



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No. 138/2022**

Present: Sri.M.P.Mathews, Member

Dated - 23<sup>rd</sup> June 2022

## **Complainants**

1. Dr.Shah Nawaz,  
411,Galaxy Court, Sudbury,  
Ontario, P3E 5K6,Canada.  
Represented by Power of Attorney Holder  
Kamaludeen, Kallarakkal House,  
T.C.20/839/14, Surya Nagar,  
Karamana P.O, Thiruvananthapuram -695002.

2. Zuhra Nawaz,  
411,Galaxy Court, Sudbury,  
Ontario, P3E 5K6,  
Canada.

## **Respondents**

1. M/s Great India Estates Pvt. Ltd,  
New Corporation Building,  
Ground Floor, Palayam  
Thiruvananthapura 695013.  
(Represented by its Chairman &  
Managing Director.
2. Najeeb, Chairman,  
M/s Great India Estates Pvt. Ltd,  
Corporation Buildings,  
Palayam, Thiruvananthapuram 695013.



3. E.Iqbal,  
Director,  
M/s Great India Estates Pvt. Ltd,  
Corporation Buildings,  
Palayam, Thiruvananthapuram 695013.

The above Complaint came up for virtual hearing today. counsel for the Complainant Adv.V Ajakumar and counsel for the Respondent Adv.Sameer Kharim attended the hearing.

### ORDER

1. Complainants is an Allottee of project named 'GRAND ASTERIA' located at Peroorkada village, Thiruvananthapuram District developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, 2016 vide registration No. K-RERA/PRJ/208/2021.

2. The facts of the complaint is as follows:- The respondents entered into a joint venture agreement dated 24/12/2009 with land owners of 34,360 cents of property comprised in Sy No . 24/192 and 24/193 of Peroorkada Viillage for joint venture agreement of the said property. Based on the same above said joint venture agreement the respondents have obtained an approved plan and permit vide building permit No.E5/ BA/546/08 dated 5/11/2009 for construction of a multi level apartment complex in the above said property in the name and style " GIE GRAND ASTERIA". Being attracted by the brochure and advertisements published by the respondents and believing the oral promises and



representations made by the respondents and their employees, the complainants have decided to purchase Apartment No 13 in the thirteenth floor of the Apartment Complex GIE GRAND ASTERIA by paying an advance of Rs.63,10,240/- on 2/5/2011 and entered into an agreement on 6/6/2021 for land construction detailing terms agreed in between the complainants and respondents in this regard.

3. The apartment No 13 in the thirteenth floor of the apartment complex is having an area of 2582 square square feet (approximate) along with 4.73% UDS in the above said property (ie 1.63 cents) is allocated to the complainants for a total apartment cost of Rs.1,67,68,323/-. Out of the above said total consideration of Rs.1,67,68,323/- an amount of Rs.1,37,78,620/- is fixed as construction cost of the apartment Rs.8,00,000/- was agreed to be the cost of car park and lumber room , Rs.1,29,100/- is agreed to be paid towards Corpus fund for maintenance, Rs.11,96,980 was agreed to be paid towards the value of undivided share of land and Rs.3,85,622 /- was agreed to be paid towards Service tax and VAT. The above said amounts was agreed to be paid to the 1st respondent in different installments in accordance with progress of construction.

4. The complainant has paid a total payment of Rs.1,38,10,240/- to the respondent towards the cost of the Apartment No.13 in the above project. The details of the payment made to the respondent towards the cost of the above said apartment is as follows:-

<u>Date</u>	<u>Amount</u>
02/05/2011	Rs.63,10,240.00
18/04/2012	Rs.50,00,000.00



06/05/2014

Rs.25,00,000.00

**Total**

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**Rs.1,38,10,240.00**

5. Till 6/5/2014 the complainants have paid a total amount of Rs.1,38,10,240/-. Though almost full amount of the cost of construction of the apartment is paid by the complainants the respondent has not achieved any desirable progress in accordance with the payments made. By letter dated 3/6/2014 the respondents have offered a cost deduction at the rate of rupees 1.5 lakhs from January 2015 if the apartment is not completed if the Apartment No 14 is made in a liable condition in December 2014. Even though the complainants and other allottees were making prompt payments, the respondents have failed to progress with the construction of the apartment and hand over the same to the complainants in accordance with the terms of the agreement with the Complainants. The permit for the construction is also expired. The respondents have diverted the funds for their business and made huge profit out of the same. As the respondents have failed to complete the construction and hand over the apartment as promised by them within a period of 24 months in accordance with the terms of the agreement, the complainants are entitled to withdraw from the project and claim back the amount paid to the respondents with interest at the rate of 14.4% for the amount paid as shown in the statement of accounts given above. Though the complainants have told the respondents their decision to withdraw from the project and claim refund of the amount paid with interest, so far the respondents have not paid the amount due to the complainant.

6. The relief sought by the Complainants is to allow the complainant to realize Rs.3,39,95,315/- which is inclusive of the amount paid to the respondent towards the cost of the Apartment No. 13 allotted to the



complainant and interest due for the said amount at the rate of 14.5% as detailed above under the statement of accounts and also to allow the complainant to realize future interest on Rs.1,38,10,240/- at interest rate of 14.5% from the date of this complaint till realization from the respondents and charged on all their assets.

7. The Respondent has not filed any counter statement even after ample time granted by the Authority.

8. Heard both parties in detail and perused the documents produced by the Complainants and the same is marked as Exbt.A1 to A8. On going through the documents it is seen that there is an agreement for land and construction dated 06/06/2011 which is marked as Exbt.A4, executed between the Complainants and the Respondents. In was stated in the agreement that, the Respondent has offered 4.73 undivided share in the land equivalent to 1.63 cents and also agreed to construct an apartment No.13 on the 13<sup>th</sup> floor admeasuring 2582 sq.ft. of built area. It was also stated in the agreement that the Respondents shall deliver the apartment to the Complainants by September 2013.

9. From the Exbt.A5 series documents which is the copy of payment receipts it is clear that the Complainants have paid an amount of Rs.1,38,10,240/- to the Respondents as cost of apartment No.13, on the 13th floor of the said project developed by the Respondents. During the hearing the counsel for the Respondents also admitted that the said project is not completed as per the promises made to the Complainants.

10. The Respondent had submitted an application for registration of the project under section 3 of the Act. Along with the said application an affidavit cum declaration in form B under Rule 3(6) is also



submitted by him and it is stated therein that the time period within which the project shall be completed by the promoter is 31/12/2021. The date of completion as stated in the above affidavit under section 4(2) 1 C of the Act, 2016 is considered as 31/12/2021. The permit was valid only up to 04/11/2012. The promoter had submitted a declaration as per order no. K/RERA-T3 102-2020(1) dated 06/01/2021 based on which the registration was granted. It is seen that the project has not progressed any further after submission of the application and obtaining registration under section 3 from the Authority. Based on the records available with the authority, the promoter is declared as a defaulter due to the failure on his part to update the details of the project on the website of the authority.

11. As per R.17 of Kerala Real Estate Regulations and Development Rules 2018, relevant details as stated therein is to be made available on the website of the Authority in respect of each project registered. It is evident that the project is abandoned and the registration granted is to expire in 30/06/2022.

12. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as*



*provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".* The Section 19(4) of the Act also specifies that *"The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".* Here, in this case the Promoter has not refunded the payment made as stated in the Complainant and the receipt submitted by the Complainant.

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



with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

14. For the reasons stated above, it is evident that the possession of the flats has not been handed over to the Complainant as promised in the agreement. As per the agreement the Respondents should have delivered the apartment to the Complainants in September 2013.

15. Hence, the Complainant herein is entitled to get the refund of the above mentioned amount along with interest and the Respondent is liable to refund the amount to the complainant along with the interest according to section 18(1) of the Act,2016. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 12.75% with effect from 15/06/2022. The Complainant is entitled to get 14.75% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. However the Complainant herein prayed for refund of the amount of Rs.1,38,10,240/- paid by him along with interest due for the amount @14.5%. Hence it is found that the Respondent's are liable to pay Rs.1,38,10,240/- along with 14.5 % simple interest on each payment as per the statement given above and sought for by the Complainant.

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





1. The Respondents shall return the amount of **Rs.1,38,10,240/-** to the Complainant with simple interest @ 14.5% per annum on each payment from the date as shown in the statement above, till the date of realization.

2. If the Respondents fails to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondent No.1 and its assets & Respondents No.2 and his assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-  
Sri. M.P.Mathews  
Member

AP  
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/True Copy/Forwarded By/Order

  
Secretary (legal)

**Exhibits**

**Exhibits marked from the Side of Complainants**

Ext.A1 - Copy of building permit dated 05/11/2009.

Ext.A2 - Copy of list of features and fixtures enlisted in the  
Brochure.

Ext.A3 - Copy of allotment letter dated 02/05/2011.

Ext.A4 - Copy of agreement for land and construction dated 06/06/2011.

Ext.A5 series - Copy of Payment receipts.

Details of payment of Rs.1,30,00,000/-

Ext.A6 - Copy of letter dated 03/06/2014.

Ext.A7 - Photocopies showing the present condition of the  
building.

Ext.A8 - Copy of Power of Attorney dated 14/01/2022.