



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No. 125/2021**

Dated 24<sup>th</sup> November 2021

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

## Complainant

Francis Ambattu Chacko,  
9-A, Skyline Marble Arch,  
Judges Avenue, Kaloor,  
Ernakulam-682 017.

## Respondents

1. M/s Asten Realtors Pvt.Ltd.,  
Having registered office at 3<sup>rd</sup> floor,  
Compass, N.H. Bypass, Thammanam P.O,  
Ernakulam, Kochi-32.
2. Siraj Mather,  
Managing Director,  
M/s Asten Realtors Pvt.Ltd.,  
33/29A, 'Promenade'  
Mather Projects, Pavor Road,  
Padivattom, Edappally P.O,  
Kochi-682 024.

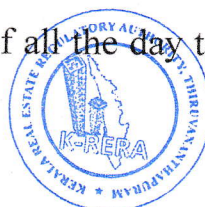


3. The Sacred Heart Provincial House,  
Rajagiri P.O, Kalamassery,  
Njalakam Kara, Thrikkarakara North Village,  
Kanayannur Takuk, Ernakulam-683 104.  
(Represented by present Provincial  
Rev. Fr. Benny Nalkara.)
4. Rev. Fr. Benny Nalkara,  
The Sacred Heart Provincial House,  
Rajagiri P.O, Kalamassery-683 104.
5. Rev.Fr. Jose Kuriyathu,  
The Sacred Heart Provincial House,  
Rajagiri P.O, Kalamassery-683 104.
6. Rev.Fr. Jose Cleetus Plackal,  
The Sacred Heart Provincial House,  
Rajagiri P.O, Kalamassery-683 104.
7. Rev.Fr. Jose Alex,  
The Sacred Heart Provincial House,  
Rajagiri P.O, Kalamassery-683 104.

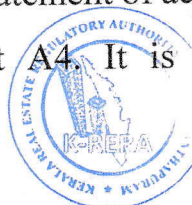
The Counsel for the Complainant Adv. Binu John and Counsel for the Respondents Sunil Shankar and A.V Kevin Thomas attended the hearing. Heard the parties in detail.

### **ORDER**

1. The facts of the case is as follows: The Complainant is an allottee in a real estate project by name 'Rajagiri Campus Court'. The 1<sup>st</sup> Respondent is the Promoter and 2<sup>nd</sup> Respondent is its Managing Director who is in active charge, management and control of all the day to day affairs of the 1<sup>st</sup>



Respondent Company. The 3<sup>rd</sup> Respondent is the owner of the land over which the above real estate project is being constructed. The Respondents 4 to 7 are the respective provincials who are in charge and responsibility of the 3<sup>rd</sup> Respondent from time to time. The Complainant came to know about the Real Estate Project by name "Rajagiri Campus Court" developed by 1st Respondent Company as the Promoter on the basis of vide propagation and publicity. This project was undertaken and was carried out by Respondents 1 and 2 as builder and Respondents 3 to 6 as vendors/landowners. As per the said propagation, it was represented that the said real estate project offers a luxurious real estate project with all sorts of amenities along with a hotel block, a commercial shopping mall facilitated with multiplex, food court, hypermarkets and other lifestyle stories in addition to the common areas and facilities appurtenant thereto. The Complainant decided to purchase an apartment in the said project based on the prospectus published by Respondent, copy of which is produced and marked as Exhibit A1. As per the understanding between the parties, the apartment was agreed to be handed over to the Complainant on or before 31-05-2015 after completion of the entire project. The Complainant entered into two separate agreements for sale of the land and the construction of the apartment with the Respondents 1 and 2 who were acting for and on behalf of the other respondents herein on the basis of agreements executed among themselves for the implementation and development of the Project. True copy of agreement dated 31-05-2012 is marked as Exhibit A2. On the same day itself, the Complainant entered into another construction agreement, copy of which is produced and marked as Exhibit A3. As per A3 agreement, the Complainant agreed to pay a total sum of Rs.68,62,173/- as the price of the apartment bearing No. 16 A on the 16<sup>th</sup> floor of Tower No.1. Out of the said amount, the Complainant had already paid a substantial amount of Rs. 64,15,946 and only a small portion remains to be paid which could practically be done at the time of registration. Copy of statement of accounts is produced by the Complainant and is marked as Exhibit A4. It is also submitted that the





Complainant has availed a bank loan for an amount of Rs.48,01,424 which carries an interest rate of 10.75% per annum.

2. It is submitted further that the completion of the above real estate project was being delayed inordinately at all stages of construction. It is felt by the Complainant that the Respondents are trying to differentiate and divide the project area by bifurcating the residential area and commercial area in such a manner that both are not connected to each other and Respondents are not having any rights whatsoever to distinguish between the two by dividing the Project area into two. Thus it is clear case of unfair and irregular trade practice adopted by the Respondents and the Respondents 3 to 7 who are vendors/landowners are acting hand in glove with the Respondents 1 and 2. So it is crystal clear that the fashion in which the above project was propagated, marketed, represented and sold by the Respondents, the same was done with malafides and in contravention of the provisions of Real Estate (Regulation and Development) Act, 2016. Moreover, the Respondents had not completed and handed over the apartment in accordance with the agreement. The Complainant had made several requests both orally and via emails and in furtherance the Respondents had finally informed the Complainant that the real estate project would definitely be finished and the same would be handed over by the end of 2019. The Respondents did not keep their word by handing over the possession of the entire real estate project by completing all constructions in the entire project area. The inordinate delay so far occurred is because of the sole reason that the construction is being carried out by the Respondents in flagrant violation of the Act and the rules made thereunder. The reliefs sought by the Complainant is to direct the Respondents to refund a sum of Rs.64,15,946 being the sale consideration paid along with the interest at the rate of 18% per annum from the respective dates of each payment made by the Complainant till the date of actual repayment, under Sections 19(4) of the Act and to direct the Respondents to



register the ongoing project in accordance with the provisions of the Act and to prosecute the Respondents as contemplated under Section 59 thereto and to conduct an inquiry by appointing appropriate persons with regard to malpractices including diversion and misappropriation of funds in contravention to the obligations cast upon by the Respondents as envisaged under Section 35 of the Act.

3. The Respondent No 1 and 2 has filed Objection and submitted that the Complaint is not maintainable in law or on facts. The Respondents submitted that the Rajagiri Campus Court was only a residential apartment complex. Adjacent to the apartment complex, the 1<sup>st</sup> Respondent had proposed a commercial complex in the name and style Asten Mall alongwith a hotel block. The said commercial complex was not a part of the residential development, and no rights in the commercial complex were agreed to be conveyed in favour of the Complainant, in either the land sale agreement or the construction agreement. In fact, even a cursory reading of the land agreement would clearly show that only an extent of 3 acres and 49 cents is demarcated for construction of a multi storied residential apartment project Rajagiri Campus Court. It is also submitted that the 1<sup>st</sup> Respondent has already registered the said project with this Authority in the name and style 'Asten Campus Court'. Copy of registration certificate is produced and marked as Exhibit B1. It is submitted that the reasons for the delay in the completion of the project is very well known to the Complainant. On account of various factors including global factors, the real estate sector was going through a recessionary phase with practically no demand. The Project was also affected by 2018 floods and the Government of Kerala has declared Kakkanad Village as flood affected vide G.O. True copy of certificate issued by Tahasildar is produced and marked as Exhibit B2. True copy of photographs is produced and marked as Exhibit B3. The averments that the Respondents are trying to bifurcate the residential and the commercial area, and





the same cannot be done etc. are misplaced and misconceived contentions, having no basis in fact and on the material on record. It is further submitted that the Complainant was fully aware of the reasons of the delay, and agreeing with them had extended the time fixed in the construction agreement for completion. The email intimating the revised schedule dated 01/03/2019 is produced and marked as Exhibit B4. Even in August 2020, the Complainant had requested the 1<sup>st</sup> Respondent vide email dated 16-08-2020 to go ahead with laying of floor tiles. True copy of email is produced and marked as Exhibit B5. In such circumstances, the Complainant cannot withdraw from the Project as the date of completion in the agreement is modified by the subsequent conduct of parties. It is further submitted that the prayers sought in the relief A is not liable to be granted for the reasons mentioned above and the prayer in relief B is infructuous as the project is already registered with the Authority and the other prayers are not maintainable, hence the above Complaint is liable to be dismissed with costs. The Respondent No:3 has also filed Counter statement and submits that the reliefs claimed by the Complaints are not maintainable as the 3<sup>rd</sup> Respondent Province or its Priests/ provincials arrayed as Respondents 4 to 7 will not come within the purview of the 'Promoter' under the Act. The Respondents 3 to 7 have not received any money from the Complainant and the 3<sup>rd</sup> Respondents only has the responsibility as the land owner to execute agreement for sale/sale deed to the 1<sup>st</sup> Respondent or its allottees and 3<sup>rd</sup> Respondent has always been ready and willing to perform this obligation. The only obligation of the 3<sup>rd</sup> Respondent as per its agreement with the 1<sup>st</sup> Respondent is to transfer an undivided share in the land to each allottee, which is ready and willing to do and further submits the Respondents 3 to 7 are unnecessary parties in this Complaint and prayed that the Complaint be dismissed as against Respondents 3 to 7 or they may be removed from the party array.



4. The matter was heard on 03-11-2021. The only issue that is to be considered is whether the Complainant is eligible to withdraw from the Project and demand return of the amount paid for the apartment with interest as at such rate prescribed in this behalf as provided under the Act. It is accepted that the construction is still in progress and the Promoter has failed to complete the Project as promised and he is unable to even commit a date for handing over possession of the apartment. The specific question was put to the Counsel for the Promoter/Respondent as to whether he can commit a date to hand over possession of the apartment to the Complainant, to which the reply was 'No'. As per the agreement executed between Promoter and Complainant it is stated as below "the Builder undertakes to ensure that the said construction is completed within 36 months from 31-05-2012, subject to the client fulfilling his obligations as per the agreement and also subject to the situation arising out of factors beyond the control of the builder and force majeure". It is further mentioned that "Handing over of possession of the Constructions" shall mean handing over possession of the constructed super built space with standard specifications hereby agreed upon and, in any context, does not cover the electrical, water, sewage and other service connections which are regulated by Government and other statutory bodies from time to time. However the builder shall put forth all earnest efforts to secure the same before handing over possession and the client do hereby agree that any delay in obtaining such connections shall not be a constraint for taking over possession of the said building/apartment as per these presents on receipt of due notice from the builder. It is therefore clear that the apartment was to be handed over as per the agreement on or before 31-05-2015. The Complainant has filed Statement of Calculation of his Interest Claim and the Respondent 1 and 2 has filed rejoinder also to the calculation statement.

5. The only argument put forward by the Respondent was that the term of the agreement were varied by the conduct of the parties as to the





completion date in as much as the said date has been given a go by, for which the Respondent has produced copy of an email dated 01-03-2019 which is marked as Exhibit B4. In the said email the Respondent has attached revised schedule for the proposed completion of the Project and assured that the Respondent will try their best to complete almost all the major works by November 2019 and urge the customers to release their respective due amounts immediately to complete the Project ahead of revised schedule. Another email produced by the Respondent is marked as Exhibit B5, the email dated 16-08-2020 emailed to one Nisha Sam of Respondent Company in which the Complainant requests the Respondent to fix floor tiles and epoxy work for toilet tiles. Even after receipt of this email, on 16-08-2020, the Respondent has not been able to complete the construction and handover possession of the apartment till the filing of the Complaint on 18-02-2021. There is nothing on record that there were factors beyond the control of the Promoter that delayed the Project beyond 31-05-2015. The inordinate delay in completing the construction as promised in 31-05-2015 and the uncertainty of completion of the Project has bestowed upon the right of the allottee under Section 18 of the Act to withdraw from the Project and demand return of amount paid by him in respect of that apartment with interest as prescribed under Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018.

6. Therefore, there is no point in refusing the demand of the Complainant on the basis of an email by a desperate allottee to somehow get the possession of the apartment for which he was waiting for more than five years.

7. The Complainant had admittedly paid the instalment as detailed below on the respective dates as per the payment schedule in the agreement.

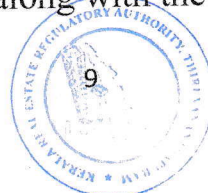




<u>Date</u>	<u>Amount</u>
03-05-2012	2,00,000/-
03-05-2012	10,85,455/-
09-08-2012	2,00,000/-
27-08-2012	1,50,000/-
03-10-2012	41,818/-
04-10-2012	1,00,000/-
03-01-2013	6,42,000/-
17-06-2013	7,94,123/-
13-08-2013	6,42,727/-
27-11-2013	6,42,147/-
28-02-2014	4,82,853/-
29-05-2014	4,82,045/-
02-01-2015	6,42,741/-
28-01-2016	3,10,037/-
<b>Total-</b>	<b>64,15,946/-</b>

8. The non-completion, non-delivery of possession, non-execution of conveyance deed by the Respondent are also admitted by the Respondents. Hence the Authority finds that this is a fit case for refund along with interest under Section 18 of the Act.

9. The interest payable by the Respondent to the allottees is by State Bank of India PLR rate plus 2% from the date of payment from the allottee to the Promoter as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBI PLR rate is 12.15% as on date of the Order. The Complainant is entitled to get 14.15% interest on the amount paid to the Respondent from the date of payment as detailed above in the payment schedule till the refund of money along with the applicable interest.



10. Accordingly, the Respondent 1 and 2 are directed to return the amount received in respect of the apartment from the Complainant as per the payment schedule above along with simple interest of 14.15 % from the date of receipt of each payment by the Promoter till refund of the amount with interest, within 60 days from the date of this Order. If the Respondents 1 and 2/ Promoters fail to pay the aforesaid sum with interest as directed above within a period of 60 days, the Complainant is at liberty to proceed against the Respondents 1 and 2 and their assets by executing this decree in accordance with the Real Estate (Regulation and Development) Act and Rules.

Dated this 24<sup>th</sup> November, 2021

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)



## APPENDIX

### Exhibits on the side of the Complainants

- Exhibit A1 : Brochure published by the Respondents about the Project  
Exhibit A2 : True copy of agreement dated 31-05-2012  
Exhibit A3 : Copy of construction agreement dated 31-05-2012  
Exhibit A4 : Statement of Accounts produced by the Complainants

### Exhibits on the side of the Respondents

- Exhibit B1 : True Copy of Registration certificate issued by RERA  
Exhibit B2 : True copy of certificate issued by Tahasildar  
Exhibit B3 : True copy of Photographs  
Exhibit B4 : True copy of email dated 01-03-2019  
Exhibit B5 : True copy of email dated 16-08-2020

