



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 270/2022**

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

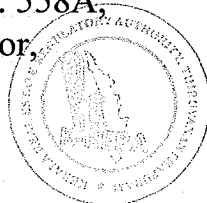
Dated 26<sup>th</sup> May 2023

**Complainant**

P A Ajithkumar & Sumathi  
Aikkara, House No. IV/430-A,  
Panthackal, Panduvapuram P O,  
Karukutty, Ernakulam,  
Kerala -683576  
[Adv. Sharan Shahier &  
Adv. Suja Madhav]

**Respondent**

1. MIR Builders and Developers Pvt. Ltd  
No. 2698, Deshabhimani Junction,  
Near Stadium Metro Station,  
Opposite to Metro Pillar No. 558A,  
Chooreparambu Road, Kaloor,  
Ernakulam, Kerala- 682017
2. Mr. Arun Kumar  
Managing Director,  
No. 2698, Deshabhimani Junction,  
Near Stadium Metro Station,  
Opposite to Metro Pillar No. 558A,  
Chooreparambu Road, Kaloor,



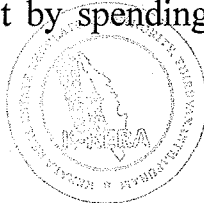
Ernakulam, Kerala- 682017  
[Adv. Abraham Mathew Vettoor]

The Complainants along with their counsel Adv. Suja Madhav and Respondent No 2 attended the hearing.

**ORDER**

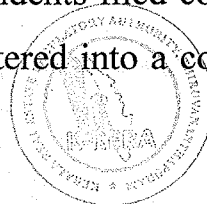
1. The facts of the case are as follows:- The Complainants who are the allottees in the project 'MIR CINTRA' developed by the Respondents, entered into agreements for sale and agreement for construction in the year 2014 as per which the flat was to be handed over on or before 31/07/2017. The Complainants paid Rs. 20 Lakhs as advance and the agreement was signed with the work schedule and payment terms. The Complainants moved to Ernakulam district from Malappuram in the hope that the flat will be handed over soon. The Respondents failed to hand over the flat on the promised date. They lived in a rented apartment for 3 years and the Respondents never showed interest in completing the project or giving them the rent. The Complainants emailed the Respondents, informing them that they are canceling the sale agreement and demanding refund. After discussion, the Respondents agreed that the Complainants can hold the balance payment until the flat is ready for possession. The Complainants filed a Complaint in Consumer court demanding a refund of their investment of Rs. 33,29,678/- with interest, which was withdrawn later in the year 2022.

2. The Complainants further submitted that the association of the Project is trying to take over the project from the builder and trying to complete the project by spending more money and an amount of



about Rs. 20 to 22 crore more is needed to complete the project. The Complainant No.1 was the secretary who worked hard for the last 3 years to find a solution to make the Respondent/Promoter himself responsible to complete the project without spending anything additionally by the investors. And now, the promoter is looking for someone to take over the building or to finance him. The Complainants are afraid of paying more amount for the completion of the project. If the association is taking over the project, they have warned the Complainants that the allottees who are not willing or capable to spend more money towards the project, they will be losing minimum 40 percent of the amount already invested and that too will get only if there are surplus fund after completing the project. Even the association has no idea about the completion time, except that they go on speculations based on clearing the inventories. The Complainants are not in the position to spend more money or to clear the balance payable to the project and it has been 7 years since Promoter is giving the Complainants mental stress. The unsuccessful flat purchase has created lots of family issues and discomfort between the Complainants. As the Complainants are aged and undergoing several treatments, they are not in a condition to spend more money and are seeking refund of the amount paid to the Respondents. The relief sought is for refund of Rs. 33,29,678/- with 12% interest. The Complainants have produced copies of the construction agreement, sale agreement, payment receipts, agreement cancellation mail, advocate's notice to the builder, police Complaint, and the consumer case withdrawal confirmation along with the Complaint.

3. The Respondents filed counter statement and submitted that the Complainants entered into a construction agreement and sale



agreement with the 1<sup>st</sup> Respondent on 25/11/2014. The project was developed in the land of Smt. Mary Mathew and Sri. K J Mathew, the land owners, on the basis of a development agreement executed by the company with them. The residential complex by the name MIR CINTRA consisted of a basement floor and ground floor area earmarked for vehicle parking facility and common facility and a superstructure consisting of 10 floors as residential apartments to be constructed for such persons who acquired undivided right in the land and perform their part of the contract in accordance with the terms and conditions of the agreement, including the payment of the cost of construction to the builder. The apartment allotted to the Complainants was one having a super built-up area of 1412 sqft and one car parking space is to be constructed in 1412/101816 undivided share in the land allotted in favour of the complainants. The total consideration payable by the complainants for such allotment of land and construction of apartment was ₹52,50,000 of which 9,88,400 was towards cost of land. The said amount was to be paid by the complainants in several instalments as has been incorporated in Page 7 and 8 of the construction agreement. The Respondents have already completed 9 floors of the residential complex. The total amount paid by the complainants towards the value of the land and construction charges admittedly was Rs.33,29,678 only. The Complainant has paid the amount dues from him up to the 4<sup>th</sup> floor and thereafter he did not care to pay any amount though he was secretary of the Association. The 1<sup>st</sup> Respondent made several request and reminders thereof to the Complainants requesting them to clear the arrears together with interest, but they did not care to pay the balance amount payable by the Complainant. After 30/07/2016, the Complainants have not paid any amount towards the instalment payable and all the payments made so far by the Complainants have



been duly acknowledged also. The amount payable by the Complainant up to the 9<sup>th</sup> floor slab was Rs. 46,47,763/- and in such circumstances, the admitted overdue amount is Rs. 13,68,085/- together with interest stipulated in the agreement.

4. When the Respondents insisted for payment of the entire arrears and issued notice to the complainants with respect to payment of the balance installments together with interest due from them, the complainants met the second Respondent and expressed the inability to pay the balance installment and interest thereof. The Complainants made 2 proposals, one is to waive the interest portion on clearance of the overdue instalments and second was for seeking cancellation and refund enabling the Respondents to effect refund on re-allotment of the apartment to an intending purchaser. Later on the Complainants approached the Respondents and sought for payment holiday till the completion of the project on the condition that he will not claim any compensation on account of the delay in completion of the project. The Respondents submitted that the Complainants are chronic defaulters as per the terms and conditions of sale agreement and construction agreement executed by them with the 1<sup>st</sup> Respondent. Out of the said amount, the Complainants had taken back a total amount of Rs. 50,000/- expressing certain exigencies and offering to return the said amount immediately. The Respondent had made the said payment through four different Bank, Rs. 20,000/- on 17/04/2020, Rs. 10,000/- on 28/06/2020, Rs. 15,000/- on 14/08/2020 and Rs. 5000/- on 29/08/2020 and the Complaint is filed suppressing the said amount already received by him.



5. The Respondents further states that they were ready to go ahead with the completion of the project, meanwhile, the association filed Complaint insisting that the Respondents were not able to fully comply with the agreement due to financial constraints despite earnest efforts to raise the required funds. While proceeding with the Complaint, filed on behalf of the Association of Allottees, the complainants herein had simultaneously filed a complaint before the Consumer Redressal Forum, Trivandrum seeking compensation for the alleged delay in the completion of the project. In the meanwhile, the first Complainant was removed from the post of the secretary of the Association and declared as defaulter of payment. If the Complainants informed that they are unable to make payment and want to cancel and seek refund, the Respondents would have reallocated the apartment. Instead, the Complainant had made the situation worse by filing a police Complaint and other cases. Now, the SBI has already sanctioned and granted approval in favour of the 1<sup>st</sup> Respondent for payment of the requisite funds for the completion of the project under the SWAMIAH Funds. The Respondents will be able to complete the MIR CINTRA project at Angamaly within a short period in case the association of allottees renders necessary co-operation and assistance. All the averments in the Complaint are denied and hence to be dismissed. The Respondents produced copy of the email communication from 6.07.2017 to 20.07.2017.

6. The project is Registered under section 3 of the Real Estate (Regulation & Development) Act 2016 and the certificate of registration was issued vide No. K-RERA/PRJ/139/2021.

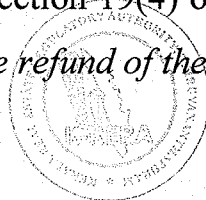


7. After detailed hearing and perusal of the pleadings and documents submitted by the parties, the following points came up for consideration:

i. 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?

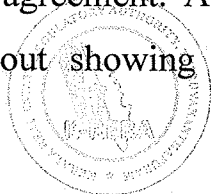
ii. Whether the Complainants herein are entitled to withdraw from the project at this stage and entitled for refund of the amount paid with interest as provided under Section 18 (1) of the Act 2016 or not?

8. **Points No. 1 & 2:** - The relief sought is for direction to refund the amount paid by the Complainant 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". Hence, 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. In this case the Complainant selected the second option, to withdraw from the project and to claim refund with interest.

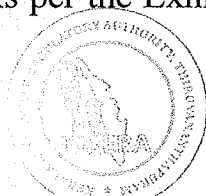
9. The documents produced by the Complainants are marked as Exhibit A1 to A7. The documents produced by the Respondents is marked as Exhibit B1. The agreement for sale dated 25.11.2014 entered in to between the MIR Builders & Developers, the landowners and the Complainants, is marked as **Exhibit A1**. As per the said agreement, the Respondents had agreed to sell and the Complainant had agreed to purchase 1412/101816 undivided share in the property, having a total extend of 65 cents together with the right to construct an apartment number with No. 106A on the 6<sup>th</sup> floor on the west side of the project "MIR CINTRA" having a super built up area of 1412 sq.ft. and together with a car parking area for a consideration of Rs.9,88,400 subject to the condition that construction of the apartment and the common areas and common amenities shall be entrusted to the builder under a separate agreement. Accordingly, a separate agreement for construction without showing date was entered into between the





Respondents and the Complainants which is agreed by the Respondents. A copy of the same is produced by the Complainants which is marked as **Exhibit A2**. As per the Construction agreement, the total construction cost was agreed as 52,50,000/- and the payments were agreed as per payment Schedule available in clause 3 of the said agreement and it was mentioned that each payment is to be done within 15 days from the date of intimation of each stagewise completion. In Clause 5 of the agreement, it was promised that the said apartment was to be constructed and the work to be completed within 24 months from the date of the agreement. It was also promised that the possession would be handed over within 180 days from the date of payment of the entire consideration as per the payment schedule. The Complainants also produced a copy of the final Bill dated 10-02-2018. The copy of acknowledgment receipts with respect to the payments made by the Complainants shows the amount paid by the Complainants as per the agreement on various dates, which are marked as **Exhibit A3 series**. As per Exhibit A3 series receipts, the Complainants had made a total payment of Rs. 33,29,678/- from 10/11/2014 till 03/08/2016. The copy of the email dated 03/09/2018 intimating their willingness to cancel and withdraw from the sale agreement has been produced by the Complainants and is marked as **Exhibit A4**. The Lawyer notice sent to the Respondent/Builder by the Complainant is produced and marked as **Exhibit A5**.

10. After hearing it is found that the Respondents have no dispute, with respect to the payment of consideration made by the Complainant with respect to the unit and the allegation as to non-completion and non-delivery of possession of the unit as promised to the Complainant. As per the Exhibit A2 agreement, the promised date

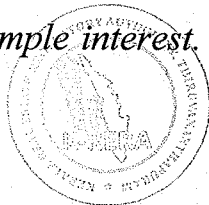


of completion and handing over was 25/12/2016, but it was admitted in the counter statement submitted by the Respondents that the project is not yet completed and the possession is not handed over till now. There is a connected case filed by the Association of Allottees as Complaint No. 11/2019 for completion and possession of the project in which the Authority issued an order dated 05/02/2021 directing the Respondents (1) to complete and hand over the project 'MIR CINTRA' to the Complainants with all the amenities as committed/promised as per the agreements executed with the allottees, along with all the mandatory sanctions/approvals required to be received from the Authorities concerned on or before 06.07.2022 without fail, (2) to open an escrow account, (3) to submit the status/progress report of works, in every 2 months starting 15.02.2021, in the form of a sworn affidavit with copy to the Complainants, (4) to ensure the quality of materials used in the construction works and thereby safety and security of the allottees of said Project in all respects. The Complainant association approached the Authority through I A 74/2021 informing that the order is not complied with by the Respondents and the matter is still pending consideration of this Authority from which we can confirm that the project is not so far completed. So the only contention raised by the Respondent/Promoter that the Complainants were chronic defaulters of payments is also not sustainable. Hence it is clear that the Respondent/Promoter has grievously failed to perform his part and honour the promises given to the Complainant 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". In these circumstances, the complainants herein 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 to the Respondents along with interest from the date of receipt of payment by the promotor till refund to the complainant with interest. Hence points No. 1&2 are answered accordingly in favour of the Complainant.

11. The rate of interest payable by the Respondents to the Complainants is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.85%. Hence, the allowable interest rate is  $14.85\% + 2\% = 16.85\%$ . Anyhow, the Complainant herein sought interest only @ 12%. The relevant portions of Rule 18 of the said Rules are extracted below: "(1) *The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India's Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest.* (2) *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 agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.”*

12. From Exhibit.A3 series, it is clear that the Respondents have received an amount of Rs.33,29,678/- from the Complainant. The details of the payment made to the respondents is scheduled below:-

<u>Date</u>	<u>Amount</u>
10/11/2014	Rs. 2,50,000.00
11/11/2014	Rs. 5,00,000.00
13/11/2014	Rs. 3,00,022.00
13/04/2015	Rs. 9,62,600.00
04/12/2015	Rs. 2,62,588.00
25/01/2016	Rs. 2,63,617.00
20/06/2016	Rs. 2,63,617.00
30/07/2016	Rs. 2,63,617.00
03/08/2016	Rs. 2,63,617.00
<b>Total</b>	<b>Rs. 33,29,678.00</b>

13. In the counter statement, it is mentioned that the Respondent had paid back Rs. 50,000/- to the Complainant, which was admitted by the Complainant during the hearing. Hence, the Complainant is entitled for refund of the amount of Rs. 32,79,678/- (after deducting the said Rs. 50,000/-already received) paid by him along with interest at the rate of 12% Percent per annum, as simple



interest as claimed by the Complainants from the respective dates of payment till date of realization of amount with interest.

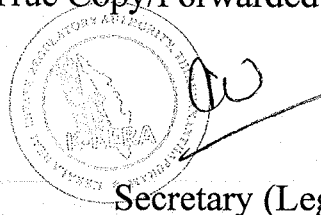
14. The Authority, after going through the facts and circumstances of the case and the documents produced and by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016 hereby directs as follows: -

- 1) The Respondents No. 1&2 shall return the total amount of **Rs. 32,79,678/-** received by them, **with simple interest @ 12% per annum**, to the Complainants, from the respective dates of payment, as shown in the schedule above, till the date of realisation of the said amount.
- 2) If the Respondents fail 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 and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder.

Sd/-  
Preetha P. Menon,  
Member.

Sd/-  
Sri. P. H. Kurian,  
Chairman

/True Copy/Forwarded By/Order/

  
Secretary (Legal)

**APPENDIX**

Exhibits marked on the side of the Complainant

- Exhibit A1: True copy of the Agreement for sale.
- Exhibit A2: True copy of the construction agreement.
- Exhibit A3series: True copy of the Payment Receipts.
- Exhibit A4: True copy of the Cancellation Mail.
- Exhibit A5: True copy of the Advocate Notice.
- Exhibit A6: True copy of the Police Complaint
- Exhibit A7: True copy of the Consumer Case Withdrawal

Exhibits marked on the side of the Respondents

- Exhibit B1: True copy of the email communication from  
06.07.2017 to 20.07.2017

