



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Complaint No: 283/2021

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

Dated 10<sup>th</sup> March 2022

**Complainant**

Anitha M V  
T C 8/2175-1, Mangalassery House,  
Pongummoodu P O  
Pin- 695011  
Kunnathumury Desom,  
Cheruvakkal Village, Trivandrum Taluk.  
[Adv. M Unnikrishnan]

**Respondents**

1. M/s Jomer Properties & Investments( P) Ltd  
Represented by its Managing Director M M Jose,  
IInd Floor, Jomer Arcade, Chittoor Road, Kochi- 16,  
Karithala Desom, Ernakulam Village, Kaniyannur Taluk

2. M M Jose





IInd Floor, Jomer Arcade, Chittoor Road, Kochi- 16,  
Karithala Desom, Ernakulam Village, Kaniyannur Taluk  
[Adv.M V Joy]

The Complaint came up for hearing today. The Counsel for the Respondent attended the virtual hearing. The Complainant or his counsel did not attend the hearing.

### **ORDER**

1. The Complainant is the allottee of service apartment on the 14th-floor bearing unit No. 14 A2 N1 in the project named 'Jomer Symphony' at Poonithura Village of the 1<sup>st</sup> Respondent company for a total consideration of Rs. 29,00,000/-. A sale deed was registered as No. 2514/2010 in Maradu SRA. Though the sale deed was executed, further construction was not carried out by the respondents. When the complainant pressurized for completion and handover, the respondents offered to take out the incomplete apartment for lease by paying a monthly rent of Rs.13,260/- for a period of 9 years, and the offer was accepted and accordingly a lease deed no. 1077/2011 was executed in the Maradu Sub registry on 07.04.2011. The monthly lease payment continued for hardly 2 years and it was informed that the construction has been stopped and they are looking for another buyer. Accordingly, an agreement for sale was executed for a consideration of Rs. 35,94,150/- and the period of the agreement was 22.02.2019 to





15.05.2019. Even after repeated requests, the balance consideration was not paid by the new buyer. The complainant submitted that at the time of the Real Estate (Regulation & Development) Act, 2016 commencement the above-said project was an ongoing project and has to be registered with the Authority. The reliefs sought by the complainant are a) to direct the respondents to complete the construction of apartment in the 14th-floor bearing unit no. 14 A2 N1 in the building named 'Jomer Symphony'; b) refund of Rs. 29 Lakhs paid by the complainant with interest; c) to direct the respondents to pay interest at the rate of 12% for 29 Lakhs. The documents produced by the Complainant are marked as Exhibit No. A1 to A4.

2. The Respondents submitted the Counter Affidavit stating that the complaint is not maintainable before this Authority. The construction of the apartment was completed in the year 2014 itself. It is a completed project before 2014. The promoter has received a completion certificate for the project prior to the commencement of the Act. The apartment was already handed over to the complainant and hence the complainant is not entitled to receive any amount and interest from the respondents and the complaint be dismissed. The Respondent has produced a copy





of the occupancy certificate dated 09/10/2014 which is marked as Exhibit No. B1.

3. As the Complainant was absent, the Respondent's counsel was heard and the documents submitted were examined. After hearing and perusing the documents submitted by the parties it is found that the project was completed in the year 2014 and the Occupancy Certificate was obtained on 09/10/2014 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, the Project in question is not a registrable Project and this Authority cannot entertain the complaints pertaining to such projects that have 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 the appropriate Forum for getting their grievance redressed.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

*Shah*

True Copy/Forwarded By/Order/  
  
Secretary (Legal)

**APPENDIX**  
**Exhibits on the side of the Complainants**

1. Exhibit A1 – Copy of the sale deed no 2514/2010 dated 24.09.2010.
2. Exhibit A2 – Copy of the lease deed no. 1077/2011 dated 07.04.2011.
3. Exhibit A3- Copy of agreement for sale baring no. 403/2019 dated 22.02.2019.
4. Exhibit A4 - Copy of lawyers notice dated 30.11.2021.

**Exhibits on the side of the Respondents**

1. Exhibit B1 – Copy of the Occupancy Certificate dated 09/10/2014.