature]
Secretary (legal)

Exhibits

Exhibits marked from the Side of Complainants

- Ext.A1- Copy of agreement for sale dated 06/02/2019.
- Ext.A2- Copy of construction agreement dated 06/02/2019.
- Exbt.A3 series- Copy of payment details.
- Exbt.A4- Copy of letter dated 24/02/2021.
- Exbt.A5- Copy of letter dated 08/09/2021.
- Exbt.A6 - Copy of E-Mail dated 10/02/2022.

