



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 244/2022

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

Dated 16-09-2023

Complainant

Hariharan Nair,
Anugraham, Shivaji Road,
Khese Park, Lohegaon, Pune,
Maharashtra- 411032

Respondents

1. Motiff Builders & Developers Pvt. Ltd
Padamugal, Kakkanad,
Kochi – 682021
2. Althaf M.Y ,
MD, Motiff Builders & Developers,
Padamugal, Kakkanad,
Kochi – 682021
3. T.H Salim,
Thacharukudy House, Mudickal P.O,
Marampilly, Ernakulam.
4. Rajeena Salim
Thacharukudy House, Mudickal P.O,
Maram pilly, Ernakulam.



The above Complaint came up for virtual hearing on 29-05-2023. The Counsel for the Complainant was represented by Adv. Asok Kumar and Adv. Sreekumar for the Respondents 1 & 2 attended the hearing. Respondents 3 & 4 were absent. The project is registered with the Authority under section 3 of the Act, vide Reg No. K-RERA/PRJ/ERN/174/2022 and was valid till 28/02/2023.

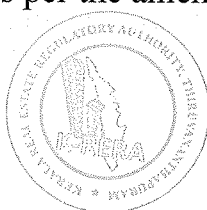
ORDER

- (1) The Complainant had booked a flat, 2A, in the project "Grand View" located at Aluva of the Respondent Builder, M/s Mottiff Builders & Developers Pvt. Ltd. The complainant had submitted that they had executed an agreement with the respondents for the purchase of undivided shares of land and the construction of the apartment 2 A, having super built-up area of 1456 Sq. Ft. along with carparking, at a total cost of Rs.29,56,750/-.
- (2) The Complainant further submitted that he had been paying the installment amounts to the Respondents in a prompt and regular manner and the progress of construction was in a dead slow pace. Later the entire works were stopped and remained so till the year 2019. The Respondents had collected 70% of the total cost before completing the structure of the building. The Complainant states that he had paid a total amount of Rs. 32,73,100/- to the Respondent and as per the agreement entered with the Respondent, the project was to be completed in all respects on or before 31.12.2011 and possession was to be handed over. When the Complainant came to know the actual condition of the construction it was too late and the Respondents were very negligent and progress of the work remained still. The flat is being completed in a dead slow pace and amenities are incomplete. The Registration of sale deed and handing over of the flat are to be done.



(3) The reliefs sought by the complainants.

- (1) Issue appropriate orders to complete the flat in all respects as per agreement and hand over within one month time.
- (2) Penal interest from the Respondent for the amounts paid by the Complainant from 31.12.2011 as per sec 18 of the Act and other reliefs were not considered by the Authority.
- (4) The Respondents 3 and 4 filed their objections and stated that by virtue of a joint venture agreement dated 07.10.2008 the 1st respondent was permitted to construct a 12 storied apartment in the land having an extent of 25.9 cents. It was further stated that on 17.01.2009 a power of attorney was executed in favour of the 2nd Respondent empowering him to enter into all kinds of agreements including sale agreements, construction agreements and to execute necessary documents like building permits etc.
- (5) The Respondents 1 & 2 filed their objection in which they allege that the allottees who have booked the apartments in the project "Grand View" had entered into agreements with the Respondents but has not paid the full amounts and the project could not be taken forward. The Respondent further submits that the project was completed and obtained K-RERA registration on 26-10-2022 and later the registration was extended on 28-03-2023 and is valid upto 31-08-2023. The Respondent further states that the final clearance from the Department of fire and Rescue services is pending and once the same is obtained the 1st Respondent/ Builder will execute the sale of the said apartment to the Complainant. The Respondent submits that he had carried out the electricity and water connections of the apartment number A on the 2nd floor allotted to the Complainant for Rs.58,150.50 at the expense of the builder and the Complainant is liable pay back the amount to the Respondent No.1 and the sale deed registration and statutory charges at the time of execution of the sale deed.
- (6) The Complainant filed IA 69 of 2023 for amending the reliefs part in the complaint. The reliefs as per the amended complaint is as follows.



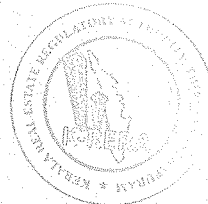
- (1) Issue appropriate orders to complete the flat in all respects as per the agreement and handover possession and key within one month time.
- (2) The respondents have been making promises of completion and handing over the project many times. Since none of the promises have been fructified, respondents may be directed to fix a final cut out date for completion of all amenities in flat and file affidavit in this regard.
- (3) Title deed of flat may be directed to be registered in the name of Complainant within one month time.
- (4) Delay interest to be paid by the Respondent for the amounts paid by the Complainant from 31.12.2011 till realisation as per Sec. 18 of the Act.
- (7) The counsel for the complainant submitted that he was insisting only on the fourth relief and the IA No. 69/2023 was admitted accordingly. The Authority heard the learned counsel for both the parties and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced by the Complainant is marked as **Exbt.A1 to A5**. The documents produced by the Respondents is marked as **Exbt.B1 to B4**.
- (8) **Exhibit A1** is the copy of the agreement dated 20-06-2010 entered into between the complainant and the 1st Respondent represented by the 2nd Respondent and other respondents. As per the agreement, the respondents had agreed to sell the apartment No. A on the 2nd floor having a super built-up area of 1465 sq.ft together with Car park No. 11 on the ground floor, along with 1/34, undivided share in the A schedule property and the right to use the common areas and common amenities described in Schedule E for a total consideration of Rs. 29,56,750/- (cost of the apartment is Rs.28,06,750 and Rs. 1,50,000/- is the cost of undivided share of land). The Complainant had paid Rs, 7,50,000/- to the 1st Respondent as advance towards the consideration and had undertaken that he shall pay the balance consideration of Rs. 22,06,750/- being the balance cost of the apartment allotted to him, along with all statutory taxes



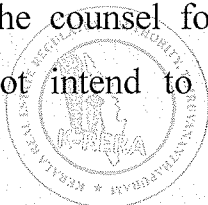
and charges. It is also stated in the agreement that Respondent shall complete the construction within 31.12.2011 subject to the allottee fulfilling obligations as per the agreement. It is also confirmed that the handing over possession of the apartment to the allottee shall be 45 days of completion of its construction or after receipt of the entire payment by the allottee as provided in the agreement, which ever is later.

- (9) **Exhibit A2** is the copy of the account statement showing the payments made by the complainants to the Respondents. **Exhibit A3** is the copy of the mail dated 06-02-2017 of the complainant forwarded to the Respondent expressing his dissatisfaction at the progress of the work and the delay in completion. **Exhibit A4** is the mail dated 11-01-2021 requesting completion and execution of the sale deed. **Exhibit A5** is the statement showing the detail of the payment and is as detailed below.

Sl.no	Date of Payment	Amount paid
1.	05-10-2009	50000
2.	07-04-2010	50000
3.	07-04-2010	100000
4.	07-04-2010	100000
5.	07-04-2010	100000
6.	07-04-2010	100000
7.	30-04-2010	100000
8.	30-04-2010	50000
9.	22-06-2010	100000
10.	12-08-2010	300000
11	29-03-2011	431750
12.	29-03-2011	591750
13.	24-05-2011	220675
14	24.10.2011	220675
Total		25,14,850/-



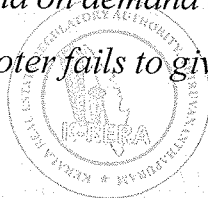
- (10) **Exhibit B1** is the copy of the Joint Venture Agreement dated 07-10-2008 entered into between the 3rd and 4th Respondents (landowners) and the 1st Respondent represented by the 2nd Respondent. (Builder) in which the 1st respondent was permitted to construct a 12 storied apartment in the land having an extent of 25.9 cents. It was further stated that on 17.01.2009 a power of attorney was executed in favour of the 2nd Respondent empowering him to enter into all kinds of agreements including sale agreements, construction agreements and to execute necessary documents like building permits etc.
- (11) **Exhibit B2** is the Copy of order in CC.121/2015 of the Kerala State Consumer disputes redressal commission Vazhuthacaud, Thiruvananthapuram dated 03.06.2019, directing the 1st and 2nd respondents to complete the work and pay compensation to the 3rd and 4th Respondent. Execution petition has been filed, in the above complaint before the CDRF and the same is pending according to R3 and R4. **Exhibit B3** is the copy of the order in complaint No. 31/2022 dated 26-08-2022, an identical complaint filed before this Authority, in the said order Respondents 1 and 2 were directed to return the amount paid under section 18 of the Act, 2016. **Exhibit B4** is the statement of accounts showing payments and dues by the complainant to the Respondent.
- (12) The secretary, Aluva Municipal corporation attended on 21-03-2023 and submitted that the permit issued to the promoter had expired on 2017. The completion certificate submitted on 05-05-2022 by the 3rd and 4th respondents before the municipality can be considered only after regularisation of the permit and obtaining clearances from fire and rescue department, Airport Authority and Pollution Control Board. Even after the above submission, the counsel for the complainant confirmed that the complainant does not intend to withdraw from the project. The 2nd



respondent had uploaded an affidavit on the website of the project on 12 - 09-2023 confirming the fact that what is stated by the secretary, Aluva Municipality was true.

- (13) 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 not 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”*. Here, in this case the Allottee is entitled to claim interest for delay in handing over possession of the apartment as the promoter failed to handover possession of the apartment within the time stipulated in the agreement.

15. 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 not 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". On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to get delayed interest for every month of delay till handing over possession as per the Act, 2016.

- (14) Since the Respondents have failed to complete and hand over possession of the apartment to the Complainant as per the agreement the Complainant is entitled to get interest for every month of delay, till the handing over of the possession at rate prescribed under Rule 18(1). Rule 18 (1) of the rules 2018 states that the annual rate of interest payable by the promoter to the allottee shall be the state bank of India bench mark prime lending rate + 2% and shall be computed as simple interest SBI PLR rate is 14.85 %. Hence the rate of interest payable is 16.85 percentage on Rs 22,06,750/- from the promised date to the date of handing over of the possession of the apartment. Rule 18 (2) of the Kerala Real Estate (Regulation & Development) Rules 2018 stipulates that "*In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agreed date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale*". The payment schedule as per the agreement is given below.



SL No.	Details of Stages	Payment Amount
1.	At the time of Agreement	5,51,688/-
2.	On completion of foundation	2,20,675/-
3.	On completion of First floor slab	2,20,675/-
4.	On completion of Third floor slab	2,20,675/-
5.	On completion of Fifth floor slab	2,20,675/-
6.	On completion of seventh floor slab	2,20,675/-
7.	On completion of Ninth floor slab	2,20,675/-
8.	On completion of Tenth floor slab	2,20,675/-
9.	At the time of Handing over	1,10,337/-
Total Amount		22,06,750/-

16. It is stated in the Exhibit A1 agreement that an amount of Rs 7,50,000/- was received as advance from the allottee towards consideration and the balance amount due is Rs 22,06,750/-. The total amount paid before the promised date as confirmed in the Exhibit B4 statement is Rs 25,14,850/-

17. Hence, the Complainant herein is entitled to get interest for the delay on Rs.25,14,850/-. which is the amount paid by the Complainant to the Respondents and the Respondents are liable to pay interest to the complainant according to Section 18 of the Act, 2016 for the period from 15.02.2012 which was the promised date of completion, till the date of handing over possession.

18. 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 14.85% with effect from 15/06/2023. The Complainant is entitled to get 16.85% simple



interest on Rs 25,14,850/, from 15.02.2012, till the date of handing over of possession.

19. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions: -

- (i) The Respondents shall pay interest on Rs 25,14,850 for every month of delay from 15.02.2012, till the handing over of possession, at 16.85% computed as simple interest, after deducting the defaulted payment as per the agreement and executing sale deed in favour of the complainant, upon receipt of the occupancy certificate.
- (ii) If the Respondents fail 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 above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.


Sd/-

Sri M.P Mathews
Member

Sd/-

Sri. P H Kurian
Chairman

True Copy/ Forwarded By/Order


Secretary (legal)

Exhibits marked from the Side of Complainants

Ext.A1- Copy of agreement dated 22/06/2010.

Ext A2 - Copy of Account Statement.

Ext A3 - Copy of the mail dated 06-02-2017

Ext A4 - Copy of the mail dated 11-01-2021

Ext A5 - Copy of the detail statement of Payments made by the
Complainant to the Respondent.

Exhibits marked from the Side of Respondents

Ext.B1- Copy of Joint Venture agreement dated 07.10.2008

Ext B2 – Copy of order in CC.121/2015 of the Kerala State
Consumer disputes redressal commission Vazhuthacaud,
Thiruvananthapuram dated 03.06.2019.

Ext B3- Copy of the Order in CNo. 31/2022 of the Kerala Real
Estate regulatory Authority.

Ext B4 - Statement of accounts showing payments and dues by the
complainant to the Respondent

