



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 168/2021

Dated 08th October 2021

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

Complainant

George Varghese &
Rachel Renu Zachariah
(Represented by Power of Attorney Holder
Pattathil, Kottamugal,
Nalanchira P.O,
Thiruvananthapuram-695 015.

Respondents

1. M/s. Samson & Samsons Builders & Developers Private Ltd,
Kaliveena Building, Muttada P.O
Thiruvananthapuram-695025, Rep by Managing Director-
Mr. John Jacob
2. Mr John Jacob, Managing Director,
Samson & Samsons Builders & Developers Private Ltd
Kannimattom TKD Road
Muttada P.O, Trivandrum
3. Samuel Jacob, Director
Samson & Samsons Builders & Developers Private Ltd
TC.No.3/678,Kannimattom TKD Road
Muttada P.O, Trivandrum
4. Jacob Samson,
TC.No. 3/678, Kannimattam, TKD Road

The above Complaint came up for virtual hearing today. The Complainant and the Counsel for the Respondent, Adv. Douglas Linsby has attended the hearing.

ORDER

1. The case of the Complainant is as follows: The 1st Respondent is a promoter company registered under the Companies Act and on 18.11.2015, Respondent No: 2 and 3 has entered into an agreement for sale and construction with the Complainant with respect to the purchase of an apartment 14-D on the 14th floor of the residential apartment project named 'Samson and Sons Sanctuary-Skylark' along with undivided shar0.988 cents in 178 cents of land. In the agreement, the Respondent has agreed to complete the said project by December 2019. As per the agreement, the Complainant paid an amount of Rs 25,00,000/- as advance on 18.11.2015. The receipt of payment is attached. But the 1st Respondent have not completed the said project which he had agreed to complete before December 2019 and did not repay the advanced amount of Rs.25,00,000/- which is paid by the Complainants to the Respondent. Thus, the Respondents have violated the terms and conditions of the agreement executed on 18/11/2015. The relief sought by the Complainant is for return of amount of Rs.25,00,000/- paid by the Complainant as advance at the rate of 10% interest from the dates of payment to till date. The documents produced by the Complainant are copy of agreement for sale & Construction, Payment Receipts, Copy of building permit dated 14/06/2013, Copy of NOC from Airports Authority of India.



2. The Respondents have filed Objection alleging that the application seeking compensation is not maintainable either in law or on facts. The claim for compensation is filed by the Complainant without any Bonafide. The application is silent with respect to the allegations of violations or contraventions committed by the developer against the provisions of the Act or the rules and regulations made there under. It is the duty of the Complainant to establish what provisions of law are violated by the Respondents. In the absence of such averments, the Complaint is not maintainable. The alleged transactions stated in the Complaint were taken place prior to the establishment of the Authorities under the act. There are no provisions incorporated in the statute stating that the provisions of the Act have retrospective effect. Hence, the penal liabilities and other liabilities cannot be attributed against the Respondents as per the provisions enshrined in the Constitution of India. It is submitted the averments contained in para 4 of the application seeking compensation are not fully correct and hence denied. No demand notice issued under the provisions of the Act. The act came into force on 01-05-2017. Therefore, it is crystal clear that the applicant has ceased to have any contract with the Respondent at the time of the enactment. Hence, there is no consideration in support of the agreement. As per the provisions of the Act, the applicant has to make a demand for return of amount. There is no demand made by the applicant for the return of the amount and hence the applicant cannot seek a remedy under section 18 of the Act and further submitted that two complaints were filed by this Complainant before the Adjudicating officer seeking similar remedies. The Complainant intentionally suppressed all those facts in his Complaint and hence the Complaint is not at all maintainable as per the principles of Res judicata. It is true that an agreement was entered into between the Complainants and the Respondents as alleged. But the agreement was cancelled according to



the wish of the Complainant which is suppressed in the Complaint. Therefore, the question of any delay or latches on the part of the builder cannot be attributed. The apartment allotted to the Complainant was one among the entire project name as "Sanctuary Skylark". Since, the agreement between the parties was cancelled orally in the year 2016, the applicant cannot make any claim under the provisions of the Act on the basis of the said agreement. The original agreement is not in the custody of the Complainant. Therefore, the case of the Complainant is not at all maintainable. The documents relied on by the Complainant are objected by the Respondents on the ground that no original documents were produced before the Authority and some forgery and manipulation with regard to settlement of accounts and detailed evidence is necessary in this regard. The documents relied on by the Complainant are not genuine, which cannot be admitted in evidence before testing the veracity of the documents. Several police cases were registered against the Respondents at the instances of the Complainants too and almost all documents including the statement of accounts, computers, registers etc were taken over by the police (Crime Branch) in connection with the police investigation. The Respondents were also in judicial custody for more than 21 days and during this period most of the office records were taken over by some interested parties. Hence the documents relied on by the Complainant are all disputed documents and hence cannot be admitted in evidence. Respondent builder is the first professionally managed builder in more than 10 years of expertise and trust. The company has gained the distinction of having pioneered residential high – raise construction in Thiruvananthapuram. There is no compromise whatsoever in the quality of the material used, strength or durability of any of the buildings constructed by the Respondent builder. There is no violation of any contract between the parties as there is no contracts with due



consideration. The property wherein the alleged project is proposed to be completed is presently occupied by the State Bank of India under the provisions of the SARFAECI Act. The Complainant and the other customers who have booked separate units in the project have miserably failed to make prompt payments as agreed and hence the Respondents could not complete the project as agreed. At the same time this case is filed seeking paid amount with interest is truly maintainable before the Authority but the principles of limitation for the same barred the claim. The claim is moved in the year 2021, after the lapse of five years of the enactment of the provisions of the Act. Hence the Complaint is barred by limitation also. The rate of interest claimed is also exorbitant and against the provisions of law. The aggregate amount claimed with interest is not mentioned in the Complaint. The Respondent has not filed any counter to the Interest calculation statement filed by the Complainant. During the hearing on 08/10/2021, the Respondent admitted that they abandoned the project. No documents have been produced from the part of the Respondents.

3. After hearing both sides and perusing the documents placed on record, it is clearly found that the Respondent/Promoter has grievously failed to complete the project as per the terms of agreement. It is also understood that though the Respondent agreed to complete and hand over possession of the project by December 2019, the Respondents failed to complete the project and hand over it to the Complainant till date and more over the land proposed itself has been mortgaged with the State Bank of India. The Authority has received so many complaints against this Respondents/Builders and it is revealed that the Respondents are habitual offenders by whom a lot of innocent home buyers got trapped and cheated. In this case, after having the amount of Rs. 25 Lakhs, from the Complainant and without honouring the promises made to him, how



could the Respondent shamelessly make statements such as “the documents relied on by the Complainant are not genuine, Several police cases were registered against the Respondents and almost all documents including the statement of accounts, computers, registers etc were taken over by the police (Crime Branch) in connection with the police investigation, the Respondents were in judicial custody for more than 21 days and during this period most of the office records were taken over by some interested parties, and the property wherein the alleged project is proposed to be completed is presently occupied by the State Bank of India under the provisions of the SARFAECI Act, the Complainant and the other customers have miserably failed to make prompt payments as agreed and hence the Respondents could not complete the project as agreed” and so on. It is most unfortunate that even the reputed financial institutions are ready to give finance to such offenders very easily. The complainant herein paid the amount in the year 2015 itself but the Respondent could not complete the project till date and moreover the vacant land itself has been mortgaged with the Bank. It is also admitted by the Respondents that several criminal cases are pending against the Respondents in various courts and the Complainant herein also filed a complaint u/s 138 of Negotiable Instruments Act, 1881 against this Builder. Even then the Respondent is bold enough to claim that “he is the first professionally managed builder in more than 10 years of expertise and trust, his company has gained the distinction of having pioneered residential high-rise construction in Thiruvananthapuram and there is no compromise whatsoever in the quality of the material used, strength or durability of any of the buildings constructed by the Respondent builder.”



4. 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, in 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”*. Hence, the Complainant herein is entitled to get the refund of amount along with interest and Respondent is liable to refund the amount along with the interest as prayed for. 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. However the Complainant herein prayed for refund of the



amount of Rs. 25 Lakhs paid by him along with interest at the rate of 10% per annum from 18.11.2015, the date of payment in the complaint. Later he has filed interest calculation statement and claimed refund of Rs.25 Lakhs along with interest @ 9.30% (7.30+2%) interest from 18/11/2015. Exbt.A1 to A4 are the documents produced from the side of the Complainants and no document is seen produced from the part of the Respondents. The rule eligibility of around 14% interest was brought to the notice of the Complainant at the time of final hearing. But he says that he prays only 9.30% interest as given in the claim.

5. On the basis of the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order:-

1. The Respondent is directed to return the amount of **Rs.25,00,000/-** to the Complainant @ 9.30% simple interest per annum from 18.11.2015 the date of payment, as claimed by the Complainant through statement of computation of interest submitted on 03/09/2021, till realization.

2. If the Respondent 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 and its assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

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)

Exhibits**Exhibits marked from the Side of Complainants**

Ext.A1- copy of agreement for sale & Construction.

Ext.A2 Series - Payment Receipts.

Exbt.A3 - Copy of building permit dated 14/06/2013.

Exbt. A4 – Copy of NOC from Airports Authority of India.

