



**KERALA REAL ESTATE REGULATORY AUTHORITY**  
**THIRUVANANTHAPURAM**

Complaint No: 252/2021

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

Dated 31<sup>st</sup> January 2022

**Complainant**

Renji Abraham  
Chackalayil House,  
Devalokam P O, Kottayam 686038  
(Adv. Thomas T Varghese)

**Respondent**

1. M/s BCG Estates Builders & Hotels Private Ltd,  
Represented by its Director Renu C Babu,  
5<sup>th</sup> Floor BCG Estate, Bypass Road,  
Palarivattom, Kochi- 682 025  
(Adv. Praveen)
2. Renu C Babu  
Director, M/s BCG Estates Builders & Hotels Private Ltd,  
Villa No. C,  
BCG Bungalow Annex,  
Vennala P O, Ernakulam 682028



3. Rekha C Babu  
Director, M/s BCG Estates Builders & Hotels Private Ltd,  
5<sup>th</sup> Floor, BCG Estate, Bypass Road,  
Palarivattom, Kochi-682 025

The above Complaint came up for virtual hearing today. The counsel for the Complainant Adv. Thomas T Varghese and counsel for the Respondent Adv. Praveen attended the hearing.

### ORDER

1. The facts of the case are as follows- The 1<sup>st</sup> Respondent is the builder and developer and the 2<sup>nd</sup> & 3<sup>rd</sup> Respondent are the persons in charge of the 1<sup>st</sup> Respondent Company. The Complainant along with his mother and sister-in-law were the joint owners of property having an extent of 38.13 cents of land comprised in Re-survey No. 17-1, 2, 3 of Muttambalam Village, Kottayam District. The Respondents approached the Complainant for the development of the said land by constructing a multistoried residential Apartment complex by the name 'BCG Mars' in the said property and accordingly, they entered into a joint venture agreement dated 11.03.2007 with property owners. In consideration of the land contributed and its corresponding value, the Respondent agreed to construct and hand over an extent of 16530 sq ft accounting for 25% of the total extent of 66120 sq. feet of the super built-up area by way of residential apartments in the apartment complex proposed to be constructed along with car park for each of the apartment. Accordingly, Apartments bearing numbers 10 A measuring 1650 sq. ft, 10B measuring 1351 sq.ft, 10 C measuring 1650 sq ft, and 10 D admeasuring 1958 sq.ft in the apartment complex were set



exclusively towards Complainants share in the land. The Completion time stipulated in the agreement was 36 months from the date of the agreement, failing which the Complainant is liable for compensation at predetermined manner till the date of actual handover. There was a delay on the part of the Respondent and were not able to complete the project on time. It is submitted that due to non-completion of the Project, many other allottees have approached the forum and the other co-owners were also arrayed as parties in the said litigations for no fault of theirs. In 2007, the Respondents asked the Complainants for an interchange in the apartments from BCG Mars to another Project named 'BCG Misty Meadows' at Kakkadnad, Ernakulam which would fetch them better value to the transferred property. The Complainant agreed to take up a new Apartment in lieu of the apartments initially allotted to him. The Complainant was eligible for one-third of the floor area allotted to the landowners in the agreement. If the allotted floor area is less, then the Complainant was eligible for a refund of Rs. 1650/- per sq ft. Accordingly, an agreement dated 10.04.2008 was executed by the Respondents and Complainant to that effect. As per which the new allotments in exchange of Apartments No. 10A,10B and 10 D were Apartments no. 1 D on the 1<sup>st</sup> Floor measuring 1397 sq. ft, 3E of the third floor measuring 1070 sq.ft, 12 D in the twelfth floor measuring 1397 sq. ft in the Project name ' BCG Misty Meadows, Kakkanad'.

2. The Complainant submitted that on the promises from Respondents, the Complainant had relinquished his rights over the apartments bearing 10 A, 10B and 10D with respective car parking area in favour of the respondents. Later, the Respondents handed over the possession of Apartment No 1D, 3 E and 12D in 'BCG Misty



Meadows' to the Complainant and the Respondents promised that the sale deeds will be executed on completion of the entire Project. After repeated requests, the same was not done. After much persuasion, the 2<sup>nd</sup> Respondent executed Sale deed No. 587/2021 of SRO, Thrikkakara on 23.02.2021 in respect of Apartment No. 3 E in favour of Smt. Sheethal Athul Dwaraka, an assignee of the Complainant at his direction and instruction. Even after repeated requests, the sale execution of the other two apartments has not been taken place so far. The Respondents are deliberately delaying the matter and due to this, the Complainants have been put to great loss and hardship by the Respondents. The Complainant has informed the Respondents of his readiness to bear the expenses for registration. The Complainants have issued a legal notice asking for the same and in reply, the Respondents have admitted the facts and raised untenable grounds for their failure to do so. The failure on the part of Respondents has caused undue agony and stress to the Complainant. Hence, the Respondents are liable to compensate the Complainant for the inconvenience, hardship, mental agony, and tension suffered by him and the Complainant reserves his right to do so. The cause of action of this Complaint arose at Ernakulam on 16.08.2021 when the Respondents have failed to register the sale deeds of the two apartments in favour of the Complainant in spite of written demand, within the territorial jurisdiction of this Hon'ble Authority. The relief sought for are (i) to direct the respondents to execute and register Apartment No. 1 D & 12D in BCG Misty Meadows Apartment complex at Kakkanad in favour of the Complainant, (ii) to take cognizance of the default and offenses committed by the Respondents under sec60 of the Act and impose punishment on the Respondents, (iii) to order to recover the cost of



this procedure from the Respondents and their personal assets. The Documents submitted by the Complainant are marked as Exhibit A1 to A4.

3. The Respondents have filed a written statement and submitted that the petition is not maintainable either in law or on facts. They submitted that the Complaint is hit Section 3(2) (b) of the Act. The alleged Project under which the Complainant claims his reliefs has obtained completion certificate from the Competent Authority in 2011 itself and therefore the Project against which the Complaint has been raised, need not be registered Project under Act and therefore no reliefs can be claimed by the Complainant under this Act and accordingly from this Authority. The Complaint pertains to the Agreement of the year 2007 and Project which has obtained completion certificate from the competent authorities in the year 2011, that is well before the date on which the Act came into force. There is no retrospective effect for this Act and therefore this Authority has no jurisdiction to entertain this Complaint. Here, a promoter had filed a complaint against another promoter of the same Project, for which this Authority has no jurisdiction. The Complainant herein was the owner of the property wherein the Respondents have constructed a multi-storied apartment and as costs to the property, the alleged flats mentioned in the complaint have been allotted and handed over possession to the Complainant. Furthermore, one of the flats has been sold by the Complainant to a third party. These being the facts the remedy available to the complainant is to file a complaint before the appropriate forums and not before this Authority. In light of the given legal impediments in the Complaint, the question of maintainability may be heard first as the preliminary issue. The reliefs sought by the Complainant are not



allowable by this Authority in the light of above mentioned legal and factual objections raised by the Respondents and which the Complainant has raised without any foundations or evidence to substantiate the same and hence the Complaint may be dismissed. The Document submitted by Respondent is marked as Exhibit B1.

4. Heard both parties in detail and examined the documents submitted by them. The issue of maintainability was heard as preliminary issue as desired by the parties. After hearing and perusing the documents submitted by the parties it is found that the project was completed in the year 2011 and Occupancy Certificate was obtained on 23.03.2011 itself, prior to commencement of the Real Estate (Regulation & Development) Act 2016. As per the judgement dated 11.11.2021, passed by the Hon'ble Supreme Court of India in M/s Newtech Promoters & Developers Pvt. Ltd Vs State of U P & Others, *"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 projects that has already been completed or to which the Occupancy Certificate has been granted prior to commencement of the Act 2016.



In view of the above, the Complaint is hereby **dismissed**. The Complainants can approach appropriate Forum for getting their grievance redressed.

Sd/-  
Smt. Preetha P Menon  
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 the Joint Venture Agreement dated 11.03.2007
- Exhibit A2 : True Copy of Agreement dated 10.04.2008.
- Exhibit A3 : True Copy of Lawyer Notice dated 09.082.
- Exhibit A4 : True Copy of Reply Notice dated 16.08.2021

#### Exhibits on the side of the Respondents

- Exhibit B1 : Copy of Occupancy Certificate dated 23.03.2011 issued by Thrikkakara Municipality.

*[Handwritten mark]*