



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 164/2021**

Present: Smt. Preetha P Menon, Member

Dated 12<sup>th</sup> August 2022

**Complainants**

1. E P Thomas  
CHITRA 207 'B' Wing,  
Dewan & Sons Hsg Socy,  
Dewanman, Vasai Road West,  
Palghar District,  
Maharashtra- 401202
2. Daisy Thomas  
CHITRA 207 'B' Wing,  
Dewan & Sons Hsg Socy,  
Dewanman, Vasai Road West,  
Palghar District,  
Maharashtra- 401202

**Respondents**

1. Rajeev Gangadharan  
Managing Director, M/s Meera Homes  
19/654, 1<sup>st</sup> and 2<sup>nd</sup> Floor,  
Opp. Private Bus Stand, Hill Road,



Aluva- 683101, Kerala

2. Manju Rajeev

Managing Partner, M/s Meera Homes

19/654, 1<sup>st</sup> and 2<sup>nd</sup> Floor,

Opp. Private Bus Stand, Hill Road,

Aluva- 683101, Kerala

[ Adv. Biju Abraham & Adv. Shabeer Ali Mohammed]

3. Johnson Lukose

CC 33/2002 AB,

Cherukal House,

Medical Vennala P O,

Edapally, Cochin- 682028

The Complainants and Respondent No. 1 were present in the final hearing.

## ORDER

1. The facts of the case are as follows: - The Complainants are non-resident Keralites living in Mumbai for around 38 years. The Complainants wanted to purchase a home in Kerala as part of their retirement life. In the year 2011, the Complainants saw the advertisement in Malayala Manorama News Paper offering flats in the Project of Respondents at Puthen Cruz, Ernakulam and contacted the Respondents. The Respondents had stated that their Project was nearing completion and would be made within seven months. Thereafter a sale agreement was also executed. The Complainants made a total payment of Rs. 19,60,000/-. The Respondents after getting the payment, avoided



calls and messages and refused to contact the Complainants or hand over the Flat No. 6 F in Project named 'Elegance' as offered. The Complainants had suffered huge mental agony, stress, and discomfort due to the alleged cheating by the Respondents. The Complainants have invested their entire life earnings in the hope of peaceful retirement life. It has come to their notice that flats in the said Project have been sold to multiple people and that there are multiple claimants. Therefore, the Complainants are not interested in getting the flat, but to get his money with interest. The relief sought by the Complainants are - i) to order and decree an amount of Rs. 19,60,000/- to the Complainant, ii) to order and decree an amount being the interest @ 15% of the amount of Rs. 19,60,000/- from the day of payment till the date of receipt, or as per Rules. The copies of the Agreement for Sale dated 04.05.2011, Agreement for Construction dated 04.05.2011, the Sale Deed dated 26.05.2014, details of Multiple claimants, details of payment/Bank/Receipts, Pan card, Aadhar card, Residence Proof, Kerala Government Letter & brochure are produced by the Complainants.

2. The 1<sup>st</sup> Respondent filed objection to the Complaint as follows: The Complaint is not maintainable either in law or on facts as it is beyond the scope of the Real Estate (Regulation and Development) Act and Rules. The Complaint is filed beyond the time limit fixed by the Act and Rules and hence



the Complaint is liable to be dismissed as time-barred. The Complainants had approached the Hon'ble Authority suppressing the material facts such as they had earlier approached this Authority by filing CCP No. 123/2020 and the said Complaint was dismissed as withdrawn after the appearance of this Respondent. The Complainants are the plaintiffs in O S No. 97/2016 filed before the Sub Court, Ernakulam for various reliefs identical to the same claimed in the CCP proceedings. Therefore, the Complainants are precluded from approaching the Authority under the Act,2016. The builder is not made a party and the 1<sup>st</sup> Respondent is impleaded in his personal capacity. The 1<sup>st</sup> Respondent is having no personal obligation to the Complainants or with the work or amount claimed in the proceedings. The present complaint is therefore bad for the non-joinder of the necessary party. Apart from the fact that the complainants had already been assigned their property, way back in 2014, well before the enactment of this Act. The Complainants have admitted that they were assigned the land and apartment earlier on 26.05.2014 and they are in possession and enjoyment of the same. After 2014, the Complainants never raised any objection in respect of the assignment and construction made by these Respondents. It is admitted that the apartment was assigned without completing some of the work as promised. Since the work was incomplete, the apartment was given at a lesser price than fixed at the time of agreement and the same is evident from the sale deed. The owner's association appointed one Mr. Babu as the



authorized person and an amount of Rs. 20,00,000/- was paid by the Respondents for the completion of the work. Apart from this, an arrear of the amount of Rs. 35,00,000 is pending from the apartment owners towards the balance price and construction cost for the completion. As the amount was paid to the association, they should also be made a party to this case and it is understood by the Respondents that as there was a dispute, the owners association had filed civil suit No. 97/2016 before the Ernakulam Sub Court and impleaded the present Complainants as plaintiff No. 15 & 16. If the Owners Association is ready to pay back the paid amount of Rs.20 lakhs plus arrears amount of Rs 35 lakhs with interest from June 2014 till date @ 12% per annum, the Respondent undertakes to complete all the pending works, if any, to the satisfaction of the Complainants on his personal capacity. The Respondents also submitted that they have no connection with the apartment or claim put forward by the Complainants. The Complainants does not have any right to claim the amount after 7 years of registration of the land and apartment in their favour. Hence the Respondents prayed to dismiss the Complaint with compensatory cost. The copies of the Original Suit No. 97/2016 filed before Sub Court, Ernakulam, the written statement to the O.S, the Receipt dated 21.10.2016 are produced from the part of the 1<sup>st</sup> Respondent.

3. Heard both the parties in detail. Even though the project in question is found to be registerable under Section 3



of the Real Estate (Regulation & Development) Act 2016, the project is not yet registered before the Authority despite several directions given to the Respondent/Promoter in this regard. As per the site inspection conducted by the officers of this Authority, it was found that the project consists of a 10 storied building with 32 flats out of which 17 flats are already sold out and on verification of the files of Vadavacode- Puthencruze Panchayath it was understood that the application for the Occupancy certificate is still kept pending for want of final Fire NOC. Hence on the basis of the said Site Inspection Report also it was found that the project 'Elegance' is an ongoing project which is liable to be registered under Sec 3(1) of the Act,2016. In the hearing conducted in this regard on 12/04/2022, the 1<sup>st</sup> Respondent attended and submitted that 95% of the construction is over but the Occupancy certificate is not yet received. The final order passed by the Authority, directing the Respondent/Promoter to submit application for registration of the project on or before 12/05/2022 was also violated by him. Hence the Authority has initiated actions against the Respondent/Promoter as per Section 59(1) of the Act 2016.

4. After a detailed hearing and perusal of pleadings and documents submitted by both parties, the following points came up for consideration:



1) Whether the Respondents/Promoters failed to complete or was unable to hand over possession of the apartment to the Complainants in accordance with the terms of the agreement for sale or duly completed by the date specified therein or not?

2) Whether the Complainants herein are entitled to withdraw from the project at this stage and claim a refund of the amount paid with interest as provided under Section 18 (1) of the Act 2016 or not?

3) What order as to costs?

5. **Points No. 1 & 2:** - The relief sought in the Complaint is for direction to refund the amount paid by the Complainants along with interest from the date of payment till the date of receipt of the amount. Section 18(1) of the Act 2016 stipulates 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; 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-Provided that where the 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.”* As per Section 19(4) of the Act 2016, *“the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, 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 the agreement for sale”*. It is obvious that Section 18(1) is applicable in cases where 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 duly completed by the date specified therein. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession.

6. The documents produced by the Complainants are marked as Exhibit A1 to A8. The documents produced by the Respondents are marked as Exhibit B1 to B3. A site inspection was also conducted by deputing two officers of this Authority and the site inspection report is marked as Exbt. X1. An Agreement for sale dated 04.05.2011, was entered into between Dr. Johnson Lukose,





the Landowner, represented by his Power of Attorney Agent who is the 1<sup>st</sup> Respondent herein, and the Complainants, copy of which is produced by the Complainants and marked as Exbt. A1. An Agreement for construction dated 04.05.2011 was also executed between the Complainants and M/s Meera Homes, represented by its Managing Partner, the 1<sup>st</sup> Respondent herein, copy of which is produced by the Complainants and marked as Exbt. A2. Copy of Sale Deed dated 26.05.2014, executed by the Landowner, Dr. Johnson Lukose, in favour of the Complainants is also produced by the Complainants which is marked as Exbt. A3. In the Exbt. A1 agreement for sale, it stipulates that *“the First Party made it clear to the Second party that the first party is interested in selling the undivided share in the property only if the second party is prepared to entrust the construction work to the builder Meera Homes.”* On the same day an agreement for construction was executed by the 1<sup>st</sup> Respondent with the Complainants herein and Clause 3 of the said Agreement stipulates that *“the First Party, the 1<sup>st</sup> Respondent, shall construct the apartments together with all facilities and try the utmost possible to finish the work on or before 31.12.2011 and possession will be handed over within 15 days after completion provided the entire amount due to the First party from the Second Party, the Complainant, shall be paid by the Second Party.”*

7. Even though the 3<sup>rd</sup> Respondent/ Land Owner, did not appear before the Authority or submit his Counter statement



on the complaint, he filed a reply statement in the suo-motu proceedings initiated by the Authority regarding registration of the project under Section 3 of the Act, in which he submitted that he is not a promoter of the said project but a Joint Venture agreement was executed between him and the 1st Respondent regarding construction and development in his 20 cents of land and as per the terms of said agreement, 27.5 % of the undivided share of the property has been retained by him and after completion of the project, 27.5% of the built-up space has been agreed to be handed over as consideration. A power of attorney was also executed by him in favour of the 1st Respondent. The 3rd Respondent also states that he can in no way be termed as the promoter as he never advertised, marketed, or offered for sale any of the apartments in the project or accepted any amount from anyone. But the copy of said Joint Venture agreement is not produced by any of the parties. Anyhow, it is evident that it is a residential real estate project, constructed on the land owned by the 3rd Respondent, promoted and marketed by the 1st Respondent. The contention of the Respondents No.1&2 that "the complaint is filed beyond the time limit of the Act 2016 and it is liable to be dismissed as it is not maintainable before this Authority" has no significance because the project in question has not obtained any fire NOC or occupancy certificate till date and the project itself is not completed as promised to the allottees which is clear from the documents and the hearings conducted in this complaint. As per Section 3(1) of the



Act 2016, the projects that are ongoing on the date of commencement of the Act ie; 01.05.2017 and for which occupancy certificate has not been issued shall be registered before the Authority. The Hon'ble Supreme Court of India in M/s Newtech Promoters and Developers Pvt Ltd. Vs State of U.P and others, has clarified it as follows: *"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 on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016"*. Hence it is obvious that the above complaint is maintainable before this Authority and comes under the provision of the Act, 2016.

8. The contentions elevated by the 1<sup>st</sup> Respondent in his statement of objection that "the builder is not made a party and the 1<sup>st</sup> Respondent is impleaded in his personal capacity and he is having no personal obligation with the Complainants or with the work or amount claimed in the proceedings" have no legal footing because Section 25 of the Indian Partnership Act, 1932 lays down the general rule that "every partner is liable for all acts of the firm done while he is a partner and that the liability is joint and several and an act of the Firm is an act or commission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm". The 1<sup>st</sup> Respondent's



contention that “the Complainants are also the plaintiffs in a civil suit filed by the allottees of the project and so this complaint is not maintainable” also has no relevance because Section 79 of the Act 2016 stipulates that “*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*” The argument of the Respondent/Promoter that another person named Babu was appointed by the Association and paid some amount for completion of work etc. cannot be acceptable as no documents have been placed on record to substantiate these claims and moreover to show that the Respondent/Promoter got relieved from his subsisting obligations as per the terms of agreements. The Respondent/ Promoter cannot be escaped from any of his obligations specified under the provisions of Section 11 of the Act, 2016 towards the allottees including the complainants herein.

9. Another contention raised by the Respondent/Promoter that ‘the Complainants were assigned with the apartment in 2014 itself before the commencement of the Act is also found unsustainable as it is mentioned in the Exbt. B3 Sale Deed itself that “the building is not fully finished” and “....1/32



undivided share in the Schedule A property together with the incomplete apartment marked as 6F....". Form 1B attached to the sale deed shows that the building is not completed. The 1<sup>st</sup> Respondent himself admits in his counter statement that the work was not completed at the time of execution of said sale deed. Even otherwise, the Respondents 1 and 2 cannot flee from their promise to complete the project, simply by executing a sale deed in favour of the Complainants. The Complainants also raised serious allegations that the Respondent/Promoter has sold flats to multiple people and so there are multiple claimants for each flat. A list showing the names of multiple claimants for some flats is also produced by the Complainants which is marked as Exbt. A4. But no other documents corroborating the said contention were placed before us. As per the Exbt. A2 agreement, the promised date of completion and handing over was 31.12.2011 but unfortunately the project still remains incomplete even after a huge delay of 10 ½ years. Hence it is clear that the Respondent/Promoter has failed pathetically to perform his part and honour the promises given to the Complainants who trusted him and invested their hard-earned savings and have been waiting for a long period in the dream of a roof over the head. The Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/S Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows:

*"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”.*

10. In view of the above facts and circumstances, it is found that the Respondents No. 1&2, the Promoters have failed to complete and hand over possession of the apartment to the Complainants herein in accordance with the terms of the agreement for sale and so the Complainants in the above complaint are entitled to withdraw from the project under Section 18 of the Real Estate (Regulation & Development) Act 2016, and claim return of the amount paid by them to the Respondents along with interest from the date of payment till the date of receipt of the amount with interest. Hence Points 1 &2 are answered accordingly in favour of the Complainants.

11. The Complainants paid the amount as instalments as detailed below on the respective dates. The payment receipts issued by the Respondents/Promoters are produced along with the complaint and marked as Exbt. A5 Series.



### Payment Schedule

<u>Date</u>	<u>Amount Paid</u>
08/03/2011 -	Rs. 25,000/-
04/05/2011 -	Rs. 4,75,000/-
13/05/2011 -	Rs. 2,00,000/-
21/05/2011 -	Rs. 50,000/-
26/05/2011 -	Rs. 50,000/-
04/02/2012 -	Rs. 2,60,000/-
28/04/2012 -	Rs. 1,25,000/-
29/12/2012 -	Rs. 1,75,000/-
31/10/2013 -	Rs. 1,00,000/-
21/05/2014 -	Rs. 5,00,000/-
<hr/>	
Total -	Rs. 19,60,000/-

12. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter to the Allottee shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. Hence, the Complainants herein are found entitled for getting refunded the amount of Rs. 19,60,000/- paid by them, along with interest @ 14.75% per annum, from the date of payment till the date of receipt of the amount. But the Complainants herein shall reconvey the property transferred to them as per the Sale Deed No. 3564/2014 dt. 26.05.2014 to the Respondents/Vendors therein.



13. On the basis of the above facts and findings, invoking Section 37 of the Act, this Authority hereby directs as follows:

- 1) The Respondents No. 1&2 are directed to return the total amount received by them, **Rs.19,60,000/-** to the Complainants with simple interest @ 14.75% per annum, from the date of payment of amounts by the Complainants as per the above-mentioned payment schedule, till the date of refund of the total amount with interest.
- 2) The Complainants shall reconvey the property transferred to them as per the Sale Deed No. 3564/2014 dt. 26.05.2014 to the Respondents/Vendors therein for which the Respondent No. 1 &2 shall make arrangements and bear the expenses for registration of said Deed.
- 3) If the Respondents No.1&2/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 No. 1&2 and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.





Both parties shall suffer their respective costs.

Sd/-  
Preetha P Menon  
Member

/True Copy/Forwarded By/Order/

Secretary (Legal)

**APPENDIX**

**Exhibits produced by Complainants**

1. Exhibit A1- True Copy of the Agreement for Sale dated 04.05.2011
2. Exhibit A2- True Copy of the Agreement for Construction dated 04.05.2011
3. Exhibit A3- True Copy of the Sale Deed dated 26.05.2014.
4. Exhibit A4- True copies of Details of Multiple claimants
5. Exhibit A5 series- True copies of Details of payment/Bank/Receipts.
6. Exhibit A6- True Copy of Pancard, Aadhar card Residence Proof, Telephone No.
7. Exhibit A7- True copy of Kerala Government Letter.
8. Exhibit A8- True copy of Print out of Brochure.

**Exhibits produced by Respondents**

1. Exhibit B1- True copy of the Original Suit No. 97/2016 filed before Sub Court, Ernakulam
2. Exhibit B2- True copy of the written statement to the O.S.
3. Exhibit B3 – True copy of the Receipt dated 21.10.2016.

**Other documents**

1. Exhibit X1- Site Inspection Report dated 02/03/2022.

