



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 126 /2021**

Dated 08<sup>th</sup> October 2021

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

**Complainant**

Markose Xavier,  
Kandathil, 63- Aradhana Nagar  
Samkers Junction,  
Kollam-691001

**Respondents**

The Ernakulam Co-operative House Construction Society Ltd  
Rep: by its Secretary  
No: E169, Girinagar,  
Cochin-682020

The Counsel for the Complainant Adv Pradeep Radhakrishnan and Counsel for the Respondent Adv. V.V Nandagopal Nambiar attended the virtual hearing today.

**ORDER**

1. The Complainant is a senior citizen and a retired senior electrical engineer from KSEB. The Complainant is a member of the Respondent society since 1980. The Complainant entered into an agreement with the Respondent society on 01-02-2013 for purchasing an apartment which was proposed to be constructed in the property having an extent of 18.21 cents comprised in Survey



No. 334/1 of Poonithura Village, Kanayannoor Taluk, Ernakulam District, owned by the opposite party society. The copy of Agreement dated 01.02.2013 is produced. The Complainant has paid total amount of Rs.43,92,500/-. Last instalment was paid by the Complainant in pursuance of the letter dated 30.06.2015 issued by the Respondent in favour of the Complainant on which it is also mentioned that the construction work of the Apartment has been completed. After paying the full consideration, the Respondent instructed the Complainant to pay an amount of Rs.1,08,000/- towards the 2% registration fee and other expenses after a lapse of eight months since the completion of the apartment, and the Complainant also paid the said amount on 05.03.2016. It is submitted that after receiving the payment towards the registration fee etc. more than five years have elapsed and the Respondent have not executed the title deed in favour of the Complainant till date. The Complainant on 09-09-2020 issued a detailed letter to the Respondent requesting to execute the Sale deed which was received by the Respondents. After a lapse of 5 months the Respondent issued a reply dated 06.02.2021 stating flimsy and untenable contentions which is not at all sustainable under the eye of law. Since the Respondents have not executed the Sale deed till date, the Complainant is not in a position to obtain the ownership certificate and right to use apartment has been limited resulting in huge loss. As per the agreement dated 01.02.2013 entered between Complainant and Respondent, the Respondent has undertaken that the Project will be completed by December 2014, but so far the Project is not completed and had not handed over the legal ownership of the apartment by executing the title deed. The reliefs sought by the Complainant is to direct the Respondent to refund the full amount paid by the Complainant along with its compound interest at 13% from the date of each remittance to the Complainant.



2. The Respondent has filed Objection and submitted that Complaint is not maintainable either on facts or on law. At the outset it is submitted that the possession of the residential apartment was handed over to the Complainant on 05-03-2016 i.e before the Real Estate (Regulation and Development) Act, 2016 and rules thereon. The Complainant have taken possession of the building on 05-03-2016. True copy of letter acknowledging the handing over of possession is produced and marked as Exhibit B1. It is submitted that Exhibit B1 was executed pursuant to the agreement dated 01.02.2013. The Respondent hereby acknowledges the receipt of sale consideration as submitted in the Complaint. It is submitted as per the terms of the agreement, all statutory payments shall be done by Allottees. The Complainant and all allottees are bound by the terms of the agreement and therefore they are liable to pay all statutory payments including stamp duty payable under the provisions of Kerala Stamp Act. The Complainant cannot plead ignorance of the terms of agreement after obtaining possession of the apartment. No one can plead ignorance of law as defence. It is also submitted that the Complainant had paid a sum of Rs 1,08,000/- towards 2% registration charges and other expenses after 8 months from the completion of the apartment. It is the duty and obligation of the allottees to get their apartment duly registered after getting possession to get legal ownership of the property. It is further submitted that the completion certificate was issued by Cochin Corporation and the apartment was assessed by the Cochin Corporation for the purpose of building tax. The property tax in respect of the apartment was paid by the Respondent society on 27.03.2015. True copy of Property tax is produced and marked as Exhibit B2. The Occupancy certificate issued by Cochin Corporation dated 29.01.2015 is produced and marked as Exhibit B3. Thus the Respondents have discharged all their obligations as per agreement. The reliefs sought for in the above Complaint are vague and unspecific. The Complainant has already approached before Registrar of Co-operative Societies by filing the Complaint under Section 69 of Kerala Co-operative Societies Act. Hence the Complainant



is estopped from approaching this Authority. Moreover, the Respondent society have fairly adopted a resolution to return the registration fees to the Allottees along with interest allowable to fixed deposits. The Director Board of the society took a resolution dated 22.07.2017 to return the registration fees to the respective members along with interest. True copy of resolution is produced and marked as Exhibit B4. It is submitted that this Complaint is an afterthought, raised with malafide intent. It is submitted that the possession was handed over as early on 05.03.2016. The Complainant had not made out a case to attract the provisions of Act 2016. The Respondents were ready and willing to execute and register conveyance deed in favour of the Complainant after handing over possession of the apartment. The delay occurred only on account of the non-remittance of stamp duty payable by the Complainant under the provisions of Kerala Stamp Act. Hence the Respondent prays none of the grounds raised in the Complaint merits consideration and therefore the above Complaint is liable to be dismissed. The Complainant has filed rejoinder also to the objection denying the averments in the Objection.

3. Heard Both parties in detail and perused the documents submitted by each of them. The Documents were marked from the side of Complainants as Exhibits A1 to A6 and documents were marked from the side of Respondents as Exhibits B1 to B4. The relief sought by the complainant herein is for direction to Respondent to refund the full amount paid towards the consideration of the apartment along with interest from the date of payment. Section 18(1) of the Real Estate ( Regulation & Development) Act 2016 specifies that *“If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; 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 allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act".* Here there is no case that the Promoter has failed to complete or unable to complete the apartment in accordance with the agreement executed between the Complainant and Respondent as evident from the documents placed on record. Hence Section 18(1) of the Act will not be attracted. Further, after detailed hearing, it was found that only dispute is with regard to the amount of stamp duty payable for the registration of sale deed and the said dispute is also pending consideration of the Hon'ble Supreme Court of India. Admittedly, Occupancy certificate was obtained for the Project on 29.01.2015 from Kochi Municipal Corporation copy of which is produced as Exbt. B3 and possession was handed over in the year of 2016, as shown in Exbt. B1 letter signed by the Complainant. The property Tax receipt dated 27.03.15 is also produced and marked as Exbt. B2. Undoubtedly, handing over of the apartment to the Complainant and completion of the project took place prior to commencement of the Act, 2016. As per the judgement dated 11.11.2021, the Hon'ble Supreme Court of India observed in *M/s Newtech Promoters & Developers Pvt. Ltd Vs State of U P & Others*, that *"From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."* Hence, in the light of the said judgement of the Hon'ble Apex Court, this Authority cannot entertain the complaints pertaining to project that has already been completed or to which




the Occupancy Certificate has been granted prior to commencement of the Act 2016.

4. The Complaint is dismissed. No costs.

Sd/-  
Smt. Preetha 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 : True copy of agreement dated 01.02.2013  
Exhibit A2 : True copy of letter dated 30-06-2015 issued by Respondents  
Exhibit A3 : Copy of receipt dated 05.03.2016  
Exhibit A4 : Copy of letter dated 09.09.2020  
Exhibit A5 : Reply letter dated 06.02.2021 by the Respondent  
Exhibit A6 : The Copy of Order dated 12.02.2021 of  
Assistant Registrar

**Exhibits on the side of the Respondents**

- Exhibit B1 : True copy of letter acknowledging handing over of Possession
- Exhibit B2 : True copy of Property tax issued by Kochi Municipal Corporation
- Exhibit B3 : True copy of Occupancy Certificate issued by Kochi Municipal Corporation
- Exhibit B4 : True copy of resolution dated 22.07.2017.

