



**REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 269/2021

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

Dated 29th April 2022

Complainants

Jomy T Johny
Theekanath House,
Plot No. 34, Evershine City,
Varadiyam, Avanoor P O,
Thrissur District- 680541
[Adv. Advocate Sreekumar G Chelur]

Respondents

1. M/s Asset Homes Pvt Ltd
G-129, 28/34 A, Panampilly Nagar,
Ernakulam, Kanayannoor,
Cochin- 682036
[Advocate Peeyus A Kottam]
2. M/s Precious Homes and Projects(I) Pvt Ltd.
10/815/16, St. Louis Commercial Complex,
Erinjeri Angadi,
Thrissur P O - 680001



3. V. Sunil Kumar
Managing Director,
M/s Asset Homes Pvt Ltd,
G-129, 28/34 A, Panampilly Nagar,
Ernakulam, Kanayannoor,
Cochin- 682036
[Advocate Peeyus A Kottam]
4. Joe Louis
M/s Precious Homes and Projects(I) Pvt Ltd.
10/815/16, St. Louis Commercial Complex,
Erinjeri Angadi, Thrissur P O- 680001

The above Complaint came up for virtual hearing on 31/03/2022. The Counsel for the Complainant Advocate Sreekumar G Chelur and Counsel for the Respondent 1&3 Advocate Peeyus A Kottam attended the hearing.

ORDER

1. The facts of the case are as follows:- The Complaint is the purchaser/Allottee of Apartment No. 2 G of the 'Asset Precious' residential Real Estate Project situated at Nadathara, Kuttanelloor, Thrissur. The 1st Respondent is the Promoter/ Builder company named M/s Asset Homes Pvt Ltd. registered under the Companies Act, 2013 and is represented by its Managing Director. The 2nd Respondent is a company registered under the Companies Act and is the absolute owner and in possession of the property having an extent of 25.88 Ares of land where the abovesaid 'Asset Precious' apartment Project is being developed. The 2nd Respondent assigned an undivided share of 2% of 25.88 Ares in favour of the 1st Respondent by virtue of Sale Deed No. 1743/2017 of Kuttanelloor SRO. Thus the 1st Respondent is a co-owner of the said landed property along with the 2nd Respondent and now the 1st and



2nd Respondents are the joint owners in the possession and enjoyment of the aforesaid 25.88 Ares of land with full rights of alienation. The 1st and 2nd Respondents are jointly developing the above-said property by constructing a multistoried building and formulating a scheme named 'Asset Precious' consisting of residential apartments containing Basement+ Ground+11 Floors. The 1st Respondent has registered the Project under the provisions of the Act with the Authority at Thiruvananthapuram on 29/02/2020 under Registration No. K-RERA/PRJ/030/2020. The Complainant and the Respondents executed an Agreement for sale of undivided share dated 18.04.2018 to purchase the undivided share in the above-said property. Then the Complainant and the 1st Respondent executed an Agreement for Construction on 18/04/2018 in order to construct an apartment No. 2 G admeasuring 122.49 sq. meters. (1318 sq. feet) of the super- buildup area on the 2nd Floor along with the right of one car parking in covered space marked 2 G in the residential building complex "Asset Precious" for a total consideration of Rs. 76,91,395/- inclusive of all statutory taxes, duties, and charges. The 1st Respondent informed that the total land value amounts to Rs. 22,05,476/- and the total construction cost amounts to Rs. 44,79,592/- with GST 18% amounting to Rs. 8,06,327/-. It was submitted that the GST rate imposed by the 1st Respondent on the Complainant is exorbitant and unlawful. The Complainant is entitled to a refund of the amount collected by the unlawful rate of GST imposed by the 1st Respondent along with its interest, after deducting the lawful rate of GST.

2. The Complainant submitted that the Respondents promised to complete and possession will be delivered by 01.04.2020 by virtue of the Agreement for Construction, but they failed to do so till date. So, the 1st Respondent/Promoter has violated the terms of



the agreement. It was understood from their communication that they had not completed even 30% of the work of the Project. The Complainant is prompt in payment and had paid Rs. 58,55,612/- till date. They are ready to pay the balance number of installments as and when demanded by the 1st Respondent/Promoter according to the project progress milestones. But instead of completing the project by adhering to the timelines, the 1st Respondent/Promoter harassed and pressured the Complainant through its employees and wanted to execute an Amendment Agreement to the Construction Agreement dated 18/04/2018. The Amendment Agreement proposed to bring changes to the heads like 1. Area Bifurcations, 2. Covered Car Parking, 3. Schedule for Delivery of Possession, 4. Compensation, 5. Events of default and Consequences, 6. Maintenance, 7. Defect Liability, 8. Conveyance, 9. Dispute Resolution. The proposed amendments are unilaterally in favour of the Respondents bypassing the lapse and delay that occurred in the construction and handover of the apartment to the Complainant. The amendment proposed was in gross violation of the provision of the Act, 2016 and Rules, 2018. Even after communicating the Complainant's concern, the Respondents compelled them to enter into the agreement by misleading with the name of communication as 'adherence to RERA norms', so that the allottees including the Complainant are fallaciously coaxed to approve it.

3. The Complainant submitted that they ordered and made payment for furnishing the Kitchen interiors using Godrej Interior Modular Kitchen products and wooden flooring from a third-party vendor for around Rs. 2,00,000/-. This was done with the consent of the 1st Respondent. The Kitchen works were already behind schedule and once even after completing the Kitchen floor works, the Respondent/Promoter has not allowed the Complainant to install the Kitchen interior products



citing the non-execution of the proposed Amendment Agreement. Due to this, the materials for the kitchen cabinets that have been brought from Mumbai are lying idle in the third-party vendor's warehouse for months and demurrage is paid and the latter is putting pressure on the Complainant for its early disposal. These were committed by the 1st Respondent in order to pressurize, mentally harass, and use undue influence on the Complainant Allottee to execute the unilaterally biased Amendment Agreement against the Complainant's wish. The Complainant demanded compensation as per RERA norms for the delay caused by the Respondents, but they did not agree to such a proposal. Due to the failure of delivery of possession on the promised date, the Complainant and his family are forced to continue in a rented house by paying Rs. 24,000/- as the rent amount per month. The Complainant submitted that they are entitled to compensation along with interest till date for the failure of delivery within the stipulated time. As the 1st Respondent has not completed the project and failed to deliver the possession, the Complainant is forced to pay pre-EMI @ 9.5% interest towards the housing loan availed from Punjab National Bank Housing Finance Ltd.

4. It was submitted that under the said circumstances, the Complainant has refused to execute the proposed amendment agreement, as it will be prejudicially unfavorable to him and at the same time disentitle his rights to claim compensation for the damages caused by the acts of the Respondent. The Respondent's prima-facie violates provisions of the Act, 2016 attracting penalties under Sec 61 and 69, and also claim for compensation under the provisions of the Act. The Complainant submitted that they are substantially aggrieved, there was substantial injustice caused, was left with no other alternate efficacious and speedy remedy and therefore the interference of the Authority needs to be



invoked. The reliefs sought by the Complainant are- 1. The Authority to monitor the project milestones and deadlines to be achieved, fulfillment of necessary statutory requirements, and setting up of the Association of Allottees by the Respondents for the project until completion of the project including the actual physical delivery of the apartment and common areas to the Association of Allottees is completed, 2. Recalculation of the GST rates levied on the Complainant against the purchase of the apartment by the respondents. 3. Refund of the amount collected by the unlawful rate of GST imposed. 4. Compensation for the failure of completion and delivery of the apartment and for the subsequent loss and damages due to it from the promised date of delivery till the actual delivery date of the said apartment, along with its interest for every month of delay to be paid till date. 5. Compensation for the mental harassment and hardships caused by the 1st Respondent, 6. Cost of litigation, 7. Compensation for the damages suffered by the Complainant.

5. The Complainants filed an IA No. 8/21, a petition to restrain the 1st Respondent from unilaterally terminating the agreement for construction and canceling the petitioner's apartment booking. It was submitted that after the filing of above said complaint the 1st Respondent is refusing to cooperate and has stalled the further construction of the allocated apartment. The 1st & 3rd Respondent are refusing to issue NOC for transferring the current loan in PNB- HFL to another bank. The Complainant had paid Rs. 58,55,612/- so far and the 1st Respondent asked for the remaining payment on 10.11.2021 through e-mail. As the fund was disbursed by the bank, the Complainant asked the Respondent to inform the balance payment to be made, so that it can be approved by the Complainant. The bank informed that they have not received any intimation for the release of funds since last year. Meanwhile, the 1st and

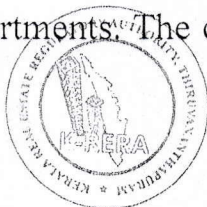


3rd Respondent sent an e-mail communication with a letter attached having subject as "Termination of Agreement for construction dated 18.04.2018" dated 27.11.2021 conveying that the agreements stand terminated due to non-payment of funds and that the allotment of the booking at Asset Precious Project has been canceled. It was prayed by the Complainant to revoke the cancellation of the Construction Agreement by the Respondents and allotment of the apartment booking in Asset Precious Project and direct the respondent to continue the construction work and provide NOC for the transfer of the complainant's current home loan in PNB- HFL to another bank.

6. The Respondents No. 1 & 3 filed the objection and denied the allegations and averments in the complaint. It was submitted that the Complainant had blatantly committed default in paying the agreed sale consideration towards the value of the undivided share of the land as well as the construction cost. The total sale consideration towards the land value and construction cost of apartment No 2G to be paid by the complainant is Rs. 76,19,341/- + Rs. 9,999/- being the flood cess and Rs. 3,05,404/- being the other charges, but the Complainant has paid only an amount of Rs. 58,55,612/- as on 01.12.2020. The Respondent has given a deduction of Rs. 72,054/- towards materials supplied by the Complainant. In spite of repeated requests and demands, the Complainant failed to pay the amount which is legally due as per the covenants in the agreement for sale of land as well as in the construction agreement. Since the Complainant refused to honor his obligation cast upon him as per the covenants in the agreement, in spite of repeated requests and demands, the Respondent was constrained to terminate the agreement for construction entered with Complainant, through letter dated 27.11.2021. The Respondent duly communicated to the Complainant about the termination



of agreement and also informed him about his entitlement to get back the amount advanced by the Complainant as per the agreed terms in the agreement executed with the Respondent. The allegation raised by the Complainant on the GST amount is exorbitant and unlawful. As per clause 15 in the Construction agreement, it was agreed to complete the construction on or before April 2020 and it was agreed to hand over possession on or before November 2020. Clause 17 in Annexure A2 agreement is about the exemption for calculating the period for handing over its property. The construction was progressing as per the schedule but due to the floods of 2018, the basement was flooded and it took more than a month to remove the mud and waste from the basement floor and restart the works there was severe material storage hence the construction was considerably delayed. In 2020, due to the spread of the pandemic, the Respondent was forced to stop the construction because of the lockdown declared by the government. The allegation that till date the complainant has made prompt payments according to the construction timeline and as and when demanded by the first Respondent is incorrect. The last payment of Rs. 5,89,785/- is made by the Complainant on 01.12.2020 and a huge amount is outstanding when the agreement was terminated. The Respondent submitted the application for getting an Occupancy Certificate before the Secretary, Thrissur Corporation in the letter dated 22.12.2021. In compliance with the Act, 2016, the amended agreement is to be registered with RERA Authority. Except for the Complainant, all other purchasers have executed the amended agreement and submitted it to the Authority through online mode. The construction of the project was completed on 28.12.2021 and possession was handed over to the purchasers those who have completed their obligation as per the covenants in the agreement. The purchasers have already started the interior works in their respective apartments. The consent form from the Pollution Control



Board and Fire and Rescue Department has already been obtained and the occupancy certificate is awaiting. The Completion Certificate was submitted along with the application, and in furtherance of the same the said apartment is having a deemed occupancy from 06.01.2022 onwards as per Clause 3 of Rule 20 of Kerala Municipality Buildings Rules, 2019, and the said apartment unit is fit to occupy.

7. The allegation regarding the proposed amendment is incorrect as it was solely for rescheduling the work, payments, and other formalities in the light of consecutive floods in the year 2018 and 2019, the spread of the pandemic, and lockdown. The further allegation that the Respondent through its employee is harassing and adamantly seeking approval to the proposed amendment and its execution from the Complainant is an amendment and its execution from the Complainant is incorrect. The communication sent by the Respondents is self-explanatory and the Complainant ought to have acted considering the honest and sincere efforts done by the Respondent to complete the Project safeguarding the interest of the customers even during the adverse impact of the Pandemic as detailed in these emails. The Respondents have intimated the Complainant about the requirement of registering agreements with RERA, but there was no response from the end of the Complainant. The Respondent has intimated the Complainant to register an amended agreement with KRERA and there was no response. The allegation regarding not allowing the Complainants to install the kitchen interiors is incorrect. Without handing over the possession after clearing the due amount, nobody will be permitted to carry any interior works in the allotted apartments. The Respondent is not aware of the Kitchen cabinets bought from Mumbai by the Complainant and its consequential effects. The allegation that in order to pressurize the Complainant he was mentally



harassed and thereby coerced him to execute the amended agreement is incorrect and against facts.

8. The Respondents further submitted that, considering the force majeure factors the Authority had provided the extension of time for all registered ongoing projects from time to time. As per the order dated 15.05.2020 bearing No. KRERA/T3/102/2020 an extension of six months from the actual agreed date of delivery was given by the Authority. Thereafter, as per the order dated 19.07.2021, a further extension of one year has been granted by the Authority to overcome the hurdles and challenges resulting from the devastating second wave of Covid-19. The time granted was up to 31.08.2022 and it was extended up to 28.02.2023. The Respondent also made a request to the petitioner's bank for the release of the due amount of Rs. 20,79,132/- vide letter dated 11.02.2022, despite the same the Respondent has not received any balance amount yet. Within the extended time, the Respondent has duly completed the Project and handed over the key of the apartments to the customers who paid the sale consideration and performed the obligation as covenanted in the agreement. The contra allegations made in the complaint are incorrect. The averment that due to failure of delivery of possession of the apartment by the 1st Respondent to the Complainant, on the promised date, he and his family are forced to continue in a rented house and he is overburdened to pay an amount of Rs. 24,000/- each month till date and hence he is entitled to get compensation with interest till date from the 1st Respondent for the failure of delivery of apartment and for the subsequent loss and damage due to him from the promised date of delivery till the actual delivery date of this apartment is incorrect, unsustainable and hence liable to be rejected.



9. Heard both parties in detail. The documents produced from the part of the Complainant are marked as **Exhibits A1 to A5** and the documents produced from the part of the Respondents are marked as **Exhibits B1 to B9**. After hearing both parties in detail and examining the documents produced, the Authority is convinced of the delay that occurred in the completion of works in the project as offered to the Complainant and that the Respondents has failed to honour the said promise given to the Complainant. As per **Exhibit A2**, Agreement for Construction, the promised date of completion of the project mentioned is April, 2020. But the Respondent/Promoter has failed to honour the said promise. Nevertheless, the Respondent / Promoter has admitted the delay occurred in the completion of the project and sought an extension of time to complete the project. The Project is registered under sec. 3 of the Act,2016, and the date of completion mentioned in the certificate is 28.02.2023. It is found that the Respondents/Promoter has updated the work status as completed and uploaded Form 6 as provided under the Regulations,2020 and also the Occupancy Certificate dated 23.03.2022 on the website. But, after hearing the above complaint, it is found that some more works are yet to be completed in the project and the common area is yet to be handed over to the Association after forming the Association of Allottees. The Promoters are supposed to submit Form 6 regarding completion, only after completing the Project in all respects, as promised to the allottees, and handing over of the common area to the Association of Allottees formed and registered legally.

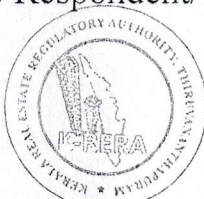
10. The Respondent / Promoter had filed an undertaking on 11/04/2022 marked as **Exhibit B10** stating that they shall complete the project with all the amenities and facilities offered to the Allottees along with all the mandatory sanctions and approvals, within two



months. They have also undertaken that a meeting of the owners has been scheduled on 16/04/2022 for the formation of an Association and the association shall be formed and the project shall be handed over within two months' time.

11. In view of the above facts and findings and with the consent of both the parties and, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows: -

1. The Respondent/Promoter shall complete the entire works of the project "Asset Precious" with all the mandatory sanctions/approvals and common amenities/ facilities and hand over the apartment to the Complainant in accordance with the terms of the agreement executed with him **on or before 30/06/2022**, without fail. The execution of the sale deed in favor of the Complainant shall also be completed by the Respondent / Promoter during the said period. The Complainant shall remit the due amount, if any to the Respondent as per the terms of the agreement executed between them.
2. The Respondent/Promoter shall enable the formation of the Association and its registration after which the common area and the documents pertaining to the project shall be duly handed over to the Association.
3. The Respondents shall upload Form 6 on the website after completing all the works relating to the common amenities/ facilities as agreed by the promoter/builder and hand over possession of the project to the Association within the aforementioned period.
4. In the event of failure on the part of the Respondent / Promoter to complete the entire works of the project and handover the apartment as stated above the Respondent/ Promoter shall be liable to pay Rs.




25,000/- per day from 01/07/2022 to the date of actual compliance of said direction, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

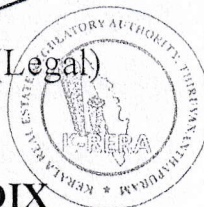
This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)



APPENDIX

Exhibits from the Complainants

1. Exhibit A1 - True copy of the Agreement of Sale of undivided share executed on 18/04/2018.
2. Exhibit A2 - True Copy of the Agreement for Construction on 18/04/2018.
3. Exhibit A3 - True copy of the proposed Amendment Agreement.
4. Exhibit A4 - True copy of the mail communications dated 17.03.2021, 24.06.2021, 30.08.2021, 10.11.2021, 12.11.2021, 29.11.2021
5. Exhibit A5 - True copy of the Agreement Termination Letter sent to Complainant on behalf of the 1st Respondent dated 27.11.2021



Exhibits from the Respondents

1. Exhibit B1 - True copy of the statement of Complainants due and paid amount.
2. Exhibit B2 - True copy of the letter intimation of termination dated 27.11.2021.
3. Exhibit B3 - True copy of the track records showing due service of notice.
4. Exhibit B4 - True copy of the Thrissur Corporation for accepting application for Occupancy certificate.
5. Exhibit B5 - True copy of the NOC issued by the Pollution Control Board dated 06.01.2022.
6. Exhibit B6 - True copy of the NOC issued by the Fire and Rescue Department dated 15.05.2020.
7. Exhibit B7 - True copy of the order dated 15.05.2020&19.07.2021 of the Authority.
8. Exhibit B8 - True copy of the certificate is registration under Act,2016
9. Exhibit B9 - True copy of the letter dated 11.02.2022.
10. Exhibit B10 - Undertaking filed by the Respondent.



Handwritten signature/initials