



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.309/2021

Present: Smt. Preetha P Menon, Member

Dated 30th June 2023

Complainants

Dr. Zubin Paul Jacob &
Dr. Liza Ann Paul,
Residing at 16/475, P T Jacob Road,
Kazhuthumuttu, Cochin, Kerala – 682005.

(By Adv. Haritha V A)

Respondents

1. The Chairman,
Sobha Ltd.,
Sarjapur-Marathahalli Outer Ring Road (Orr),
Devarabisanahalli, Bellandur Post,
Bangalore – Karnataka – 560103.
(Sobha Ltd., Marina One, Gida Road-Queens Way,
Marine Drive, Kochi -682018.)

2. Managing Director,
Puravankara Ltd., No.130/1,



Ulsoor Road, Bangalore, Karnataka- 560042.
(Managing Director, Puravankara Ltd., 3g-261,
Panampally Avenue, Panampally Nagar,
Ernakulam -682036.

3. Ravi P N C Menon,
The Chairman, Sobha Ltd.,
Sarjapur-Marathahalli Outer Ring Road (Orr),
Devarabisanahalli, Bellandur Post,
Bangalore – Karnataka – 560103.
(Sobha Ltd., Marina One, Gida Road-Queens Way,
Marine Drive, Kochi -682018.)

(Respondents No. 1,2 &3 by Adv. Abraham Mathew Vettoor)

The above Complaint came up for final hearing on 30/06/2023. Counsel for the complainants and counsel for the Respondents attended the virtual hearing.

ORDER

1. The Complainants are the allottees of the project named 'Marina One-Phase 2' located at Marine Drive, Kochi developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016').
Registration No. K-RERA/PRJ/252/2020.



2. The facts of the Complaint are as follows: - The Complainants approached the Respondents for the purpose of enquiring and booking a residential flat in the project 'Marina One' at Marine Drive, Ernakulam in December 2018. The Respondents handed over the brochure of the project to the Complainants and promised that they will be provided with Flat No. A-8 N2183 in the 18th floor of North block, wing 2 and assured that the said Flat has good view of the sea, privacy from other buildings and least direct impact of the evening sun rays. It was also promised by the Respondents that the project will be completed and handed over to Complainants on 22/06/2021. Based on the assurances given by the Respondents on 05/01/2019 the Complainants booked the aforesaid flat in Marina One and as per Respondents' demand, the Complainants paid an amount of Rs.11,20,000/- towards booking amount / advance on the same day. The Complainants further paid an additional amount of Rs.4,58,594/- on 06/02/2019. Thereafter on 12/02/2019 executed agreement for sale and agreement for construction. Both the agreements are not registered. The Complainants further paid amount of Rs.45,15,137/- on 15/02/2019 as per the demand of the Respondents. The acceptance of the said amount is a clear violation of Section 13(1) of the Act, 2016. The basic sale value of the apartment that is quoted in the agreements mentioned by the Respondents is Rs.1,16,33,647/- + Rs.1,55,70,509/- = Rs.2,72,04,156/-.



3. The Complainants further submitted that the Respondents served a copy of the agreement for sale only after the said payment that too after repeated requests and the Complainants were shocked to see that the date of completion of the project in the agreement was not as promised by the Respondents and that it is stipulated in the said agreement as 30/09/2022 instead of June 2021. Feeling cheated, the Complainants contacted the Respondents who replied that if the complainants withdraw from the contract, they are not bound to return any amount. The Respondents failed to execute the agreement for sale in terms of Section 13(2) of the Act. The agreement for sale executed is in contravention of Rule 10 of the Kerala Real Estate Regulation & Development Rules 2018. The Rule clearly specifies that the agreement for sale shall be in the form in Annexure A as provided. The Respondents clearly flouted the Rules by suppressing material facts by not including several clauses including that of F. Though clause F as provided in Annexure A form the Respondents were bound to disclose the details of registered project under the Authority. The same was deliberately excluded by the Respondents. It is reliably understood that the Respondents excluded the said clauses since the Respondents had submitted application and obtained registration by showing the completion year as 2027. It was further understood that the Respondents offered to sell the plot without registering the real estate project with the Authority.



4. It was further submitted by the Complainants that on 13/01/2021, the Complainants visited the project site with a qualified engineer and understood that the aforesaid proposed flat does not satisfy any of the specifications which were promised by the Respondents such that the proposed flat does not have a good sea view or privacy from other buildings and is not covered from evening sun rays and the construction of the said unit as mentioned in agreement for sale will not be completed in any near future. It was realized by the Complainants that none of the requirement that Complainant insisted are followed by Respondents and that the Respondents have committed fraud on them. Therefore, on 02/02/2021 they emailed to the Respondents that the same is to be considered as official request to exit from the project and it was further demanded to Respondents to return the full amount of money they have paid to Respondents, for which the Respondents have agreed to and replied that the amount will be returned only after 45 days of the date of resale of the aforesaid flat. In the reply it was admitted by the Respondents that another tower will be ready by 2022. The said reply is an admission on the part of the Respondents that the completion of the unit that is mentioned in the agreement for sale will not be completed in the near future. Though the Complainants were regularly requesting the Respondents to return the amount of Rs.60,93,731/- which was received by the Respondents, till date not a single rupee was



returned to Complainants. The reliefs sought by the Complainants are to direct the Respondents (1) to return the entire amount of Rs.60,93,731/- along with interest @ 18% per annum from the date of payment of the said amount (2) to pay a compensation of Rs.20,00,000/- to the Complainants (3) to pay penalty since they are liable to pay a penalty to the tune of 10% of the estimated cost of the real estate project as determined by the Authority.

5. The Respondents have submitted the counter statement as follows: The complaint is not maintainable before this Authority and accordingly the same is liable to be dismissed. The complainants have given a totally misleading version only to suit their purpose. The Complainants had approached the representative of the Respondents during the 1st week of December, 2018 and had obtained brochure and copies of the project approvals including plans and drawings with respect to the project 'Marina One' undertaken by the Respondents. With reference to the brochure and plans, the sales executive of the Respondents had clearly explained the various categories of apartments such as standard, premium and premium plus available in the said project and the facilities attached to each category thereof. The company executive had also explained to the Complainants with regard to the pricing of each category of projects. After carefully studying the brochure and the other drawings and plans which provides the details of various categories of apartments available in the project, its location, elevation,



views, facilities and the pricing with regard to each category of the apartments, the Complainants again visited the site and the mock up apartment constructed at the project by the 2nd week of December, 2018. The apartment which the complainants preferred was Type A8 in the 18th Floor of North Wing Tower 2 which is the middle tower on the northern wing of the project. Identical towers are proposed on the southern wing also. The eastern wing consists of 5 towers. There will not be any construction in the western side which is open towards the Vembanad Lake. Thus, few apartments in the 1st tower of northern side and southern side are those facing the Vembanad Lake on the west and those towers will be getting direct sunlight as well. All the west facing apartments in the eastern Block are also having direct sunlight. The apartment No. A8 selected by the Complainants are garden view apartments which also have the privilege of view towards lake, but without the problem of exposure to direct sun light. The category of apartment selected by the Complainants are priced at a lower rate than those apartments having direct lake view and access to sunlight. It is on fully realizing the advantages of the location that the Complainants selected the apartment in the North Wing Tower 2. The sales executives of the Respondents had never persuaded or influenced the Complainants to select the apartment in North Wing Tower 2 facing the lake as well as the garden and the selection of that apartment was at the sole discretion of the Complainants alone. The respondents have never promised that the project would be

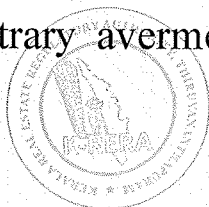


completed and handed over by 22nd June, 2021 and in fact the tentative date of completion offered to the Complainants was by the end of September, 2022. In the construction agreement also, the date of completion is shown as September, 2022. The said project has been registered with this Authority with Reg. No. K-RERA/PRJ/252-2020 dated 13-11-2020 and the Authority has extended the period of completion by 6 months each on 2 occasions in view of Force Majeure situation arisen due to Covid-19 pandemic and the restrictions thereof. The agreement executed by the Complainants with this Respondents also contains clear provisions with regard to refund of amounts on cancellation and the Complainants are fully aware of such terms and conditions. It is concealing and suppressing such binding clauses that the Complainants have approached the Hon'ble Authority quite prematurely and, on that ground, alone, the present complaint is liable to be rejected.

6. The Respondents further submitted that the complainants had booked the apartment on 05-01-2019 of their own volition and accordingly paid the booking advance of Rs. 11,20,000/-. Subsequently, the regular sale agreement and construction agreements have also been executed between the complainant and promoters on 12th February, 2019 and the complainants have produced a copy of the construction agreement and sale agreement along with the complaint. The basic sale value



of the apartment is Rs. 2,72,04,156/- made up of Rs. 1,16,33,647/- being the cost of construction and Rs. 1,55,70,509/- as the cost of land. The sale value including tax and other charges for the apartment is Rs.3,04,68,655/- which is available from the statements at page No. 20 of the construction agreement wherein the payment schedule has also been given. The booking amount of Rs. 11,20,000/- is inclusive of the GST and other charges payable and the said amount would not constitute 10% of the total cost of the apartment being Rs. 3,04,68,655/-. Therefore, there is no violation of 13(1) of the RERA Act as has been alleged as these respondents have not received more than 10% of the cost of the apartment towards booking advance. The complainants have subsequently executed the sale agreement and construction agreement on fully being convinced that the booking of the apartment is one made in full compliance of the Act and the Rules there under. As required by the Complainants, the representatives of the Respondents had provided draft copies of the construction agreement and the sale agreement to the Complainants and they agreed to the terms and conditions incorporated therein. The complainants who went through the documents informed the representative of the Respondents that the agreement can be prepared in stamped papers and they will be available to sign them on 12-02-2019. Accordingly, the agreements were prepared in stamped papers on 12-02-2019 and got them signed by the Complainants at their hospital on the same day itself. The contrary averments made in the complaint with



regard to the execution of the agreements are absolutely false. The Respondents have not incorporated any stipulation or condition in the agreements so executed on 12-02-2019 which were not there in the draft of the agreements communicated to the Complainant. There was no change with regard to the apartment selected by the Complainant much less the facilities provided to it. The date of completion, the view of the flat, the privacy and least effect of direct impact of evening sun rays are the advantages of the apartment and the complainants will be able to enjoy all such conveniences and facilities on completion of the apartment. The subsequent payment of Rs. 45,15,137/- has been received from the Complainants only after execution of the agreements aforesaid and therefore, there is no violation of Sec. 13 (1) of the Act as alleged. In fact, the Respondents received the cheque towards booking advance on 31-12-2018 which was encashed on 05-01-2019. As per the agreement itself, the purchaser need to pay the subsequent installment within 30 days from the booking date. The Complainants made the 2nd payment only as per the payment schedule contained in the construction agreement that too after due execution of the both the agreements.

7. The Respondents further submitted that they had delivered the original of both the agreements to the Complainants immediately after execution of the same. Subsequently, the Complainants informed that they happened to hand over the agreements to the bank for availing the loan without keeping

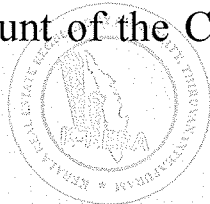


copies thereof and accordingly requested for photocopies thereof and these Respondents complied with the said request. Now, the complainants are pretending ignorance of the receipt of the original agreements for the purpose of the present complaint. It is after sanction of the loan from the Federal Bank that the of the 2nd payment has been made by the Complainants and part of the 2nd installment was received by Respondents through the bank. The Respondents had never offered to complete the project by June, 2021 in order to make such a promise to the Complainants and both the agreements are those executed as per the mutually agreed terms and conditions and all the contrary averments are hereby denied including the allegations of cheating. In fact, the 1st e-mail with regard to the proposed cancellation has been sent on 2-02-2021, about 2 years after the execution of the agreements and when the Respondents had commenced the constructions for the apartments. It is after completion of the expected target that the Respondents issued the communication dated 21-10-2021 requesting the Complainants to make subsequent payments, which is clear from the document produced by the Complainants and also from the client ledger summary. The Complainants wanted the agreements to be executed for the purpose of the loan sought from the bank and now they are making false allegations that the Respondents failed to execute the agreement for sale in terms of Sec. 13(2) of the RERA Act. Even after execution of the agreements on 12-02-2019, the Complainants did not intimate these Respondents that they want a



further agreement in RERA format till the request for cancellation was made on 02-02-2021. The agreement already executed by the Complainants contain all the specifications that are required in the RERA format. Both the agreements are executed by the parties thereto with full knowledge regarding the contents thereof and the Complainants being party to the same cannot now be heard to say that the agreements are those executed in contravention of the Act and Rules. It is a matter of common knowledge that there was an interregnum period during which the rules were not available for application. The Complainants are now trying to take advantage of the said situation. The project is already registered as has been stated above.

8. In this connection it was further submitted by the Respondents that the tower in which the apartment booked by the Complainants is included altogether contains 112 apartments and everybody knows that it is quite impossible to construct such a tower within 6 months and therefore the statement that the Respondents represented the period of completion as 6 months is a totally false statement. The brochure is one prepared as a replica of the 3D elevation of the front view of the total project with details of each category of project and the construction is also being done in strict compliance with the projections in the plans and brochures and there is no difference at all as alleged. The construction is in full progress despite the slowdown which occurred on account of the Covid-19 pandemic and consequent



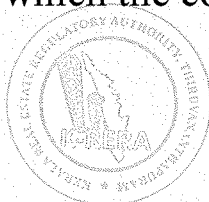
lock down and these Respondents are taking all earnest efforts to hand over possession to the customers as per schedule. The reasons for offering cancellation are not stated in the complaint and it is understood that the actual reasons for cancellation is lack of funds to serve the installments of the loans from the bank. The Complainants are liable to bear the consequence of the cancellation in as much as the cancellation has been made not for any deficiency in service or construction from the part of the respondent. These Respondents had offered to return the money taking the time as provided in the agreement since the entire amount received from the Complainants has been invested for the constructions already done. The complainants are also fully aware of the dreadful situations which prevailed in the country on account of the Covid situation and it is realizing the entire reality that this authority has also extended the time for completion. The Respondents allege that the Complainants have made a complaint like the present one under the influence of a rival builder who happened to accompany him during the subsequent site visit and the Complainants are not entitled for any interest as claimed by them according to the Respondents who also sought sufficient time for making the payments to the Complainants on deducting the amounts paid towards tax and under other heads. It is also submitted by the Respondents that the Complainants have not suffered any loss or damages in the hands of these Respondents and hence they are not entitled for any compensation either in terms of interest or



otherwise and the Complainants are not entitled for any interest on the amount received much less at the rate of 18% from the date of payment as the cancellation has been made Complainants without valid reasons chargeable against the Respondent.

9. The Complainants had filed reply statement as follows: The Act and Rules specifically states that the Respondents shall not accept the prescribed sum of more than ten percent without registering the same and it is the duty of the Respondents to see that the agreement is in Annexure A format and the same is registered. It is reliably understood that none of the agreements are registered before receipt of the sum beyond the prescribed limit. The Respondents keep on demanding further amount in contravention of the Act and Rules. Even before entering a written agreement, the Respondents had illegally demanded Rs.49,73,731/- and kept on sending mails attaching reminder notices demanding deposit of sum of Rs.24,37,492/-. The Respondents failed to complete the work as per the schedule provided by them. As on 03/09/2021 only piling work was done contrary to the schedule provided. True copy of extract of the work progress photos provided by the Respondents dated 03/09/2021 is also produced.

10. The above complaint came up for first hearing on 23.02.2022 in which the counsels for both parties appeared and



the counsel for the Respondents requested time for filing their counter statement. On the next posting date on 11.04.2022, though the counsel for the Respondents represented that the counter statement has been sent, it was not received by the Authority. On 11.07.2022, the counter statement received and the counsel for the Complainants sought time for replication on it and both the counsels submitted that there is chance for settlement of the case. On the next posting date on 13.09.2022, both counsels appeared and submitted that settlement talk is going on and requested for an adjournment. On 27.10.2022, both counsels attended and informed that matter was not settled. The counsel for the Complainant again requested time for filing replication on the counter statement of the Respondents. When the complaint came up for hearing on 08.12.2022, counsels for both parties again submitted that settlement talk is going on and they will report settlement before the next posting date. The complaint was posted to 18.01.2023 for final hearing and disposal, directing the parties to report settlement, if any, before the said posting date. On 18.01.2023, the counsel for the complainants filed I. A. 11/2023 seeking permission to amend the prayer portion in the complaints and the counsel for the Respondents sought time for counter statement in the said application. The case was posted to 23.03.2023 for final hearing directing the counsel for the Respondents to file counter statement before the said date with copy to the opposite party. On the next posting date on 24.04.2023, the counsel for the



Respondents again requested time for counter statement. On 24.04.2023, counter statement was filed by the counsel for the Respondent and I. A. 11 /2023 for amendment for the prayer portion of the complaint by inserting some more payment which were mistakenly omitted by the Complainants was heard in detail and allowed. On 30.06.2023, the Counsel for the Complainants filed amended complaint and both parties were heard.

11. Heard both parties in detail. The documents produced from the part of the Complainants are marked as Exbts.A1 to A6. No documents have been produced by the Respondents. Here, the Respondents agreed to refund the amount to the Complainants and they only raised objections with respect to the claims of interest and compensation by the Complainants. As far as the other prayers in the complaint are concerned, the claim for compensation cannot be adjudicated through this complaint filed in Form M. Similarly, 3rd prayer in the complaint is also inserted unreasonably as it is not in consonance with the provisions of the Real Estate (Regulation & Development) Act 2016[hereinafter referred to as the “the Act 2016”]. Hence, the only issue to be decided herewith is with respect to the eligibility of the Complainants to obtain the interest on the amount to be refunded by the Respondents. After hearing both parties and examining carefully, the pleadings and documents placed on record, following points came up for consideration: -



1) Whether the request for cancellation dated 02.02.2021 made by the Complainants/allottees was on the basis of any failure from the part of the Respondents/Promoters?

2) Whether the Complainants/allottees herein are entitled to get interest, on the amount agreed to be refunded by the Respondents/Promoters, as prescribed under Section 18 (1)(a) of the Act 2016?

3) Whether there is any violation of Section 13 of the Act 2016 on the part of the Respondents/Promoters herein?

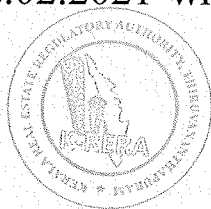
12. **Point No. 1&2** : The project named ' Marina One-Phase 2' is found registered before the Authority under section 3 of the Act 2016, vide Registration No. K-RERA/PRJ/252/2020 and obviously, the project in question is an ongoing real estate project comes under the purview of the Real Estate (Regulation & Development) Act 2016. So, the Complainants/allottees are eligible to file the above complaint for violation of any provisions under the Act 2016 and hence the initial contentions of the learned counsel appeared for the Respondents that the above complaint is not maintainable before this Authority are found not legally sustainable. The documents produced from the part of the Complainants are marked as **Exbts. A1 to A6**.



Ext.A1 is the copy of agreement for sale dated 12/02/2019 entered into between the Complainants and Respondents. As per the said agreement the Respondents agreed to sell and the Complainants agreed to purchase 0.90% undivided share in the A Schedule property ie., equivalent to 669.24 sq.ft. **Ext.A2** is the copy of agreement for construction dated 12/02/2019 entered into between the Complainants and Respondents as per which the Respondents agreed to construct apartment No. A8-N2183 on the 18th floor in Block North wing-02 of the building with carpet area of 2239.02 sq.ft. balcony area of 95.26 sq.ft and 614.68 sq.ft. of proportionate share in the common areas, totaling to super built up area of 2948.96 sq.ft. with two car parking space in the stilt level. It was also stated in the agreement that the Respondents shall complete and handover the apartment to the Complainants by 30/09/2022. **Ext.A3 series** is the copies of ledger summary details of the Complainants, which shows that the Complainants had paid an amount of Rs.60,93,731/-. **Ext.A4** is the copy of email dated 03/02/2021 issued by the Respondents whereby they acknowledged the request of cancellation made by the Complainants. **Ext.A5** is the copies of printouts of photographs of the project as on 03/09/2021, **Ext.A6 series** are the copies of emails issued by the Respondents to the Complainants whereby requested them to pay the outstanding amount.



13. As mentioned above, the project in question is a registered project under Section 3 of the Real Estate (Regulation & Development) Act 2016 before this Authority and the proposed date of completion is given by the promoter as 30.06.2027. The learned counsel for the Complainants contended that the Respondents had promised the Complainants to complete and handed over the project on 22/06/2021 and based on the assurances given by the Respondents the Complainants booked the flat on 05/01/2019 and as per Respondents' demand, they Rs.11,20,000/- towards booking amount / advance on the same day. But it is noticed that the Complainants could not bring in/produce any evidence/document to substantiate the said contention as to such a promise given by the Respondents before booking the flat. At the same time, the complainants agree that the date of completion shown in the agreement is 30.09.2022 which is supported by Exbt. A2 agreement produced by them. The learned counsel appeared for the Respondents strongly objected the above contention with regard to such an earlier promise and argued that they never promised to complete and handed over by 22.06.2021 and the tentative date of completion offered to the Complainants was by the end of September 2022. The learned counsel for the Respondents argued that the promised date of handing over the flat was 30.09.2022 with grace period of 6 months as per the agreement but the request for cancellation of booking was made by the Complainants on 02.02.2021 which was acknowledged by them



through Exbt. A4 e-mail communication dated 03.02.2021 and so the request for cancellation was not on the basis of the date of completion and handing over. According to him, the Complainants could not have apprehended that the flat would not be completed on the promised date as per the agreement. According to the Complainants, they visited the project site with a qualified engineer on 13/01/2021, and understood that the proposed flat does not satisfy any of the specifications which were promised by the Respondents as it does not have a good sea view or privacy from other buildings and it is not covered from evening sun rays and also the construction of the said unit will not be completed in any near future. The counter argument from the part of the counsel for the Respondents was that the person accompanied the complainants was a rival builder under whose influence the complaint is being filed and the Respondents could not have offered the Complainants in any way, a flat having least impact of evening sun rays and privacy from other buildings and having a good sea view, as the said project is one facing the Vembanadu Lake. In this respect, the learned counsel for the Respondent sought attention of this Authority to Exbt. A4 e-mail through which they offered to give a Unit in another Tower without the alleged infirmities and submitted that if it were the reason for cancellation by the Complainants, they would have immediately agreed to shift the Unit offered by the Respondents.



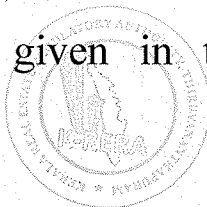
14. According to the Complainants, the payments made by them are as follows:

Date	Amount
05.01.2019	Rs. 11,20,000/-
06.02.2019	Rs. 4,58,594/-
15.02.2019	Rs. 45,15,137/-
Total	Rs. 60,93,731/-

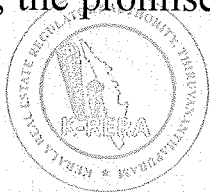
The main contention of the learned counsel for the Complainants is that the demand and acceptance of these amounts by the Respondents are clear violation of Section 13(1) of the Act 2016 and the complainants state that “only after the said payment, that too after repeated requests,” a copy of the agreement for sale was served and they shocked to see the date of completion in it as 30.09.2022 instead of June 2021. In reply, the learned counsel for the Respondents contended that the payments were required to make as per the schedule shown in the Exbt. A2 agreement as per the stage wise completion of works mentioned therein and only after realizing that the stage wise completion has been done, the Complainants made subsequent payment of Rs. 45,15,137/- on 15.02.2019 when the agreement was executed on 12.02.2019. The learned counsel for the Respondent strongly argued that the cancellation request was made by the Complainants on 02.02.2021 was on account of their inability to pay the future installments as



per the payment schedule. Here, it is seen that the last payment was done by the Complainants on 15.02.2019. According to the Complainants, the inspection of the project site was done on 13.01.2021 when they understood that the proposed flat does not satisfy any of the specifications which were promised by the Respondents such that the proposed flat does not have a good sea view or privacy from other buildings and not covered from evening sun rays and the construction of the said unit as mentioned in agreement for sale will not be completed in any near future. Thereafter, they made request for cancellation on 02.02.2021, the copy of which is not produced by the Complainants. Out of these contentions of the Complainants, the claim with respect to the alleged promise of giving good sea view or privacy from other buildings or evening sun rays, etc. are not found maintainable here, for lack of supporting evidence to prove such a promise from the part of the Respondents. At the same time, the other contention as to their apprehension of completion of the project as promised seems to be deserving consideration, even though the promised date of completion and handing over as per the Exbt. A2 agreement was on 30.09.2022 with grace period of 6 months. It is a registered project before this Authority and on verification of data uploaded by the Respondents/Promoter in the registration web page, it is seen that the project still remains incomplete and majority works including that of common areas are yet to be started. The proposed date of completion given in the registration web page is



30.06.2027. It is a settled position of law that the date of promise for completion and handing over given to the allottees of ongoing projects through previous agreements shall not be affected by the new timeline obtained by the Promoter through registration as per the proviso to Section 3 of the Act 2016. While considering the same aspect, the Hon'ble Supreme Court of India in its judgement in *M/s Imperia Structures Ltd. vs. Anil Patni & another*, observed as follows: *"The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration."* At the same time, the arguments from the part of the Respondents cannot be discarded with respect to their helplessness to continue works during the force majeure situation arose in the Country in the form of Covid-19 pandemic and consequent lock downs in the years 2020 & 2021. Here, the Respondents admit that they could not make sufficient progress in the works as per the Schedule due to the covid-19 restrictions. The Respondents also pointed out the Clause concerned in the Exbt. A2 agreement insisting to take into account such force majeure events at the time of consideration of compensation prescribed therein for delay in completion and handing over. Here, the promised date of completion and handing



over as per Exbt. A2 was clearly hit by the Covid -19 pandemic as mentioned above. However, the contention of the learned counsel for the Respondents that it is the inability of the Complainants to make future payments is what made them to cancel the allotment cannot be acceptable as admittedly a loan was availed by the Complainants who are doctors by profession and the subsequent payments except the initial ones were made through the Bank with whom a tripartite agreement had also been executed by both of them. But the contentions with respect to the delay occurred due to such a strange situation arose on account of Covid pandemic are undoubtedly deserving appreciation even as per the law. The clause No. 7.1 of the Annexure 'A' agreement of the Kerala Real Estate (Regulation & Development) Rules 2018 specifies as follows: “.....*The Promoter, based on the approved plans and specifications, assures to hand over possession of the apartment on.....unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the project(force majeure) If the completion is delayed due to the force majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the apartment, provided that such force majeure conditions are not of a nature which make it impossible for the contract to be implemented. The allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due*



to such force majeure conditions, then this allotment shall stand terminated and Promoter shall refund to the Allottee the entire amount received within 45 days from that date.....” in view of the above, by considering the date of completion in the Exbt. A2 agreement and also taking into account the force majeure situation in the form of outbreak of Covid -19 pandemic, no failure could be alleged on the part of the Respondents, at the time of making request for cancellation of allotment by the Complainants. Hence, Point No.1 is answered in favour of the Respondents.

15. In fact, the state of affairs in this complaint is seeming to be somewhat uncommon because the Complainants herein had already made a request for cancellation and refund on 02.02.2021 which was agreed by the Respondents on the next day assuring that payment would be made within 45 days of re-allotment of the proposed flat/unit. But admittedly, the Respondents have not paid any amount so far. As discussed above, the Respondents could not be alleged with any failure/delay at that point of time as the date of completion as per the Exbt. A2 agreement falls on 30.06.2022 only and also on account of the strange situation arisen due to Covid-19 pandemic during that period. But, the registration web portal before this Authority reveals that the project in question is not completed even now and majority of works remain with zero progress. It being the situation, I feel it appropriate to seek guidance of the mandates of the Act



2016 and the Rules 2018 made thereunder in this regard. The provisions under Sections 18(1) and 19(4) of the Act 2016 give entitlement to the allottees to withdraw from the project and obtain refund of the amount paid by them in the circumstances prescribed therein. Both these provisions are reproduced herein below:

Section 18(1): *“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”.*

Section 19(4): *“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*

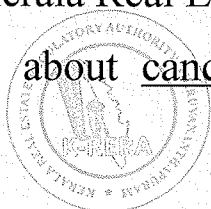


or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder”.

16. With respect to the above provisions of law, the Hon'ble Supreme Court of India made some remarkable observations in its judgement M/S Newtech Promoters & Developers Pvt. Ltd. Vs State of U. P. & Ors., which are suitable to be replicated herein 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 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”.

17. Clause 7.5 of the Annexure A agreement prescribed under Kerala Real Estate (Regulation & Development) Rules 2018 refers about cancellation by allottee which is as



follows: *“The Allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act; Provided that where the Allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned by the Promoter to the allottee within 45 days of such cancellation.”*

18. But the Respondents herein have failed to follow the above said format of agreement prescribed under the Rules 2018. If the Respondents were confident at the time of receiving the request for cancellation that they were not in fault with the terms of the agreement, they could have opted to follow the forementioned clause 7.5 in Annexure A and refunded the amount to the Complainants after deducting the booking amount. Nevertheless, it is to be pointed out that the Respondents herein being the Promoters of an ongoing project which comes under the purview of the Act 2016 are strictly bound to follow the above-mentioned agreement format ‘Annexure A’ prescribed under the Rules 2018. It has been viewed seriously that even after the above Rules 2018 came into force, Exbt. A1 & A2 agreements have been prepared by the Respondents/Promoters in their own formats and executed on 12.02.2019. As the Rules 2018 were published by the State Government on 14.06.2018, the provisions therein including clauses in ‘Annexure A’ agreement are applicable to all the



projects comes under the Act 2016 and even in case of allottees of ongoing projects with whom agreements were executed previously in some other formats. It is also noticed that major allegations of the Complainants herein are in connection with the violation of Section 13 of the Act 2016 by the Respondents/promoters. Anyhow, the allegation that the Respondents received more than 10% of the amount of consideration before executing the agreement in violation of Section 13(1) is found unreasonable as the documents placed on record reveal that before execution of the Exbt. A1 & A2 agreements, the Complainants had paid only Rs. 11, 20,000/- which does not amount to 10% of the total amount of Rs. 3,04,68,655/- With respect to the allegations of the Complainants as to non-insertion of details of the project in the Exbt. A2 agreement, I prefer to consider the arguments of the Respondents that it is quite unbelievable in case of the Complainants who are doctors by profession without reading and understanding the clauses, executed the agreements, continued for a long period and also made further payments without making any objections. While receiving the drafts from the Respondents/Promoter, the literate complainants could have returned them and insisted for proper agreement registered in accordance with the law. However, it is evident from Exbt. A1 & A2 that the Respondents/Promoter had grievously violated Section 13(2) of the Act 2016 r/w Rule 10(1) of the Rules 2018 by not



following the format of agreement prescribed under the law. The said provisions are reproduced herein below:

Section 13(1): "A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

The corresponding Rule 10 of the Rules 2018 is as follows:

Rule 10(1): "For the purpose of subsection (2) of Section 13, the agreement for sale shall be in the form in Annexure 'A'.

(2) Any application letter, allotment letter, agreement or any other document signed by the allottee in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or under the Act or the Rules or the Regulations made thereunder."

19. The Respondents herein are the promoters of a registered project and at the time of registration of the project in question, it is mandatory that they should submit a model agreement in the prescribed format (Annexure A). In the case of the project in question also, it could be seen that the Respondents submitted a model agreement in the prescribed format (Annexure



as per the Act and Rules under the guise of following the same in respect of all the allottees of the said project. But it is revealed here that the Respondents have committed severe negligence and violation of law in this respect. As mentioned in pre paras, the Respondents have not produced any piece of evidence to show that the apartment booked by the Complainants was ready to hand over as promised to them even after the abovementioned covid -19 period. At the same time, the registration web page shows the project still remains incomplete and majority works are not even started. In these circumstances, even if the Complainants had not made such a request for cancellation in 2021, they could have made such an option even now and got entitlement under Section 18(1) of the Act 2016. But the period of the Force Majeure due to the outbreak of Covid-19 shall have to be considered even as per the provisions of law as detailed above. Hence, I hold that the Complainants herein are entitled to get refund of the amount paid them to the Respondents along with interest as prescribed under the law but excluding the said Covid-19/ Force Majeure period. As per Order of this Authority No. K-RERA/T3/102/2020 dated 15-05-2020 and order dated 19-07-2021, the Authority had taken cognizance of the adverse effects of Covid-19 pandemic and consequent lockdowns on the real estate projects in the State and resolved to treat it as force majeure period as per the provisions of the Act, 2016 and Rules 2018 made thereunder. Hence the One-year period from 25-03-2020 has been considered to be treated as



force majeure period for which the Respondents herein are not liable to pay interest. The Respondents/Promoters are also found committed violation of Section 13 (2) of the Act 2016 r/s Rule 10(1) of the Rules 2018. Points No. 2 & 3 are answered accordingly.

20. Admittedly, the payments have been made by the Complainants as per the table below:

Date	Amount
05.01.2019	Rs. 11,20,000/-
06.02.2019	Rs. 4,58,594/-
15.02.2019	Rs. 45,15,137/-
Total	Rs. 60,93,731/-

21. 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 in the above table, till the date of refund as provided under the above Rule, exempting the One-year period from 25.03.2020, as decided above. Hence it is found that the



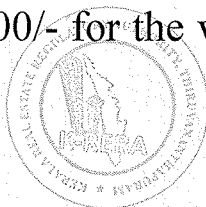
Respondents herein are liable to pay Rs.60,93,731/- to the Complainants along with 16.85 % simple interest from the date of receipt of each payment as per the schedule/table shown above, till the date of realization, exempting the period of One-year from 25.03.2020.

22. 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/Promoters shall return the amount of Rs. **60,93,731/-** to the Complainants with simple interest **@ 16.85% per annum** from the date of receipt of each payment, as shown in the schedule/table above, till the date of realization of the total amount, exempting the period of One-year from 25.03.2020.

2) If the Respondents / 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 and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

3) The Respondents/Promoters shall remit a penalty of Rs. 2,00,000/- for the violation of Section 13(2) of the



Act 2016 r/w Rule 10(1) of the Rules 2018 as detailed above. The penalty shall be remitted within one month in the penalty account of the Authority.

Sd/-
Smt. Preetha P Menon
Member

True Copy/Forwarded By/Order/



Secretary (legal)

CS

Exhibits marked from the side of Complainants

Ext.A1- Copy of agreement for sale dated 12/02/2019.

Ext.A2 - Copy of agreement for construction dated 12/02/2019.

Ext.A3 series-Copies of ledger summary details of the Complainants.

Ext.A4 - Copy of email dated 03/02/2021 issued to the Complainant.

Ext.A5 – copies of printouts of photographs of the project as on 03/09/2021.

Ext.A6 series - Copy of email dated 08/01/2019 & 21/10/2021.



