



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 277/2022

Dated 11th September, 2023

Present: Sri. M.P Mathews, Member

Complainant

Sahadevan,
T.C 9/948, Sivaji Safair,
Jawahar Nagar, Sasthamangalam,
Thiruvananthapuram.

Respondents

1. MPS India Holdings Pvt.Ltd.,
Having office at 32/7E,
Chakrampilly Estate, N H Bye pass,
Thammanam P.O, Ernakulam.
(Represented by its Chairman & Managing Director).
2. M P Shamsudeen,
Chairman & Managing Director,
M P S India Holdings Pvt. Ltd.,
Mangadan Parambath House, Manalaya P.O,
Perithalmanna, Malappuram – 679357.
3. Baba Prasad,
Puthen Veedu, Muttathara,
Veliakkadavu P.O,
Thiruvananthapuram – 695 008.

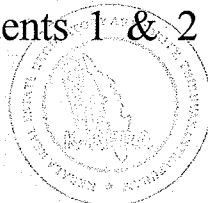


The above Complaint came up for final hearing on 26/06/2023. Counsel for Complainant Adv. G.T. Pradeep and Counsel for the 2nd Respondent Adv. Harish K and a representative of 1st Respondent Company, Muhammed Thahir attended the virtual hearing.

ORDER

1. The Complainant is an Allottee of project named 'MPS Ambience' located at Thripoonithura, developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate Regulation & Development Act, 2016 (herein after referred as Act, 2016) and the registration is valid up to 30/12/2023. (K-RERA/PRJ/342/2020).

2. The Complainant has entered into an agreement with the Respondents 1 & 2 on 08/02/2018 to purchase a flat in the building complex known as 'MPS Ambience'. As per the said agreement the Respondents 1 & 2 had offered to sell 0.70% of undivided share in 46.82 Ares of land particularly described in the Schedule A of the agreement dated 08/02/2018 and to construct the said apartment numbered as 4E in the plan having an extent of 1129 sq.ft of super built up area situated on the 4th floor and the right to use an exclusive covered car park described in the Schedule B of the agreement together with common amenities and facilities to the Complainant. The Respondents 1 & 2 had entered in to a joint



development agreement on 31/01/2017 with the owners to develop the A schedule property in the deed by constructing a multi storied building named 'MPS Ambience' and also has obtained right to enter into an agreement as a promoter for sale of undivided share in land to prospective purchaser who intend to construct and hold apartment in the proposed multi storied residential apartment building.

3. The Complainant further submitted that based on the assurances of the Respondents 1 & 2 the Complainant had agreed to purchase the said apartment for a total consideration of Rs.30,00,000/-. The said amount was received by the Respondents 1 & 2 from Mr.S Baba Prasad for and on behalf of the Complainant, and he had been impleaded as 3rd Respondent. It was further agreed by the Respondents 1 & 2 that the sale deed shall be executed by the land owner and every thing required for registration of sale deed, transfer of title, and delivery of undivided share of land together with apartment more fully described in schedule B in the agreement shall be done in all respects within 36 months from the date of agreement. So the Respondents 1 & 2 has to deliver the apartment before 08/02/2021. In the meanwhile the Complainant contacted and met the Respondents 1 & 2 for the execution of sale deed and the delivery of the apartment. But the Respondents 1 & 2 sought has sought time.

4. It was further submitted by the Complainant that he was always ready and willing to perform his part of the execution



of sale deed. But the Respondent has been delaying the execution of sale deed and the delivery of the apartment by one reason or the other. So the Complainant issued a notice through his counsel on 04/01/2022 demanding the execution of sale deed and the delivery of the apartment within 15 days of the receipt of the notice. The said notice was received by the Respondent and sent a reply alleging false and frivolous matters. It was also alleged that *“my client also clarifies that the consideration mentioned in your notice is only partial to the total consideration, though your client had not paid the same either at the time of agreement or thereafter till date, which is against the oral agreement made by your client that he will make the payment within one week’s time from the date of agreement. The project consists of 126 flats and all of them actually are priced above 60 Lakhs as on date”* and *“my client says that one of the witnesses signed in the said agreement named Mr.Baba Prasad , who has been working with my client’s company as Executive Director had suggested my client to execute the agreement without receiving the consideration amount, as in his belief your client was reliable and honest. Having utmost trust in Baba Prasad my client had entered into the agreement with your client but, neither your client Mr.Sahadevan nor Baba Prasad had ever made the payment to my client’s company and therefore your client is liable to furnish sufficient proof for payments he made to the company either by himself or through Mr.Baba Prasad, enabling my client to initiate further proceedings from his part”*



etc. Therefore the 3rd Respondent is also a necessary party to the Complaint.

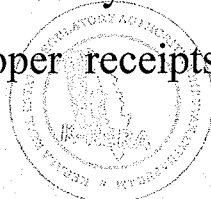
5. The Complainant further submitted that the agreement itself is an acknowledgement of the receipt of the total sale consideration at the time of execution of agreement. The denial of receipt of Rs.30,00,000/- as total consideration of the apartment on the side of the Respondent is consequent to the strained relations between the Complainant and the said Baba Prasad. In fact the Respondent and the said Baba Prasad is working hand in glove to deny the delivery of the apartment to the Complainant. The said Baba Prasad had filed written statement in the counter claim before the Hon'ble Sub Court, Thiruvananthapuram in OS No.98/2018, filed by the Complainant herein. Baba Prasad, clearly stated in para 8 of the above Written statement that " he had paid Rs.30,00,000/- towards cost of apartment No.E in the project MPS Ambience for the Complainant ". The Respondents 1 & 2 illegally and unlawfully delaying the execution of the sale deed and delivery of the apartment to the Complainant without any valid reason. Hence this Complaint.

6. The reliefs sought by the Complainant is as follows:- (1) to pass an order directing the Respondents 1 & 2 to hand over the apartment with exclusive covered car park etc. as stipulated in the agreement dated 08/02/2018 executed between the Complainant and the Respondents 1 & 2. (2) to pass an order directing the Respondents 1 & 2 to pay interest for every month of



delay till handing over possession as stipulated under Section 18 of the Act, 2016.

7. The Respondents 1 & 2 have submitted counter statement and denied all the material averments and allegations in the Complaint and submitted that the above Complaint is not maintainable either under law or on the truth of the case. The Respondent admitted the agreement entered into with the Complainant on 08/02/2018. The said agreement is an incomplete one executed between the parties. The 1st Respondent company since the execution date of the agreement mentioned in the complaint had been contacting the Complainant for completion of processes in relation to the execution of agreement, but the Complainant had failed to respond and comply with the terms of the agreement on time. The Company's customer Relations Manager has sent draft copy of complete agreement to the Complainant as on 07/02/2018, to which necessary compliance and responses from the side of Complainant had remained unavailable till date. The draft agreement has schedules, terms and conditions that are not included in the agreement produced by the Complainant and failure to execute complete agreement with the company from the side of Complainant disqualifies him from his eligibility to have this Complaint filed before the Authority. The Complainant had not furnished details of payments he claims to have made with the Respondent company, for every client of the company are invariably served with proper receipts against each and every



payments they make. Complainants have failed to furnish other related documents like booking for, sale agreement, construction agreement etc.

8. The Respondents further submitted that the Complainants claim about having made the payments through the 3rd Respondent is false and fabricated with ill intentions to gain undue advantages thereby. In fact the Complainant and 3rd Respondent are parties to another civil case bearing No. O S No.98/2018, pending before Hon'ble Sub Court, Thiruvananthapuram, following which Complainant had filed the above Complaint before the Authority unnecessarily making the 1st & 2nd Respondents parties to the dispute between the Complainant and 3rd Respondent. The agreement produced by the Complainant shows a rectification made with the Flat No.4G made 4E without proper attestation from the parties entered into the agreement. The 2nd Respondent has not been aware that he was signing an incomplete arrangement with the Complainant at the time of signing, which he had done blindly believing in 3rd Respondent, who had been taking care of client handling of the company at that time. In fact, this Respondent had been misguided by the 3rd Respondent about the arrangements of the agreement and happened to sign the incomplete agreement with the Complainant. The Complainant is liable to produce proper transaction details he had made with the 3rd Respondent and prove his claims in the Complaint.

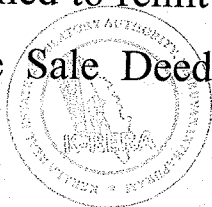


9. The Respondents 1 & 2 have filed additional objection stating that the project named MPS Ambience at Thripoonithura was initially launched in early 2017 by the Respondent developer under the name and seal of M/s MPS India Holdings Pvt. Ltd. The project was floated for developing the area comprised of 46.82 Ares of land in Survey Nos: 1382/1-2, 1554, 1606 & 1628/1-2 of Nadama Village in Kanayannoor Taluk under Thripoonithura Municipality. The Complainant approached the Respondent through Mr. Baba Prasad, a former employee of M/s MPS India Holdings Pvt. Ltd (Respondent No:3) expressing his willingness to purchase 00.70% of the undivided indivisible share of 46.82 Ares of land with the residential apartment to be constructed therein identified as 4E in the fourth floor with a built-in area of 1129 Sq. Feet apart from the exclusive covered car park. Accordingly, an unregistered sale agreement was drawn up at the behest of the said Mr. Baba Prasad and this Respondent was induced to sign the same with the Complainant agreeing to pay the sale consideration of Rs. 30,00,000/- (Rupees Thirty Lakh Rupees only) (all inclusive) in advance to the Respondent. The details of property was more specifically mentioned as Schedule A property in the sale agreement and the residential apartment proposed to be constructed therein was identified as 4E in the fourth floor more specifically described in Schedule B of the sale agreement. This Respondent was totally unaware of the evil designs of Mr. Baba Prasad who induced him to sign an incomplete agreement with the Complainant.



He had affixed his signature blindly believing in the assurances of Mr. Baba Prasad who was looking after client handling of the Company during the period. Factually, this Respondent was misguided by Mr. Baba Prasad on all corners.

10. The Respondents further submitted that, the Complainant failed to pay the Sale Consideration of Rs. 30,00,000/- (Rupees Thirty Lakh Rupees) and have later approached this Hon'ble Authority claiming that the sale consideration of Rs. 30,00,000/- (Rupees Thirty Lakh Rupees only) (all inclusive) was paid to one Mr. Baba Prasad, the 3rd Respondent, who amassed the amount by pretending to be the Authority representing this Respondent. The Respondent has no relations what-so-ever with the said Mr. Baba Prasad / 3rd Respondent. The person was not at all authorized to collect money on the Respondent's behalf and was never on the rolls of M/s MPS India Holdings Pvt. Ltd, Ernakulam at the time of executing the agreement. The said person, in all probability, might have enticed the Complainant, by defrauding him through bogus promises. The Respondent who claim to have made payments amounting to Rs 30,00,000/- to the said Mr. Baba Prasad has miserably failed to produce any conclusive evidence to support the said transaction. It is pertinent to note that during September 2017, Mr. Baba Prasad was arrested and was remanded to judicial custody for a week or two for financial impropriety. As the Complainant failed to remit the sale consideration till date, the Agreement nor the **Sale Deed** was never registered before the



concerned Sub Registry. As per the unregistered Sale Agreement, the period allowed to complete the construction and hand over the completed apartment and execute a Sale Deed was 36 months from the date of signing on 08/02/2018. Since the Complainant has not lived up to his responsibility as per Clause No:4 of the Sale Agreement, the handing over was not been done till the date of filing this complaint. Despite giving enough time over and above the timelines per the agreements, the Complainant has miserably failed to honour the promises given by him vide the Sale Agreement. Of late, the Complainant by concealing the actual reasons behind has approached this Hon'ble Authority as per the Real Estate (Regulation & Development) Act 2016 and this Hon'ble Authority.

11. The 3rd Respondent has submitted statement of fact stating that the Complainant has suppressed some material facts and trying to mislead the Authority for obtaining an order in favour of the Complainant. the 3rd Respondent is one of the witness in the agreement dated 08/02/2018 and the said agreement was executed by M/s MPS India Holdings Pvt. Ltd and Complainant on 08/02/2018. The 3rd Respondent had filed a Civil suit before the Hon'ble Sub Court Thiruvananthapuram against the Complainant as OS No.98/2018 and the same is still pending before the 1st Addl. Sub Court for specific performance of a contract. The Complainant herein had filed written statement with counter claim in the above suit and the 3rd Respondent had filed written statement to the said counter claim. The 3rd Respondent further submitted that the



Complaint is bad for joinder of unnecessary party and the 3rd Respondent is an unnecessary party and the Complainant has not sought any relief from this Respondent. Hence the Complaint may be dismissed with cost of the 3rd Respondent.

12. The Authority heard the learned counsel for both the parties and gave careful consideration to their submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 to A3. The documents produced from the part of the 3rd Respondent is marked as Exbt.B1.

13. **Exbt.A1** is the agreement dated 08/02/2018 executed between the 1st Respondent represented by the 2nd Respondent and the Complainant. As per the said agreement the Respondents offered to sell 0.70% of the indivisible undivided share in 46.82 Ares of land and agreed to construct and deliver apartment No.4E having super built up area of 1129 sq.ft. on the 4th floor and right to use an exclusive covered car park together with common amenities and facilities for a total consideration of Rs.30,00,000/-. It was also stated in the agreement that the Respondents shall deliver the apartment and execute sale deed in favour of the Complainant within 36 months. **Hence the time of completion of the project can be taken as 08/02/2021. Exbt.A2** is the copy of notice dated 04/01/2022 issued by the Complainant to the 2nd Respondent, calling upon the Respondents to take



necessary steps to execute sale deed of the apartment and deliver the apartment to the Complainant within 15 days of receipt of the notice. **Ext.A3** is the Copy of written statement to the Counter claim filed by the 3rd Respondent in OS No.98/2018 before the Sub Court Thiruvananthapuram. **Exbt.B1** is the copy of Written statement and counter claim filed by the Complainant in OS No.98/2018.

14. It was stated in the Exbt.A1 that the Respondents have received total consideration of Rs.30,00,000/- from the 3rd Respondent. Now the Respondents 1 & 2 have disputed the payments made by the Complainant. Since the Respondents have signed the Exbt.A1 agreement, they are estopped from denying the contentions in the agreement. Hence it is clear that the Respondents have received entire sale consideration of Rs.30,00,000/- from the Complainant at the time of execution of agreement itself.

15. On verification of the webpage of the project in question in the website maintained by the Authority, Occupancy certificate was not issued to the said project till date and the registration of the said project with the Authority under Section 3 of the Act, 2016 is valid up to 30/12/2023. Since the Respondents failed to complete and handover the apartment to the Complainant as per the agreement executed with the Complainant, he is eligible to get interest for every month of delay as per Section 18 of the Act, 2016.

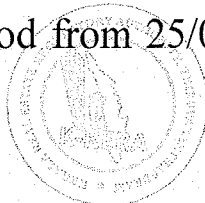


16. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due 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 the Complainant does not intend to withdraw from the project and is demanding interest for delay under Section 18 of the Act, 2016. 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 claim interest for the delay in handing over possession of the apartment as provided under the Act, 2016.



17. As per Exbt.A1 the Complainant had paid total consideration of Rs.30,00,000/- at the time of executing the Exbt.A1 agreement. The Complainant is eligible to get interest for every month of delay on Rs.30,00,000/- 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 agree 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”*. Since the Respondents failed to complete the project and handover possession of the apartment as per the agreement the Complainant is eligible to get interest for the delay from the Respondents as per Section 18 of the Act.

18. Hence, the Complainant herein is entitled to get interest for the delay on Rs.30,00,000/- and the Respondents are liable to pay interest to the complainant according to Section 18 of the Act, 2016 for the period from 08/02/2021 till the date of handing over possession of the apartment. As per Order No.K-RERA/T3/102/2020 dated 15/05/2020 and 19/07/2021 the Authority had taken cognizance of the adverse effects of Covid-19 Pandemic and the lock downs on the real estate projects in the state and resolved to treat this an event of force majeure as per the provisions of the Act, 2016. The one year period from 25/03/2020 was considered to be



treated under the force majeure clause and the Respondents are not liable to pay delay interest for the said period of 1 year, and hence the delay interest is payable from 08/02/2022.

19. 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 15/03/2023. Hence the Complainant is entitled to get 16.85% simple interest per annum on the amount paid, from 08/02/2022 till the date of handing over of possession.

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

1. The Respondents 1 & 2 shall complete the entire works of the project "MPS Ambience" with all the mandatory sanctions/approvals and common amenities/ facilities in accordance with the terms of the agreement dated 08/02/2018 executed with Complainant, and handover possession of the apartment to the Complainant **on or before 30/12/2023 as promised in the registration certificate issued by the Authority**, failing which the Respondents shall be liable to pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.



2. The Respondents shall pay the Complainant interest for every month of delay from 08/02/2022 till the date of completion and handing over possession of the apartment as per the agreement under section 18 of the Act, 2016 on Rs.30,00,000/- @ 16.85% simple interest per annum.


3. If the Respondents fail to pay the interest for every month of delay 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 amount from the above Respondents 1 & 2 and their assets by executing this order in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-

Sri M.P Mathews
Member



True Copy/Forwarded By/Order


Secretary (legal)

Exhibits**Exhibits marked from the side of Complainants**

Ext.A1- Original Agreement dated 08/02/2018.

Ext.A2 - Copy of notice dated 04/01/2022.

Ext.A3 - Copy of written statement to the Counter claim filed by the 3rd Respondent in OS No.98/2018.

Exhibits marked from the side of 3rd Respondent

Exbt.B1- Copy of Written statement and counter claim filed by the Complainant in OS No.98/2018.



