



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.68/2024

Present: Smt.Dr.B Sandhya, Member

Dated 16th day of December, 2024

Complainant

Divya Balu,
Nandanam, House No.94,
Koimarpadam, Near Old Age Home,
T K Thara, Koduvayur P.O,
Palakkad-678501.

Respondents

1. M/s Sanroyal Builders & Contractors Pvt. Ltd.,
TC 2/118, KDPMRA-01, Sydney Lane,
Kesavadasapuram, Thiruvananthapuram -695004.
2. Sanju Das N S,
Managing Director,
M/s Sanroyal Builders & Contractors Pvt. Ltd.,
Rohini Bhavan, Indira Nagar,
Peroorkada, Thiruvananthapuram -695005.

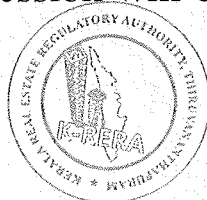
The above Complaint came up for final hearing on 04/11/2024. Counsel for the Complainant Adv.Poornima S Nair and Authorised representative of the 1st Respondent Company Mr.Praveen attended the virtual hearing.



ORDER

1. The Complainant is an Allottee of the project named 'Sanroyal Adonia' located at, Menamkulam village, Thiruvananthapuram District, developed by the Respondents. The said project is registered with the Authority under Section 3 of the Real Estate (Regulation & Development) Act 2016, herein after referred as 'Act 2016'. (Registration No.K-RERA/PRJ/032/2020).

2. The factual matrix of the Complaint are as follows :- The complainant entered into an agreement with the 1st Respondent on 05/05/2021 for the construction of a residential apartment in the said project. The agreement was for construction and sale of an apartment in the fifth floor namely Flat No. 5E having a super built up area of 825 sq. feet along with a covered car parking area together with an undivided right in the common areas of the said project and 1.58% undivided share, right, title and interest in the plot equivalent to 0.32 Ares having a total extent of 106.17 Ares for a total consideration of Rs.29,00,000/-. The copy of agreement for sale dated 19.07.2021 was also executed between the complainant and the seller, who had entered into a joint venture agreement with the 1st Respondent. As per agreement dated 05/05/2021, **the 1st and 2nd Respondents have agreed to complete the construction of the said apartment by 31/12/2022** and it was agreed that the possession will be handed over to the complainant



on or before 31.12.2022 without fail. The complainant had availed a home loan from ICICI bank as the said project is an ICICI Bank approved project. The 1st respondent would make a request for releasing the loan amount in favour of the 1st respondent mentioning the current stage of construction to ICICI Bank as per the payment schedule and as per the said disbursal request and in accordance with the stage of completion of the apartment, the bank disburses the amount to the 1st Respondent. Then the 1st and 2nd Respondents pushed back the date of completion of construction and delivery of the apartment by six months i.e. the date of completion was moved from 31.12.2022 to June 2023. Thereafter the date of completion was moved to several other dates when the complainant enquires about the date of handing over.

3. The Complainant further submitted that after making various communications to the customer service personnels regarding the complainant's hardships of the indefinite date of handing over the apartment, the complainant was assured by the 1st and the 2nd Respondents that the date of handing over is fixed at April 15, 2024. However, due to the inactions and incomprehensible delays on the part of the 1st and the 2nd Respondents, the construction is not completed even after years from the scheduled date of completion of the project. The Complainant no longer trusts the Respondents and does not wish to proceed with the purchase of the apartment promoted by the



Respondents. Hence on 19.03.2024, the Complainant had sent an email to the Respondents seeking refund and compensation along with interest. The Complainant was compelled to agree to the revised dates of handover and make consequential payments in order to take possession of the property as a huge amount of money has already been paid to the Respondents. The Respondents were never diligent in completing the construction of the apartment and often failed to make disbursal requests to ICICI Bank. The Complainant had paid a total amount of Rs.19,98,000/- till date and the Respondents issued disbursal request to the ICICI Bank till the stage of sixth floor roof slab completion only. Thereafter the Respondents never updated the Complainant about the progress of the project. The Complainant made communications to the various executives of the Respondents but never received any real updates about the project. The Respondents never kept their promise and dragged the Complainant to litigation and grave hardships. The first two payments amounting to Rs.50,000/- and Rs.7,00,000/- were made from the SBI account of the Complainant. The Respondents have used the fund of the Complainant and other similarly placed persons for gaining disproportionate gains and unfair advantages. The Complainant and similarly placed persons, who have paid considerations for other apartments in the same project contacted the Respondents umpteen times and they were left with nothing else than fake promises of immediate delivery of their apartments. Since there were no satisfactory responses from the part of the



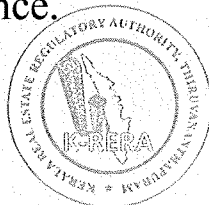
Respondents, the Complainant issued a lawyers notice to the 1st and the 2nd respondents on 04.04.2024 and no response whatsoever is received by the Complainant till date.

4. In this connection the Complainants further submitted that the Respondents have not completed nor delivered the possession of the apartment even after lapse of **1 year and 5 months** from the scheduled date in the agreement. Meanwhile, the Respondents have been bringing in huge profits by using the payments received from this Complainant and other similarly placed persons for funding other projects and investing in properties which are not connected to the project 'Sanroyal Adonia' throughout these years. The Complainant had booked the above-mentioned apartment for Rs.29,00,000/- promoted by the Respondents by paying a booking fee of Rs.50,000/- in the year 2021 believing the assurance from the Respondents that the possession of the apartment will be handed over to the complainant on 31.12.2022. But the Respondents having failed to make the delivery till date, caused numerous hardships and losses, including monetary and otherwise to the Complainant. Due to the failure of the Respondents to hand over the apartment and the inordinate delay from the part of the Respondents to complete the construction and that too till date, the Complainant had to pay heavy interest towards the ICICI loan and other loans taken from her friends. The complainant is still paying huge interest for the same. Considering

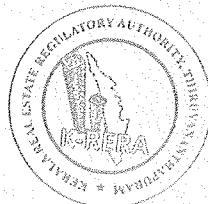


the current inflation, the Complainant is not in a position to buy another apartment for Rs.29,00,000/- as agreed between the Complainant and the Respondents in the agreement dated 05.05.2021, an apartment with the agreed amenities is not currently available in the said locality. There is high appreciation in land value also. Hence the Respondents will be getting undue advantage and unlawful gain from not completing and handing over possession of the apartment to the complainant. The Complainant herein has suffered huge monetary loss and mental agony due to the violation of terms of agreement by the Respondents and is liable to be compensated for the same through provisions of the Real Estate (Regulation and Development) Act, 2016.

5. The reliefs sought by the Complainant are as follows:- (1) To direct the Respondents to return an amount of Rs.19,98,000/- paid by the Complainant together with interest which shall be at the rate of SBI BPLR rate plus 2% per annum from the date of payment till realisation of the amount. (2) Rs.10,000 as cost for expenses and effort from the part of the Complainant in preferring the complaint before the Hon'ble Authority. (3) A quantum of compensation for the losses, hardships and mental agony suffered by the Complainant in accordance with the Real Estate (Regulation and Development) Act, 2016. (4) Any other relief that this Hon'ble Authority deems fit in the interest of justice, equity and good conscience.



6. The Respondents have submitted an affidavit on 12/07/2024 stating that the works with respect to the project 'Sanroyal Adonia' with all the common amenities and facilities offered to the complainant is nearing completion, and the same could be handed over to the allottees including the Complainant herein along with the common area and all the relevant documents related to the said project during the coming months. The completion of the said project was never purposefully delayed by the Respondents, but it was due to other unforeseen circumstances, which was beyond the control of the Respondents. Now the Complainant had decided to rescind from the said project by not willing to purchase the proposed flat by repaying the balance sale consideration. Regarding the part payment of a total amount of Rs.19,98,000/- made by the Complainant by way of instalments towards advance sale consideration, the Respondents are ready and willing to refund the same, provided with sufficient and considerable time for the Respondents. Since it was the Complainant who decided to annul from the said project for the reasons best known to her, other than the delay in completion which occurred due to reasons beyond the control of the Respondents, viz. the aftermaths of the pandemic, several floods etc. Hence consider this affidavit as the compliance statement, towards cancellation and refund of the advance sale consideration, by granting sufficient



time, enabling the Respondents to settle the matter. No documents were produced from the side of Respondents.

7. The Authority heard the learned counsel for the Complainant and the authorised representative of the 1st Respondent company and gave careful consideration to their submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 to A8. No documents were produced from the part of the Respondents.

8. **Exbt.A1** is the copy of construction & sale agreement dated 05/05/2021 executed between the complainant and 1st Respondent represented by the 2nd Respondent. As per the said agreement the Respondents agreed to construct apartment No.5E on the 5th floor having super built up area of 825 sq.ft (Carpet area 432 sq. ft.) along with one covered car park for a total consideration of Rs.29,00,000/-. Out of the said consideration Rs.8,00,000/- is the cost of undivided share (0.32 Are) and Rs.21,00,000/- is the cost of construction. As per the said agreement the Respondents agreed to complete and deliver the said apartment to the Complainant on or before 31/12/2022. **Exbt.A2** is the copy of registered agreement for sale vide No.1751/2021 dated 19.07.2021 executed between the landowner Alexander Vadakkedom and the Complainant. As per the said agreement the



Landowner agreed to convey and transfer 0.32 Are (0.800 cents) of undivided interest in the piece and parcel of Schedule A land for a sale consideration of Rs.8,00,000/-. **Exbt.A3** is the copy of loan account statement issued by the ICICI Bank. **Exbt.A4 Series** is the copies of letters issued by the 1st Respondent to the ICICI Bank requesting to release loan amount due as per the payment schedule. **Exbt.A5 Series** is the copies of email communications dated 13/03/2024 & 19.03.2024 between the Complainant and Respondents. The Respondents issued email dated 13/03/2024 to the Complainant stating that they have completed the electrical wall chasing work and are going to start plastering work by April 1st week and they will hand over the flat for doing the interior works by June 2024. In its reply email the Complainant stated her final decision to withdraw from the project and sought refund of the amount paid by her along with interest and compensation. **Exbt.A6 series** is the copies of payment receipts issued by the Respondents. **Exbt.A7** is the copy of account statement issued by the State bank of India for a period from 21/03/2021 to 15/03/2022. **Exbt.A8** is the copy of legal notice dated 04/04/2024 issued to the Respondents along with postal receipt and acknowledgement cards, calling upon the them to refund an amount of Rs.19,98,000/- along with interest at SBI BPLR plus percent and compensation within 15 days from the date of receipt of this notice.



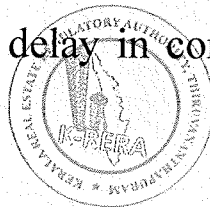
9. During the hearing the counsel for the Complainant contented that the Complainant had booked apartment No.5E having a super built up area of 825 sq. feet along with a covered car parking area together with an undivided right in the common areas of the said project and 1.58% undivided share, right, title and interest in the plot equivalent to 0.32 Ares having a total extent of 106.17 Ares for a total consideration of Rs.29,00,000/- and entered into an agreement with the Respondents on 05/05/2021. As per agreement dated 05/05/2021, the 1st and 2nd respondents have agreed to complete the construction of the said apartment by 31/12/2022. Thereafter the Respondents pushed back the date of completion of construction and delivery of the apartment by six months i.e. the date of completion was moved from 31.12.2022 to June 2023. Thereafter the date of completion was moved to several other dates when the complainant enquires about the date of handing over. The Complainant had paid a total amount of Rs.19,98,000/- till date and the Respondents issued disbursement request to the ICICI Bank till the stage of sixth floor roof slab completion only. Thereafter the Respondents never updated the Complainant about the progress of the project. Due to the inactions and incomprehensible delays on the part of the 1st and the 2nd Respondents, the construction is not completed even after years from the scheduled date of completion of the project. The Complainant no longer trusts the Respondents and does not wish to proceed with the purchase of the apartment promoted by the



Respondents. Hence on 19.03.2024, the Complainant had sent an email to the Respondents seeking refund and compensation along with interest.

10. The Respondents have filed affidavit instead of filing their counter statement. During the hearing the representative of the 1st Respondent company contented that the project offered to the Complainant is nearing completion, and the same could be handed over to the allottees including the Complainant herein along with the common area and all the relevant documents related to the said project during the coming months. The Complainant had decided to rescind from the said project by not willing to purchase the proposed flat by repaying the balance sale consideration. Regarding the part payment of a total amount of Rs.19,98,000/- made by the Complainant by way of instalments towards advance sale consideration, the Respondents are ready and willing to refund the same, provided with sufficient and considerable time for the Respondents. It was the Complainant who decided to withdraw from the said project for the reasons best known to her, other than the delay in completion which occurred due to reasons beyond the control of the Respondents, viz. the aftermaths of the pandemic, several floods etc.

11. As per Exbt.A1 agreement the Respondents agreed to complete and handover the apartment to the Complainant on or before 31/12/2022. Even though in the said Affidavit, the Respondents admitted the delay in completion of the project and



handing over it to the Complainant as promised, as per the agreements executed with her, they raised contentions to justify the delay in the name of flood and Covid-19 Pandemic. However, it is evident from the documents that the 1st Respondent/Promoter has failed to complete and hand over the project within the time period as promised to the Complainants. Exbt.A5, is the email dated 13/03/2024 issued by the Respondents to the Complainant stating that they have completed the electrical wall chasing work and are going to start plastering work by April 1st week and they will hand over the flat for doing the interior works by June 2024. From the said email dated 13/03/2024 it is clear that the project is not completed even in March 2024. In its reply the Complainant issued email dated 19/03/2024 stating her final decision to withdraw from the project and sought refund of the amount paid by her along with interest and compensation. The Complainant also issued Exbt.A8 which is the legal notice dated 04/04/2024 to the Respondents calling upon them to refund an amount of Rs.19,98,000/- along with interest at SBI BPLR plus percent and compensation within 15 days from the date of receipt of this notice. After hearing it is found that Respondents / Promoters have failed to honour the promises given to the Complainant as per the Exbt.A1 agreement.

12. 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 given by the Respondent/promoter was 24.07.2024. On verification of the registration webpage of the project maintained by the Authority, it is seen that out of 57 building units, 2 building units are sold and status is still shown as “in progress”. The Respondent/Promoter has not obtained Occupancy Certificate for the project till date from the local authority. It is also noticed that the Form 6 showing completion of the project is not uploaded as on date in the registration web page which reveals that the project in question is not completed even now. 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”.* 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

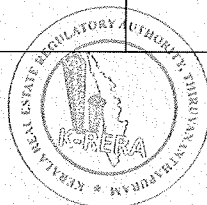


allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act”.

13. As stated in pre paragraphs, the registration web page shows that the project still remains incomplete. Since the Respondents failed to complete the project and hand over the apartment, as promised to the Complainant as per the terms of the agreements, executed with them, the Complainant herein is entitled to get refund of the amount along with interest as prescribed under the law.

14. As per Exbt.A3, Exbt.A6 & Exbt.A7 the Complainant had paid total amount of Rs.19,98,000/- to the Respondents. The Respondents also admitted the same. The details of payment made by the Complainants are as follows: -

Date	Amount
19/01/2021	Rs.50,000/-
04/05/2021	Rs.7,00,000/-
09/11/2021	Rs.3,44,000/-
04/12/2021	Rs.2,90,000/-
16/03/2022	Rs.95,000/-
16/04/2022	Rs.1,45,000/-



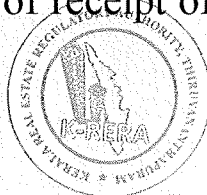
04/07/2022	Rs.79,000/-
23/11/2022	Rs.2,11,000/-
25/01/2023	Rs.84,000/-
Total	Rs.19,98,000/-

15. 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 15.15% with effect from 15/09/2024. Hence it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17.15 % [15.15% (current BPLR rate) +2%].

16. 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 shall return the amount of **Rs.19,98,000/-** to the Complainant with simple interest @ **17.15% per annum** from the date of each payment till the date of realization of the said amount.

2) If the Respondents / Promoters fail 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 Complainant is



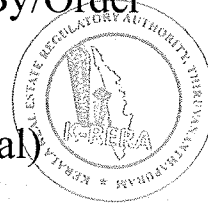
at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

The Parties shall bear their respective costs.

Sd/-
Smt.Dr.B Sandhya.
Member

True Copy/Forwarded By/Order

Secretary (legal)



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EXHIBITS

Documents produced from the side of Complainants

Exhibit A1: Copy of construction & sale agreement dated 05/05/2021 executed between the complainant and Respondents.

Exhibit A2 : Copy of registered agreement for sale vide No.1751/2021 dated 19.07.2021.

Exhibit A3: copy of loan account statement issued by the ICICI Bank.

Exhibit A4 Series: Copies of letters issued by the 1st Respondent to the ICICI Bank.

Exhibit A5 Series: Copies of email communications dated 13/03/2024 & 19.03.2024 between the Complainant and Respondents.

Exhibit A6 Series: Copies of payment receipts issued by the Respondents.

Exhibit A7 : Copy of account statement issued by the State bank of India for a period from 21/03/2021 to 15/03/2022.

Exhibit A8 : Copy of legal notice dated 04/04/2024 issued to the Respondents along with postal receipt and acknowledgement cards.

Documents produced from the side of Respondents

Nil

