



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 33/2021

Dated 12th November 2024

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

Complainant

Saju Sathyan,
Sathya Nivas, Puthumana Veedu
Koonayil, Paravur
Kollam-691301
[By Adv. Sreejith Nair]

Respondents

1. M/s. Meritra Homes Pvt Ltd
Head Office at 3rd Floor
Vallavattom Estate, M.G Road
Ravipuram represented by its
Managing Director
Pincode-682015.

2. N. Ravishanker,
Managing Director,
Meritra Homes Pvt Ltd.
No. 27, Imperial Gardens,
Eroor South, Kanyannur Taluk,
Ernakulam District- 682306.
[By Adv.V.V. Asokan (Senior Advocate)]



The above Complaint came up for final hearing on 10.07.2024 for which both the Counsels for the Complainant and the Respondents attended the virtual hearing.

ORDER

1. The Complainant initially filed a Complaint before this Authority on 10.02.2021. The Authority considered the Complaint and passed order dated 04.07.2022 directing the Respondents/promoters to pay amount of Rs. 49,28,290/-, the interest for the amount of consideration paid by the Complainant/allottee for the delay caused in handing over possession of the apartment from 03.06.2018 to 25.11.2021. Aggrieved by the order, the Respondents preferred appeal before the Kerala Real Estate Appellate Tribunal, Ernakulam as REFA No. 57 of 2022 and the Hon'ble Appellate Tribunal passed order dated 09.11.2023 as per which a preliminary objection was raised by the senior Counsel appeared for the Appellants/Respondents/promoters that though the order was signed by the Chairperson and one member, the Chairperson not in fact heard the parties during the final hearing process and that the Chairperson joined the Member to pass the order without actually hearing the parties. A report was called by the Tribunal and the Authority has reported that the Chairman heard the Complaint in four sittings prior to the issue of order and even



though the final hearing was not attended by the Chairman, the decision was arrived in the Complaint jointly by the Chairman and Member I on the basis of the records, documentary evidences etc., and orders issued accordingly. The Tribunal observed that the Chairperson ought to have heard the parties along with the Member and if he could not join the hearing the Authority could have adjourned the matter for hearing by the Chairperson and Member and found it as a serious illegality in the process of adjudication and the Order dated 04.07.2022 was set aside and the Complaint remanded to this Authority for enquiry and procedure afresh according to law. The Complaint was filed, seeking reliefs for direction to the Respondents i) to rectify the defects of the apartment pointed out by the Complainant, ii) to execute sale deed and hand over possession, iii) to pay interest @ 12% from 03.06.2018 for the delay caused in handing over possession of the apartment and iv) to bear the cost of flood cess. The first two reliefs got redressed due to the intervention of this Authority even before issuing the final order dated 04.07.2022. After remanding back the Complaint, the Respondents filed some additional documents on 07.12.2023.

2. The facts of the case are as follows:- The Complainant came to know that Respondent had started construction of multi-storied residential complex named "Meridian Tower Eleven" in Maradu village of Kanayannur Taluk, Ernakulam District. The



Complainant being an NRI is desirous of owning an apartment for interim stay in Kerala has agreed to purchase proportionate undivided share of land of an extent of 1958/40600 for a consideration of Rs 15,00,000/- and an apartment No.10A having super built up area of 1958 Sq ft on the 10th floor for a construction cost of Rs. 90,73,200/- and exclusive car parking facility for Rs. 2,50,000/- totalling Rs. 1,08,23,200/- by agreement for sale and construction agreement dated 03/01/2017 arrived between both Complainant and 1st Respondent. As per clause 3 of the construction agreement, the Complainant had to pay entire amount less the amount paid as advance as per payment schedule attached to the agreement and as per clause 13 of the agreement, the builder shall handover the property together with all facilities complying with the best construction principles and methods and make the utmost possible effort to finish the work of the apartment within 15 months with a grace period of 2 months from the date of agreement. As per clause 15 of the agreement the promoter undertake to ensure handing over possession after receipt of entire amounts for construction from the allottee. As per ledger account from 01.04.2013 to 10.03.2020 issued by the 1st Respondent, Complainant had remitted Rs. 1,17,99,573/- It is submitted that in view of the payment of amount as per the payment schedule mentioned in clause 3 of agreement, the 1st Respondent should have handed over possession of the apartment on or before 02/06/2018 including



the grace period as agreed in clause 13 of the construction agreement. On 17/04/2018, the 1st Respondent sent an email to the Complainant attaching some photographs of the apartment building informing that Prime Meridian Tower Eleven Apartment is nearing completion and handing over. Thereafter, there was no response from the 1st Respondent regarding the handing over of the possession of apartment, the Complainant made enquiries over phone and sent emails complaining about the delay. In reply to the same, the 1st Respondent sent an email dated 21.02.2019 attributing delay on the part of Government officials in clearing the formalities of issuing completion certificate, fire clearance etc. Since then there was no response from the 1st Respondent regarding the handing over of possession of apartment, the Complainant sent an email dated 12.09.2019 reminding the 1st Respondent about the clause of compensation in case of delay from the side of the builder and requesting him to abide by it and to settle compensation for the financial loss and inconvenience caused. The Respondents had replied that the Government officials are responsible for the entire delay of the project so as to escape from legal liabilities. On 22-11-2019, the 1st Respondent informed the Complainant by email that with reference to the agreement entered into with them and the terms contained therein all the works pertaining to the apartment had been completed and confirmed that they had received amounts towards apartment 10A as various instalments an amount of Rs 1,17,99,573/- and Rs



2,34,692/- is remaining to be paid. The 1st Respondent sent a final statement of accounts by email dated 25.11.2019 for the Complainant's reference, reiterating the amount mentioned in the ledger account for the period from 01.04.2013 to 10.03.2020 and requested to remit Rs. 3,70,000/- as registration amount and Rs. 30,000/- as water and electricity connection. Furthermore, the Complainant has complained about some defects too to be cured, and the Respondent replied some of the defects complained were cured. It was also submitted that the Complainant found severe leakage on the walls in two rooms. The Complainant had invested more than 1.5 crore and yet he could not do anything about it since the apartment has water leakage problems. Regarding the registration of the apartment in the name of the Complainant, the 1st Respondent had prepared a registration deed and communicated to the Complainant for his approval. On 20.03.2020 the Respondent had emailed that all the paper work kept ready for registration of the apartment on 21.03.2020 as the final date for registration under the subsidy will end by 23rd March 2020 and the Complainant was informed to settle the balance amount and finish registration process as per communication dated 22.11.2019. But in the email dated 22.11.2019, no such registration amount was mentioned. The 1st Respondent also complained that the Complainant wanted to register the property for Rs 1,19,46,252/- which will bring the registration cost from Rs. 3,70,000 to Rs. 11,95,000/- plus



documentation charges. The hike was due to last minute change of registration date and the Complainant would have to pay 1% TDS and this process would take two days and they would not be in a position to complete the process before 23.03.2020. The Complainant also alleged this would in turn increase the registration fee to 10% from the current 7% and the total registration expense would be around Rs 12,20,000/-. The Complainant informed through email dated 20.03.2020 that he cannot go with a reduced amount in registration deed and wants to see the whole amount already paid for the apartment and informed that he does not want to be in a position like the home owners in Maradu whose apartments were taken away from them probably shown the amount less in their registration and ended up as the loser. In the email dated 21.07.2020, it was stated by the Respondents that they are planning to complete the registration of all clients and move forward with formation of association. It was also informed that the revised amount of registration will be Rs.12,30,000/- out of which Rs. 3,70,000/- paid and the balance amount of Rs. 8,60,000/- and to clear the settlement amount of Rs. 2,69,422/- and to transfer the amount to the 1st Respondent's account. Though the Respondents requested to transfer the amount for the registration of the deed on the basis of the actual amount paid as per the agreement, the 1st Respondent was not prepared to register the deed with full amount already paid but with a lesser amount of 49 lakhs for the reason best known to him.

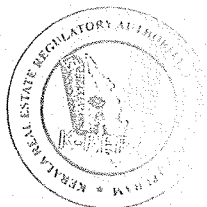


The 1st Respondent informed that they cannot do Complainant's registration because all other owners are doing registration for a reduced amount. Due to the reluctance on the part of 1st Respondent in registering deed giving 10% registration fee for the amount shown in the agreement, the Complainant was put to untold misery and monetary loss. As per construction agreement dated 03.01.2017, the Complainant had already paid all the amount in time as per schedule early in 2018 and he need to pay the last instalment at the time of handing over the apartment by the Respondent.

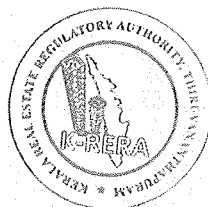
3. The Respondents No. 1 and 2 had filed Counter statement on 03.05.2021 as follows: As per the agreement executed on 03-01-2017 it was agreed to sell apartment to the Complainant and on the date of agreement itself, the construction up to 7th floor was completed. The apartment has got partial completion certificate from the Municipality on 27-02-2017 and in pursuant to that the project has got electricity and water connection from the Departments. After getting the water connection and electricity in the year 2017, the buyers started to occupy the apartment. In pursuant to obtaining the partial completion certificate on 27-02-2017, the respective flats were registered in favour of the buyers who paid the entire sale consideration. The Complainant made lot of customization, including change of flooring from vitrified tiles to Italian marbles and also requested to change CP and sanitary fittings. As per



email dated 18-12-2017, the Respondent informed the Complainant about completion of the project and also forwarded the photographs of the completed flat. Though the construction was in progress as per terms agreed, the Complainant committed default in paying the sale consideration and the construction cost to the Respondents as agreed. An amount of Rs. 18,00,000/- was due from the Complainant and after repeated demands Rs. 15,00,000/- paid on 20.03.2018. The Respondents completed every work by May 2018 and during 2018, the Respondents submitted application for occupancy certificate before the Municipality. Issuance of occupancy certificate was delayed by the Municipality due to various reasons, beyond the control of the company and finally occupancy certificate was issued by the Municipality on 04.09.2019. From the date of issuance of occupancy certificate, sale deed was registered within six months and there was subsidy in stamp duty, as ordered by the Government and subsidy was available to the Complainant up to 23.03.2020 and the Respondent company sent repeated emails intimating about the need to get the document registered before 23-03-2020 including the draft sale deed but the Complainant protracted the time without co-operating for the sale deed get registered. On 07.09.2019, the Respondent company sent a mail and informed the Complainant about the occupancy and completion certificate issued by the Municipality for the project and also requested to take steps for the registration and suggested



the registration between 17-09-2019 to 19-09-2019. The Complainant sent a reply dated 12-09-2019, without responding to the call for registering the sale deed, the Complainant was harping upon the compensation for the alleged delay in handing over the Project, even ignoring the fact that he has not yet paid the balance outstanding. The Respondent company sent an email dated 12.09.2019 itself and clarified about the real situation being faced by Respondent and requested to provide Complainant's ID, address proof and other required document for registering the property and also sent a draft sale deed for the Complainant's approval. As per email dated 25.11.2019, the Respondent Company also communicated to the Complainant about the balance amount outstanding to the Company and the registration amount to be paid for registering the sale deed and a reminder was sent on 17.12.2019. In December 2019, the Complainant had taken possession of the apartment and started the interior work in the flat to another contractor. On 24-12-2019, the Complainant has sent an amount of Rs 3,70,000/- for registering the sale deed, without settling the balance amount outstanding to the company. On 06.03.2020 an email was sent to the Complainant regarding registration details and also about the repairing of snags pointed out by the Complainant. On 10.03.2020, the Respondent Company sent an email to the Complainant asking him to pay the balance amount and reminding him of the deadline for registration with subsidy of 5%. On 14-03-2020, the Company



again sent email demanding the Complainant to pay the balance of Rs. 2,09,442/- which has not been paid till date. On 18.02.2020 the Respondent company sent an email with photos regarding repairing of the snags pointed out by the Complainant and also draft sale deed with registration amount, asking for further information. On 19.03.2020 Complainant replied without paying the balance sale consideration. On 20.03.2020 the respondent company sent an email to confirm the draft for registration. On 20.03.2020 the complainant communicated that he wanted to register the sale deed showing a different amount than the one which has been shown in the draft. Various communications were sent by the Respondent company to the Complainant, reminding him the urgency to complete the registration. On 21.03.2020 the Respondent company did registration for two pending apartments with the subsidy. On 23.03.2020 the subsidy period got over and the Complainant did not pay the difference amount and provided to the Respondent, the TDS certificate from his chartered accountant for the amount suggested by the Complainant to be shown in the sale deed, which is a mandatory requirement for registering the sale deed. On 24.03.2020 lockdown was declared in Kerala. On 21.07.2020 Respondent company had sent an email to the Complainant showing the willingness to register the property as requested by him. Then as requested by the complainant via WhatsApp, to hold the registration, the respondent company sent another mail to the Complainant on



29.07.2020 confirming the same. Again, in November 2020, the Respondent company had communicated to the Complainant to register the property, however he replied stating that he will wait for the government notification for reduced rates. Later, without disclosing all these factual aspects, the Complainant approached the Regulatory Authority. The contra allegations in the Complaint filed before the Regulatory Authority is incorrect rather unsustainable and hence denied by the respondent. The allegation that after the communication dated 17.04.2018 there was no response from the 1st Respondent regarding handing over the possession of the apartment is apparently incorrect and against facts. Being a responsible builder, Respondents communicated each and every development and the reason for delay in getting the occupancy certificated to all the buyers, including the complainant. By May 2018 the project was completed and submitted completion certificate and application for occupancy certificate before the Maradu Municipality. Therefore, the contra allegation is absolutely incorrect and against facts and as per the e-mail dated 07.09.2019 the Respondents communicated to the complainant to pay the balance amount outstanding to the Respondents and to get the sale deed registered. But the registration of the sale deed was being delayed by the Complainant for the best reasons known to him and on the contra, Respondent was ever ready and willing to register the sale deed in favour of the Complainant on paying the balance sale



consideration. Apart from that, email dated 12.09.2019 was sent after taken possession of the apartment and started his interior works in the apartment through another contractor. The Complainant is no way entitled to get the compensation because there is no delay or latches from the side of the Respondents in completing the project and handing over possession of the apartment. As per clause 14 in the agreement if owing to any wilful act or default of the builder, the possession of the apartment is not given to the complainant within the agreed period, the buyers shall give intimation in writing to the builder and if there is no cogent reason for the delay, the Complainant will be entitled to interest @ 12% per annum on the amount balance remaining with the builder for the unconstructed area as liquidated damage till the date of actual handing over of the possession from the date of receipt of intimation by the builders. In this case, the intimation sent by the Complainant was on 12.09.2019 much before which the project was completed and Occupancy certificate was issued by the Municipality on 04.09.2019. Therefore, it is apparently clear that the Complainant is no way entitled to get any benefit of clause 14 of the agreement since the project is completed much before that and even if there is any delay in getting occupancy certificate that reason also convincingly conveyed to the buyer. All the defects brought into the notice of the Respondent by the Complainant, was cured and it was duly communicated to him through mail. The email sent by the Respondent company to the



Complainant will reveal that, the Respondent was duly intimating the complainant about the expiry period during which the benefit of subsidized stamp duty will be available but complainant has not taken the communication seriously and he has delayed the time without any cause or reasons. The latches from the side of the Complainant cannot be put on the Respondent's shoulders for the delay in registration of sale deed. The email communication dated 20.03.2020 by the Respondent to the Complainant is self-evidentiary with regard to the earlier communication sent to the Complainant, requesting him to take steps to get the apartment register at the subsidized stamp duty. The attitude of the Complainant is very much apparent from email communication dated 20.03.2020 by the Complainant to the Respondents. The email dated 12.09.2019 by the Respondents to the Complainant is also self-explanatory. The draft sale deed was sent much earlier and if the Complainant had a plan to register a sale deed, varying from the draft sale deed sent to him, he would have communicated the same without delay and as he suggested the variation from the draft in the last moment, it was impossible to get it done within a short span of time. The mandatory procedural requirements for registration of sale deed cannot be bypassed. The allegation that due to the reluctance on the part of the 1st Respondent in registering sale deed, he was bound to pay 10% registration fee, for the amount shown in the sale deed and thereby the Complainant was put to untold misery and monetary



loss, is also denied by the Respondents and the lethargic attitude of the Complainant put him to misery for which the Complainant alone is responsible.

4. During the hearing on 29.11.2021, the Counsel for the Respondents had submitted that works have been completed, sale deed was executed and key was handed over to the Complainant on 26-11-2021, and the issues were settled. Though the Counsel for the Complainant admitted the same initially, later he filed I.A No. 285/2021 on 04.12.2021 stating that the matter was not yet settled, and only the prayers (i) and (ii) have been complied with but prayers (iii) and (iv) are yet to be redressed. It was also submitted that as per direction of this Authority as a first step to cure all defects and register the sale deed, the Respondents had rectified the entire defects of the apartment pointed out by the Complainant and that the Respondent had executed sale deed showing the amount shown in the agreement in favour of the Complainant and thus the first two prayers in the Complaint had been complied with. It was submitted that the other two prayers as to the direction for payment of interest @12% for delayed handing over of possession, from 03.06.2018 for the full amount paid and to bear the cost of flood cess by the Respondents are pending for which an early posting of the case was requested. The Authority allowed the said petition. The Complainant had filed Interest claim dated 14-12-2021, claiming interest from the period 03-06-2018 to 25-11-2021, for which Complainant has



calculated a total interest of Rs 49,28,290/-. The details of claim as per the statement produced by the Complainant is as follows:

Total cost of the Apartment	-	Rs. 1,08,23,200/-
Date of agreement entered between parties	-	03-01-2017
Total Amount paid by the Complainant	-	Rs. 1,17,99,573/-
Rate of interest claimed	-	12% per month.
Agreed date of handing over as per agreement	-	02-06-2018.
Date of occupancy certificate	-	23-03-2022.
Date of handing over of Apartment to the Complainant	-	26-11-2021.
Interest claimed for the delay of From 03-06-2018 to 25-11-2021	-	Rs. 49,28,290/-

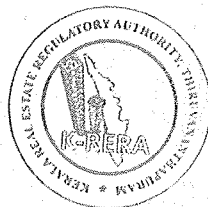
5. The Respondents had filed objection on 15.03.2022 to the Interest Claim and submitted as follows: The construction agreement was entered between the complainant and the Respondents on 03.01.2017. The period of completion was 18 months i.e. June, 2018. The construction of the apartment was completed during the end of 2017. They produced copies of email sent by the Respondent dated 10.11.2017, 13.11.2017, 18.12.2017 with photographs. During December 2017 the Complainant requested to substitute the CP and sanitary fittings



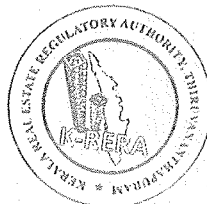
and the CP and sanitary fittings as suggested by the Complainant was procured and the fittings were installed and the copy of communication dated 21.02.2018 sent by the Respondent in this regard was produced. The copy of communication dated 17.04.2018 sent by the Respondent to the Complainant was produced. The Complainant had requested to change the standard tiles to Italian marble, and his request was accepted and he was permitted to lay Italian marble through his contractor which was supervised by the Respondent and that was communicated as per mail dated 18-12-2017 and copy produced. After completing the construction of Complainant's apartment, the Complainant was given a proposal for the interior work and for which the Respondent had submitted a quotation through mail dated 19.03.2018 and copy produced. Water connection was obtained to the apartment from the Water Authority on 27.06.2018 and copy of bill and payment of water charges produced. The permanent electricity connection was obtained for the project in 2017 itself. The common area work of the apartment was completed by May 2018. Since some rectifications suggested by the Fire and Rescue Department, even though rest of the construction work was entirely completed a considerable time has taken for doing the rectification works suggested by the fire and rescue department. After completing the rectification work suggested by the fire and rescue department, application for occupancy certificate was submitted on 24.04.2019 and



Municipality issued occupancy certificate on 04.09.2019. Therefore, it is apparently clear that there is no latches or negligence from the side of the builder for completing the construction of the project within the agreed time. On the contra this project was completed in time rather a head of the schedule time. Since Fire and Rescue Department suggested some modification after completion of the project, the builder was constrained to implement such suggestion. The Complainant was duly intimated the time to time progress of the project and hence he cannot claim any latches, negligence or delay from the side of the builder. In fact, the client made his final settlement only in November 2021, and the Respondent cannot handover possession before full and final settlement against the purchase of the apartment. As per mail dated 21.02.2019 the Respondent had duly communicated to the Complainant about water and electricity connection obtained for the project and the effort taken for sorting out the issue of fire and rescue clearance. As per e-mail dated 07.09.2019 the Respondent informed the Complainant about the receipt of the occupancy certificate and requested to contact the office for registration process and the copy of said mail produced. But, the Complainant had not furnished the details required for executing the sale deed nor he approved the draft sale deed sent to him for registering the sale deed. From the date of issuance of occupancy certificate, sale deed is to be registered within 6 months for getting subsidy in stamp duty. For getting the subsidy



the sale deed ought to have been registered on or before 23.03.2020. The Respondent company sent repeated email intimating about the need to get the document registered before 23.03.2020 including the draft sale deed but the complainant protracted the time without co-operating with the Respondent company for the sale deed get registered. The Respondent company as per email dated 07.09.2019 informed about the occupancy certificate and requested to complete the registration process and suggested registration between 07.09.2019 to 20.09.2019. The Complainant sent email dated 12.09.2019, without responding to the call for registering the sale deed, the Complainant was harping upon the compensation for the alleged delay in handing over the project, even ignoring the fact that he has not yet paid the balance outstanding. To the reply issued by the Complainant dated 12.09.2019, the Respondent company sent a clarification as per e-mail dated 12.09.2019 and thereby intimated to the Complainant about the real and true situation being faced by the builder and it is further requested to provide Complainant's ID, address proof and other required document for registering the property in the Complainant's name and also sent a draft sale deed for the Complainant's approval. As per email dated 25.11.2019, the Respondent company communicated to the Complainant to pay balance amount outstanding and the registration amount to be paid for registering the sale deed. In December, 2019, the Complainant had taken possession of the



apartment and started the interior work in the flat through another contractor. On 24.12.2019 the Complainant has sent an amount of Rs.3,70,000/- for registering the sale deed, without settling the balance amount outstanding to the company. On 06.03.2020 an e-mail was sent to the Complainant regarding registration details and also about the repairing of snags pointed out by the complainant. On 10.03.2020 the Respondent company sent a mail to the Complainant asking him to pay the balance amount and reminding him of the deadline for registration with subsidy of 5%. On 14.03.2020 the Respondent company again sent email demanding the Complainant to pay the balance of Rs.2,09,442/- which has not been paid by the Complainant and it was paid only on November 2021. On 18.02.2020 the Respondents sent email with photos regarding the repairing of snags pointed out by the Complainant. On 20.03.2020 the Respondent sent email to confirm the draft for registration and the Complainant wanted to register sale deed showing a different amount than in the draft. Various communications were sent by the Respondent company to the Complainant, reminding him the urgency to complete the registration. On 23.03.2020 subsidy period got over and the Complainant neither paid the due amount and nor produced the TDS certificate. On 24.03.2020 lockdown was declared. On 29.07.2020 Respondent company sent another email and in November 2020 the Respondent company communicated to register property but the Complainant was waiting for

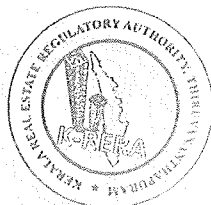


Government notification for reduced rates. Without disclosing these factual positions, the Complainant approached this Authority. During the pendency of the Complaint before this Authority, there was a conciliation talk and accordingly Complainant has paid the balance sale consideration due to the Respondents in November 2021 and the Respondents executed the sale deed. The Respondents also cured all the defects as pointed out by the Complainant towards full and final settlement. After sale deed got registered, in contrary to the terms mutually agreed, the Complainant came up with a claim for interest which is perse illegal and unsustainable in law. Hence the Respondent prayed to reject the request of the claimant for interest, damage and cost etc.

6. The Complainant filed rejoinder on 11.04.2022 to the Objection filed by the Respondent denying almost all the contentions taken by the Respondent. As per clause 3 of the agreement, the complainant has to pay to the builder the amounts as per the payment schedule without demand and without default and the last instalment is to be paid at the time on handing over of the property. As per clause 13, the builder had to hand over the apartment within 17 months from the date of agreement on 03.01.2017. As per clause 15 of the construction agreement, the builder undertake to ensure handing over possession of the property to the client only after receipt of the entire amounts. As per the ledger account statement for the period from 1st April



2013 to 10th March 2020, issued by the Respondents, the Complainant had remitted to the account of the Respondents by 20.03.2018, a total amount of Rs. 1,17,99,573/- (One Crore Seventeen Lakhs Ninety-nine thousand and five hundred seventy-three only) which is more than the payment schedule attached along with the construction agreement. In view of the payment of amount as per the payment schedule, the Respondents should have handed over possession of the apartment on or before 02.06.2018 including the grace period as agreed in clause 13 of the construction agreement. On 17.04.2018 the Respondents sent email with some photographs informing that the apartment was nearing hand over and after that there was no response from the Respondents regarding the handing over of possession of the apartment. On 21.2.2019 the Respondents sent email stating that they were in the process of sorting issues of fire clearance and will be completing the formalities for registration by 15.04.2019. The Complainant sent email dated 12.09.2019 reminding the Respondents about the clause of compensation in case of delay from the side of the builder and requesting him to abide by it and to settle compensation for the financial loss and inconvenience caused to the Complainant. On the very same day itself i.e. 12.09.2019 by email the Respondents had replied that they had been chasing the authorities regularly for completing the required paper works from authorities and that they obtained partial completion of the building and they were waiting for the



permission from other Government Departments to get final completion and requested to share the Complainant's ID and address proof for registering the property and they would send the draft sale deed for the approval of complainant. But instead of draft sale deed, the Respondent had sent email dated 14.03.2020 stating the split of total cost of Rs. 1,21,94,787 and the balance to pay (including 1% flood cess) Rs. 2,09,442/-. When the Complainant had visited the apartment in December 2019/ January 2020 it was noticed that most of the major defects were remaining to be rectified and email dated 17.03.2020 was sent to the Respondents to look at the critical issues with water leakage and fungus on the walls in the apartment. The Respondents sent reply dated 18.03.2020 stating that they totally understood Complainant's concern and will share the photograph after completing the works and registration of the apartment was scheduled to that week. On 18.03.2020 itself, the Respondents had communicated a draft sale deed showing the cost of the land and construction of apartment as Rs. 49,16,000/- which is far less of the amount shown in the sale deed and in the construction agreement. Immediately the Complainant had informed the Respondents that he cannot go with a reduced amount in registration deed which is illegal and he wants to show all the whole amount already paid for the apartment and requested to proceed with the registration based on the actual amount of the apartment. The Respondents on 20.03.2021 informed the



Complainant that as per his latest communication, he wanted to register the property for Rs. 1,19,46,252/- which will bring the registration cost from 3,70,000/- to 11,95,000/- plus documentation charges and the total registration expenses would be around Rs. 12,20,000/-. The Complainant had replied that he cannot go with a reduced amount in the registration deed which is illegal and requested to start registration for the amount shown in the sale agreement and with same terms that was agreed in it. The Respondents had informed the Complainant that he cannot assure the registration within two days. Since then there was nothing heard from the Respondents, the Complainant had contacted the Respondents over phone and in reply the Respondents stated that they were planning to complete the registration of all clients and move forward with Association formation and requested to clear the settlement amount of Rs.2,69,422/- by transfer to Axis Bank Account. As per the construction agreement dated 03.01.2017, the complainant had paid the amount in time as per the schedule early in 2018 and he need to pay the last instalment at the time of handing over of the apartment. The defects pointed out earlier were rectified and the registration of the apartment done in the name of the complainant only at the instance of direction from this Authority. The Complainant had never taken possession of the apartment for interior decoration works as there were problems with water leaks and fungus, plastering work issues etc and without curing the



repairs no work on the interior can be done on the apartment. In view of the above as the Complainant paid the entire amount except last instalment by 20.03.2018, the Respondents ought to have handed over the possession of the apartment on or before 02.06.2018 as per clause 13 of the construction agreement as there was no situation arising out of factors beyond the control of the Respondents. But the Respondents handed over the possession of the apartment after rectifying the major defects pointed out earlier only on 26.11.2021 at the instance of this Authority. Hence the Complainant submitted that he is entitled for the relief sought for in the Complaint.

7. After remanding the Complaint by the Hon'ble Appellate Tribunal, with direction to dispose the matter afresh, the Respondent filed IA No. 171/2023 to receive additional documents in evidence to show that there was no wilful delay on the part of the Respondents in completing the construction and handing over possession of the apartment. The documents include communications between the Respondent and the Complainant and NOC from Fire and Rescue Department dated 16.04.2019, Consent to operate from Pollution Control Board dated 03.08.2018, Partial occupancy Certificate confirming the completion of building on 24.04.2019, confirmation by Dinesh for taking possession of apartment on 04.06.2019, KWA connection dated 27.06.2018, Tax paid Receipt dated 23.09.2019 after getting door number, Account statement showing final



settlement and registration charges against the apartment on 29.10.2021. The Respondents submitted that they could not produce the document for want of proper guidance and advice from their Lawyer and had these documents been produced earlier, the initial adverse order dated 04.07.2022 ought not to have been happened. Unless these documents are accepted in evidence, they will not be able to establish their case effectively. The Authority allowed the said petition on 07.12.2023.

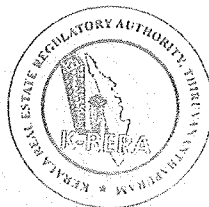
8. The Project is registered with No. K-RERA/PRJ/ERN/068/2022 before the Authority as per Section 3 of the Act, 2016. The Respondents/ promoters have uploaded the copy of the occupancy certificate dated 14.02.2020 in the web page of the Authority. The Respondents have also uploaded Form 6 statement, which is to be uploaded on completion of the project, on 12.04.2022 in the webpage of the Authority.

9. Heard the Counsels appeared for both parties in detail. The documents produced from the part of the Complainant are marked as **Exhibits A1 to A19** and the documents produced from the part of the Respondents are marked as **Exhibits B1 To B24**. After hearing the Counsels on either side and perusing the pleadings and documents submitted by both the parties with respect to the claim of the Complainant for interest for delay, and get exempted from flood cess, the following points are being considered and decided herewith:



- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainant, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) Whether the Complainant herein is entitled to get interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?
- 3) Whether the Complainant herein has the liability to bear the cost of flood cess mentioned by him or not?

10. **Points No. 1&2:** The copy of agreement for sale of undivided share in the land executed between the Power of Attorney holder of the Land owner and the Respondents No 1 represented by Respondent No. 2 and the Complainant dated 03.01.2017 produced is marked as **Exhibit A1**. In Exhibit A1, it was stated that the Respondents obtained building permit BA 160/13-14 from Maradu Panchayath for the construction of a multi storied residential complex in the schedule A property in Maradu village having an extent of 9.39Ares, with basement, ground plus eleven floors and terrace, car parking with common amenities and facilities. The Complainant desirous of purchasing Apartment No. 10A in “Meridian Tower Eleven” and for that purpose to hold apartment intends to purchase undivided share of land 1958/40600 and entered in to agreement, for a consideration



of Rs. 15,00,000/- and paid advance of Rs. 10,000/- and the balance to be paid as per payment schedule. They have also agreed for the proposal of simultaneously entering in to an agreement for apartment No 10A - having super built up area of 1958 Sq.ft on the 10th floor with exclusive covered car parking area. The copy of construction agreement dated 03-01-2017 entered in to between the Complainant and the 1st Respondent represented by the 2nd Respondent is produced and marked as **Exhibit A2**. As per Exhibit A2 the Respondents/promoters agreed to construct and sell apartment No 10A having super built up area of 1958 Sq. Ft on the 10th floor for a construction cost of Rs. 90,73,200/- and an exclusive covered car parking facility for a cost of Rs.2,50,000/- hence total cost was Rs. 93,23,200/- and it was agreed to pay as per stage wise payment schedule attached to the construction agreement. The Respondents/promoters agreed to hand over the schedule C property of apartment with car parking facility together with all facilities within 15 months with a grace period of two months from the date of agreement. It was also agreed that if any deviations there from or any extra work suggested by the client and undertaken by the Builder, delay on account of the same shall be reckoned for the purpose of handing over commitment and the handing over shall stand automatically extended in order to cover such delay. The Complainant also agreed that non-completion of common amenities/facilities at the time of handing over possession of the



individual unit shall not be a hindering or a deterring factor for taking possession of apartment and the promoter shall not be liable for damages or payment of interest and also agreed that the Complainant shall not raise any claim, whatsoever, on that account. The copy of Ledger account from 1.04.2013 to 10.03.2020 issued by the 1st Respondent to the Complainant produced is marked as **Exhibit A3**. As per Exhibit A3, the payment/receipt of sale consideration/construction cost details are as follows:

Sl No	Date	Amount
1	20.09.2016	5,00,000.00
2	12.01.2017	15,00,000.00
3	19.01.2017	5,30,000.00
4	31.01.2017	9,81,000.00
5	31.01.2017	5,00,000.00
6	09.03.2017	9,43,515.00
7	09.03.2017	9,43,515.00
8	09.03.2017	9,43,515.00
9	09.03.2017	9,43,515.00
10	09.03.2017	9,44,513.00
11	11.05.2017	14,70,000.00
12	18.05.2017	1,00,000.00
13.	20-03-2018	15,00,000.00
Total amount paid before promised date		1,17,99,573.00
	24-12-2019	3,70,000.00



Grand Total		1,21,69,573.00
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The copy of e-mail dated 17.4.2018 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A4**. As per Exhibit A4, the 1st Respondent informed that “Please find attached the latest photographs of Prime Meridian Tower Eleven Apartment, Nearing Handing over”. Though there are 8 attachments to the said e-mail, the attachments are not produced.

The copy of email dated 21.2.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A5**. As per Exhibit A5, the 1st Respondent informed that “we are in the process of sorting this issue of Fire clearance, and we will be completing the formalities for registration by 15th April 2019”. Also promised that “we will hand over the project as soon as possible”. The copy of e-mail dated 12.9.2019 issued by the Complainant to the 1st Respondent, produced is marked as **Exhibit A6**. As per Exhibit A6, the Complainant informed that he had completely paid the amount in February 2018 up on agreement, he was promised to get handover of apartment before Onam for the past three years and he was forced to take steps to obtain compensation and consider the mail as a notice. Also informed that the promise to hand over apartment had not yet complied with and he will be forced to take the matter with RERA or to Court of Law for further proceedings. The copy of e-mail dated 12.9.2019 issued by the Respondents to the Complainant,



produced is marked as **Exhibit A7**. As per Exhibit A7, the 1st Respondent informed that they had obtained partial completion of the building and obtained permanent electricity connection and water connection for the building and few owners had already moved in and they were staying there for more than one year. It was also informed that they have received necessary approvals for occupancy certificate from the Municipality. It was further informed that “we had given permission to you for doing your interior works in the apartment last year itself and I presume that you have not started them so far. We received this occupancy after a long one -year effort from the authorities now” Also informed that “we had completed the apartment habitable condition last year itself and please don’t blame us for the delay from the government authorities to give their permissions which is not within our control”. Further requested to “share your ID and address proof to us for registering the property in your name and we shall send you draft sale deed for your approval”. The copy of letter dated 22.11.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A8**. As per Exhibit A8, the 1st Respondent sent Final bill of Apartment 10A and informed that with reference to the agreement entered in to with the Complainant and the terms contained therein, that all the works pertaining to the apartment had been completed and confirmed that that they had received following amounts and the summery is as follows:

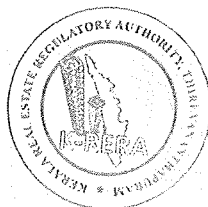


Sl No	Description	Amount Rupees
1	Cost of the apartment including KVAT, Service tax, GST & Service tax	1,18,92,077.00
2	Toward Deposits, Transformer and cabling	1,25,000.00
3	Towards additional work cost	1,77,710.00
Total cost		1,21,94,787.00
	Deduction	1,62,846.00
	Paid on contract value	1,17,99,573.00
	Balance to pay including 1% flood cess	2,34,692.00

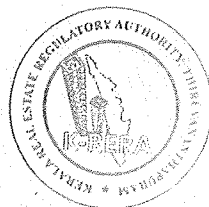
The copy of e-mail dated 25.11.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A9**. As per Exhibit A9, the Respondent attached final statement of accounts. The copy of email dated 14.03.2020 from the Respondents to the complainant as final settlement produced is marked as **Exhibit A10**. As per Exhibit A10, the total cost of apartment is 1,18.92,077/- amount towards deposit, transformer and cabling Rs. 1,25,000/- amount towards additional work cost Rs. 1,77,710/- Total Rs. 1,21,94787/- amount towards deduction Rs. 1,87,846/-, amount paid on contract value Rs. 1,17,99,573/- balance amount to pay including 1% flood cess Rs. 2,09,442/- The copy of email dated 17.03.2020 issued by the Complainant to the 1st Respondent, produced is marked as **Exhibit A11**. As per



Exhibit A11, the Complainant pointed out/listed certain repair works and called the reasons/explanations from the Respondents with regard to repair works. The copy of e-mail dated 18.03.2020 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A12**. As per Exhibit A12, the Respondents had given a detailed reply to the Complainant informing that in some cases the repair works pointed out had been completed and photographs sent and in other cases it be will be completed within a week. The copy of e-mail dated 20.03.2020 at 9.08 AM issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A13**. As per Exhibit A13, the Respondents informed that we had kept all the paper works ready for registration as the final date for registration under subsidy will end by 23.03.2020. It was also stated that “we had informed you to settle the balance amount and finish the registration process by mail and communicated the registration amount on 22nd November 2019, 3rd January 2020 and 10th March 2020. However, we are ready to complete the registration tomorrow and you may clear the balance after registration as a special case. As per your latest communication yesterday, you wanted to register the property for Rs 1,19,46,252 which will bring the registration cost from 3,70,000/- to 11,95,000/- plus documentation charges. The hike is due to the last-minute change as the last date is on 23rd March and you will have to pay 1% TDS from the balance amount due to us through a chartered accountant and the challan has to be shown in the



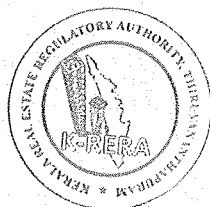
document. This process would take two days and we are afraid that we will not be in a position to complete the process before 23rd of this month. This will in turn increase your registration fee to 10% from the current 7% and the total registration expense would be around 12,20,000/- Please send us a reply today itself by a return mail accepting the change in registration value so that we can put your registration process on hold which was supposed to be completed by tomorrow.” The copy of e-mail dated 20.03.2020 at 11.11 AM issued by the Complainant to the 1st Respondent, produced is marked as **Exhibit A14**. As per Exhibit A14, the Complainant informed that “I don’t think I can go with a reduced amount in the registration deed. It is first of all illegal. I want to see the whole amount that I paid for the apartment. Please proceed with the registration based on the amount for the apartment. It is only 49 Lakh that is mentioned in the registration deed. How will I explain the rest of the money that paid to prime meridian. For that matter, how will you explain all the missing money. I don’t want to be in a position like the home owners in Maradu, whose apartments were taken away from them. They had probably shown in the amount less in their registration and ended up as the loser. Now they cannot get the compensation from the government. There are already problems in the apartment due to water leakage. I have seen it myself when I was there earlier this year. If something happens to the structure or to the apartment, I will be in a bad position to justify myself. Your representative



already told me that the walls will be chipped and will be redone again. As I can see that is not the case, it is just being repainted like you did it last time. That is simply because there was no time for you to do that and the people who were doing interior works was looking for the works to be completed from your side to start their work. Anyway, please start the registration for the amount that was shown in our initial sales agreement and with same terms that was agreed in it". The copy of e-mail dated 20.03.2020 at 1.19 pm issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A15**. As per Exhibit A15, the Respondent informed that "we cannot assure you that the registration will be done within these two days. As we are doing registration of other clients in fair value tomorrow, it will not be accepted. As informed, 23rd March is the last day to avail the benefit, but the registrar will not entertain the registration on the last day. We will try our best to get it done but cannot be assured". The copy of e-mail dated 20.03.2020 at 14.29 pm issued by the Complainant to the 1st Respondent, produced is marked as **Exhibit A16**. As per Exhibit A16, the Complainant informed to "proceed with the registration will be full amount that I paid. I will move the rest of the money today. As I can see there are two days. Please try to do it in two days." The copy of e-mail dated 20.03.2020 at 2.07 pm issued by the Complainant to the 1st Respondent, produced is marked as **Exhibit A17**. As per Exhibit A17, the Complainant informed that "I would like you to proceed



with the registration tomorrow itself. It is unfair that we have a window tomorrow and I cannot do the registration. Please try to do the registration tomorrow itself separately. You didn't write me the exact amount that I have to pay now, I have paid 3,70,000/-. I will transfer." The copy of e-mail dated 20.03.2020 at 3.02 pm issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A18**. As per the Exhibit, Respondents wrote that "As informed through our telephonic conversation, there are a lot of procedures to be carried out in order to do the registration and it cannot happen in a day. Since you would like to show the full amount, TDS has to be paid, Challan to be submitted and those details need to be furnished in the deed. Indeed, it came as a shock from you to show that full amount at the last minute because we had completed all the formalities for your registration". The copy of e-mail dated 21.07.2020 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit A19**. As per Exhibit A19, the 1st Respondent informed that "Reference to our telephonic conversation, We would request your support for the registration of the apartment that is scheduled for next week. We are planning to complete the registration of all the clients and move forward with association formation. As we haven't received the Government notification for the extension of lower registration charges, we are moving ahead with revised charges of 10%. Your revised amount will be Rs. 12,30,000/-, Out of which you have



paid Rs. 3,70,000/-. So the balance amount is Rs. 8,60,000/- Also we request you to clear the settlement amount of Rs. 2,69,442/- (includes water and electricity connection charges of Rs. 60,000). Kindly transfer the amount to the bank account given below”.

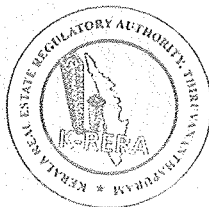
11. The copy of e-mail dated 23.05.2017 by the 1st Respondent to the Complainant, produced is marked as **Exhibit B1**. As per Exhibit B1, the Respondents intimated the rates of Italian Marbles and wooden floor in block tiles and requested to incorporate changes while carrying out interiors, since these options are not standard for Tower Eleven, and requested for confirmation from the Complainant. The copy of e-mail dated 10.11.2017 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B2**. As per the Exhibit it was informed that Door fixing work, painting work, Lift work, Lobby works are in progress and UPVC work completed and attached 10 photos. The copy of e-mail dated 13.11.2017 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B3**. In Exhibit B1, the Respondent informed the Complainant that “We are glad to inform you that we have completed the plastering work of the apartment project Tower Eleven. Tiling, painting and finishing work is progressing. Regarding the work progress of your apartment: Electrical works completed, Plumbing works completed, plastering works completed, Italian Marble laying Completed.” The copy of e-mail dated 08.12.2017 issued by the Complainant to the 1st Respondent, produced is marked as



Exhibit B4. As per Exhibit B4, the Complainant informed the respondent about his selection for bath room sink tap, shower head etc. The copy of e-mail dated 18.12.2017 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B5.** As per B5, the 1st Respondent informed that buffing work of Italian marbles was in progress and 50% completed. The copy of e-mail dated 20.12.2017 and 05.01.2018 between the parties about purchase of sanitary fittings etc., produced is marked as **Exhibit B6 and B7.** The copy of e-mail dated 09.01.2018 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B8.** As per Exhibit B8, the progress of wok of toilet tiling and Italian Marble were intimated and that they are planning to complete the entire works of the apartment by end of January, 2018. The copy of e-mail dated 21.02.2018 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B9.** Exhibit B9, is the communication intimating that the sanitary fittings suggested by the Complainant have been procured and reached at site. The copy of e-mail dated 19.03.2018 issued through Meridian Studio for interior work to the Complainant, produced is marked as **Exhibit B10.** Exhibit B10, is the communication intimating that the quotation through Meridian Studio for interior work, after completion of apartment. The copy of e-mail dated 17.04.2018 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B11.** Exhibit B11, is the email sent with photographs showing that the Apartment



nearing completion. The copy of Consent to operate obtained from the Pollution Control Board district office Ernakulam, produced is marked as **Exhibit B12**. The copy of e-mail dated 21.02.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B13**. As per Exhibit B13, the 1st Respondent informed that water and Electricity connection obtained they are dealing the issue of Fire clearance and will be completed by April, 2019 as the equipment had to come from Delhi. The copy of Certificate of Approval to the project dated 16.04.2019 obtained from the Fire and Rescue Department, produced is marked as **Exhibit B14**. The copy of email dated 28.05.2019 from VP Operations to the Complainant offering that the apartment is ready for interior works and ask the interior contractor of the Complainant to co-ordinate for the start of work, produced is marked as **Exhibit B15**. The copy of letter dated 04.06.2019 from one Dinesh stating that he is ready to take over the apartment for further interior woks, produced is marked as **Exhibit B16**. The copy of Partial Occupancy certificate to the project dated 04.09.2019 obtained from Maradu Municipality, certifying that the Building is fit for occupation, with date of completion as 24.04.2019, produced is marked as **Exhibit B17**. The copy of e-mail dated 07.09.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B18**. As per Exhibit B18, the Respondent wrote "It gives us immense pleasure to inform you that we have received the occupancy and



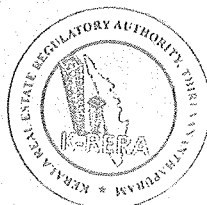
completion certificate of Tower Eleven. The Registration process can be completed soon after Onam holidays. Kindly let us know whether you would like to complete Registration between 17-19th September. We would require your ID proofs, photographs and the Registration fees to be sent across to us. If you are not available on these days, you may please be send the scanned copy of the left hand thumb impression with the above state. The final settlement and handing over will be communicated to you soon. Please do contact us if you have any queries”. The copy of e-mail dated 12.09.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B19**. The Complainant have also produced a copy of this communication and was marked as Exhibit A7. The copy of e-mail dated 25.11.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B20**. As per Exhibit B20, the Respondents furnished the final statement of accounts and stated that “Kindly go through it and make the transfer to the below mentioned account. Please be informed that the payment of water connection, electricity connection and one-time building tax are not included in the final bill. After registration and upon receiving the sale deed, we will intimate you about the utility charges.” The copy of e-mail dated 17.12.2019 issued by the 1st Respondent to the Complainant, produced is marked as **Exhibit B21**. As per Exhibit B21, the Respondents Wrote “Kindly treat this mail as a reminder. Please update us your decision in this matter” The copy



of tax paid receipt dated 23.09.2019, from Maradu Municipality after getting building number 18/263/K1 produced is marked as **Exhibit B22**. The copy of water connection bill for the reading on 15.12.2021, produced is marked as **Exhibit 23**. As per Exhibit B23, water connection was obtained on 27.06.2018. The copy of Ledger Account from 1.4.2010 to 18.08.2022, produced is marked as **Exhibit B24**. As per Exhibit B24, the details of payment is as follows:

Payment Schedule

Sl No	Date	Amount
1	20.09.2016	5,00,000.00
2	12.01.2017	15,00,000.00
3	19.01.2017	5,30,000.00
4	31.01.2017	9,81,000.00
5	31.01.2017	5,00,000.00
6	09.03.2017	9,43,515.00
7	09.03.2017	9,43,515.00
8	09.03.2017	9,43,515.00
9	09.03.2017	9,43,515.00
10	09.03.2017	9,44,513.00
11	11.05.2017	14,70,000.00
12	18.05.2017	1,00,000.00
13.	20-03-2018	15,00,000.00
Total amount paid before promised date		1,17,99,573.00
	24-12-2019	3,70,000.00



Cost of Stamp paper and registration charge	29-10.2020	8,40,200.00
Cost of Stamp paper and registration charge	29-10.2020	2,10,515.00
Grand Total		1,30,81,573.00

12. As per Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as “the Act, 2016”] “If the promoter fails to complete or is unable to give possession of an apartment, plot or building,- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) 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 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.” It is obvious that Section 18(1) of the Act, 2016 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.

13. Here, the Promised date of Completion and handing over was on 02.06.2018 as per Exhibit A2 Construction agreement. The partial occupancy certificate for the project has been obtained only on 04-09-2019, in which the date of completion was shown as 24.04.2019. Both sides raised dispute with regard to the handing over date of the apartment. According to the Complainant the date of handing over of possession of the apartment was on 26.11.2021 and he claims interest for delayed construction and handing over from 03.06.2018 to 26.11.2021. The learned Counsel appeared for the Complainant repeatedly submitted that the Respondent had handed over the possession of apartment only on 26.11.2021, for which no proof has been placed on record in this respect. But the Respondents submitted in their counter statement that the Complainant had paid the balance sale consideration due to them in November 2021 and then sale deed was executed in favour of the Complainant. The Respondents on the other hand claimed that by May 2018, the project was completed, application submitted for occupancy certificate, final occupancy certificate was issued on 04.09.2019 and thereafter on 07.09.2019 the 1st Respondent sent email to the Complainant and informed that the occupancy certificate was obtained and requested to take steps to get the sale deed



registered. As per mail dated 12.09.2019 the Respondents requested to provide ID address proof and other required documents for registering the property and again as per email dated 25.11.2019, the Respondents informed the Complainant about the balance amount outstanding to the company and the registration amount to be paid for registering the sale deed and a reminder was also sent on 17.12.2019. According to the Respondents, in December 2019, the Complainant had taken possession of the apartment and started interior work in the flat through another contractor and on 24.12.2019 the Complainant sent an amount of Rs.3,70,000/- for registering the sale deed without settling the balance amount outstanding to the company. According to the Respondents, on 10.03.2020 and 14.03.2020 they sent emails demanding the balance amount of Rs. 2,09,442/- which had not been paid by the Complainant. According to the Respondents on 20.03.2020 the Complainant wanted to get register the sale deed showing a different amount and various communications were sent reminding the Complainant to complete the registration and on 21.03.2020 the Respondent company did two registrations and on 23.03.2020 the subsidy announced by the Government for registration ended. The Complainant paid the due amount nor provided the TDS certificate from his chartered accountant which is mandatory for registration and on 24.3.2020 lockdown was declared in the State



and thereafter on 21.07.2020 the Respondents sent mail to the Complainant to register the project.

14. On examination of the documents placed on record, it can be seen that the promised date of completion of the apartment was 02.06.2018. Though the Respondents have taken contention that the apartment had got partial completion certificate from the Municipality on 27.02.2017, no documents to substantiate the same has been produced. However, the various email communications from the 1st Respondent marked as Exhibits B1 to B8 shows that the 1st Respondent company had done regular communication with the Complainant informing various stages of progress in work and follow-up for completion of construction. Exhibit B1 email communication dated 23.05.2017 from the 1st Respondent reveals that the Complainant had opted for Italian marble and wooden floor, instead of standard tiles and the Respondents advised the Complainant to incorporate changes while carrying out their interiors. As per Exhibit B2, communication dated 10.11.2017 the Respondent informed the Complainant that door fixing, painting work, lobby work, lift work, were progressing. As per Exhibit B3 dated 13.11.2017 Respondents informed the Complainant that electrical work, plumbing work, plastering work were completed and also informed the amount due as Rs.9,19,591/- As per Exhibit B4 communication dated 08.12.2017 the Complainant informed the Respondents about his selection for bath room sink, tap, shower



head etc. As per Exhibit B5 dated 18.12.2017 Respondents informed the Complainant that the work of Italian marble was in progress and 50% completed. As per Exhibit B6 dated 20.12.2017 Respondents informed the Complainant that they checked about the supply of items listed by the Complainant and confirmed availability. As per Exhibit B8 dated 09.01.2018 Respondents informed the Complainant that they had completed toilet tiling and Italian marble polishing was in progress. Exhibits B9 and B10 communications dated 21.02.2018 and 19.03.2018 reveals the change in works with respect to tiles and sanitary fittings, kitchen etc were suggested by the Complainant. As per Exhibit B11, email dated 17.04.2018 as per which photographs of the Apartment were sent showing its nearing completion. As per Exhibit B13 email dated 21.02.2019 the Respondents informed that they were in the process of getting fire clearance. As per Exhibits B15 and B16, arrangements were made by the respondents for interior works as suggested by the Complainant. Exhibit B12, Consent to operate from the Pollution Control Board was obtained on 03.08.2018, Exhibit B14, Certificate of Approval from Fire and Rescue Department was obtained on 16.04.2019, Exhibit B17, "Partial" occupancy certificate with date of completion on 24.04.2019, was obtained on 04.09.2019 by the Respondents. The local authority which issued the occupancy on 24.04.2019 has not clarified as to why the word "Partial" has been used in the occupancy certificate dated 04.09.2019. The final



occupancy certificate to the project was obtained on 14.02.2020, which is revealed from the copy uploaded in the webpage of this Authority by the Respondents. The copy of the occupancy certificate dated 14.02.2020 is marked as **Exhibit X1**. The Respondents have uploaded Form 6 statement, the statement to be uploaded on completion of the project, on 12.04.2022 in the webpage of the Authority. The copy of Form 6 statement is marked as **Exhibit X2**. From the above narrated documents before us it is clearly revealed that the contention of the Respondents such as the construction of the apartment was completed by them during the end of 2017 and they have not failed to comply with the promise, etc are totally meritless and contrary to the real facts. Hence it can be rightly concluded from the above documents that the Respondents have failed to complete and handover the apartment on or before the promised date of 02.06.2018. If at all we would consider that the interference of the Complainant by suggesting changes in the materials used as marbles, plumbing and sanitary items etc also attributed to such failure/delay the above-mentioned documents such as Exhibits B12, B13, B17 and Exhibits X1 and X2 clearly reveal that the Respondent/promoter had failed to obtain statutory sanctions and approvals like clearance from the Prolusion Control Boards, Final Fire NOC and final occupancy certificate before the promised date. The changes in the materials



or interior works inside the apartment have nothing to do with obtaining of said mandatory sanctions and approvals.

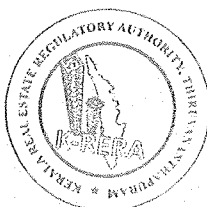
15. Anyhow Exhibits B19 to B21 shows that the 1st Respondent on 12.09.2019, 25.11.2019 and 17.12.2019 sent emails to the Complainant with respect to the registration of sale deed in his favour, but the demand of the Complainant with regard to the amount of consideration to be shown in the sale deed delayed the registration. The Complainant as per Exhibit A14 email demanded that the whole amount he paid for the apartment should be shown in the sale deed and he does not want to be in a position like the home owners in Maradu, whose apartments were taken away from them and they cannot get adequate compensation probably shown the amount less in their registration. Such a demand from the Complainant is undoubtedly genuine and purely legal. Moreover, the Act, 2016 does not envisage any other occupancy certificate such as “partial” or “conditional” for permitting an allottee to occupy the building which is clear from Section 17 of the Act, 2016. Section 17, mandates the promoter to execute sale deed within 3 months of obtaining occupancy certificate. Here, occupancy certificate was received only on 14.02.2020.

16. However, it is found that the Respondents/Promoters had failed to complete the project and hand over the apartment to the Complainant, even after getting the entire consideration from the Complainant, as promised as per the terms of the agreement.

It is to be noted that the Complainant had paid entire consideration amount by 20.03.2018 before the promised date of completion on 02.06.2018. The registration charges of Rs. 3,70,000/- was paid on 24.12.2019 and the stamp paper charges and registration charges amounting to Rs. 9,12,000/- were paid by the Complainant on 29.10.2021. The learned Counsel appeared for the Complainant submitted that the Respondent had handed over possession of apartment on 26.11.2021 at the instance of this Authority. The Respondents in the counter statement stated that the Complainant made his final settlement only in November 2021 and possession cannot be handed over before full and final settlement against the purchase of the apartment. In these circumstances, no handing over of apartment could be presumed to be done before 29.10.2021, the date on which the stamp duty and registration charges were paid, as per Exhibit B24. The contention of the Respondents that the apartment was handed to one Dinesh on behalf of the Complainant on 04.06.2019 as per Exhibit B16, cannot be taken in to consideration, as it was admittedly only an arrangement for further interior works as stated in the said Exhibit. Thus, the Complainant is found entitled to get interest for the delayed handing over of possession and the Respondents are liable to pay interest to the complainant as per the proviso to Section 18(1) of the Act, 2016 for the period from 03.06.2018 to 29.10.2021.

17. With respect to the right of allottees to get interest for delay, the Hon'ble Supreme Court made certain observation in the judgement of Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., which are as follows: "*Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession.*" Even if the Complainant/allottee had made delay in the payment of instalment, the Promoter has made use of the investments of the Complainant's hard-earned money for the past years and failed to complete the work and possession was not given as per the terms of the agreement.

18. It is obvious that Section 18(1) of the Act, 2016 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. As per Exhibit A2, the Respondents should have handed over possession of the apartment on 02.06.2018 and the Complainant could take over possession at that time. Since the Respondents could not hand



over possession as per the terms of the agreement, the Complainant is eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to sec 18(1) provides 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.” It will not be out of place to mention here, certain remarkable observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11/11/2021 of **M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others** as follows: *“ 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/homebuyer, 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 with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.*

19. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete and hand over



possession of the apartment as promised to the Complainant herein and hence the Complainant is entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant.

20. With regard to point No.3, the relief sought with respect to the liability of flood cess, it was a tax implemented by the Government of Kerala on goods and services from the customers so as to raise funds required for the relief and rehabilitation of those affected by flood happened in the state in 2018 and the said tax was applicable from August 2019 till July 2021. If the Respondents succeeded in honouring their promise to complete and hand over the apartment by 02.06.2018, the Complainant would not have been liable to pay such an amount towards flood cess and that apart, if the Respondents could have obtained the occupancy certificate and intimated the same to the Complainant for registration before July 2019, undoubtedly the Complainant would have absolved from the liability of flood cess. In view of the above, we hold that the Respondents/promoters herein are liable to bear the cost of flood cess mentioned in the Complaint and hence the point No. 3 is also answered in favour of the Complainant.

21. As provided under the Proviso to Section 18(1) of the Act, 2016, read with Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018, the allottee is entitled



to get interest for delay from the promised date of completion and handing over, till the date of handing over. As stated in pre- paras the promised date of completion as per Exhibit A2 agreement was 02-06-2018 but the actual date of handing over is on 29.10.2021. Hence it is found that the Respondents are liable for payment of interest from 03.06.2018 to 29.10.2021. As per the provisions of law, the Complainant is entitled to get interest for Rs **1,17,99,573.00** from the promised date of completion and handing over ie; on 03.06.2018 till the date of actual handing over on 29.10.2021 as provided under the Proviso to Section 18(1) of the Act, 2016, at the rate prescribed in Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018. The said Rule prescribes the annual rate of interest payable by the promoter to the allottee as SBI's Benchmark Prime Lending Rate plus 2%, to be computed as simple interest. The present SBI's BPLR is 15%. Anyhow, on perusal of the statement and records, it could be seen that the Complainant has claimed interest at the rate of 12% per annum, which is being considered by us for passing this order.

22. In view of the above facts and findings, by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, we hereby direct as follows:

1) The Respondents/promoters shall pay to the Complainant, simple interest @**12%** per annum for every month



of delay from **03-06-2018** to **29.10.2021** on the amount of **Rs. 1,17,99,573.00** paid by the Complainant to the Respondents.

2). If the Respondents fail to pay the aforesaid sum 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 aforesaid sum from the Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

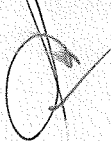
3) The Respondents/promoters shall bear the cost of flood cess mentioned in the Complaint.

The above Complaint is accordingly disposed of.

Sd/-
Preetha P. Menon
Member

Sd/-
P.H. Kurian
Chairman

True Copy/Forwarded By/Order/


Secretary (Legal)



APPENDIX**Exhibits on the side of the Complainant**

- Exhibit A1: The copy of agreement for sale dated 03.01.2017.
- Exhibit A2: The copy of construction agreement dated
03.01.2017.
- Exhibit A3: The copy of Ledger account from 1.04.2013 to
10.03.2020.
- Exhibit A4: The copy of e-mail dated 17.4.2018 issued by the
1st Respondent to the Complainant.
- Exhibit A5: The copy of email dated 21.2.2019 issued by the 1st
Respondent to the Complainant.
- Exhibit A6: The copy of e-mail dated 12.9.2019 issued by the
Complainant to the 1st Respondent.
- Exhibit A7: The copy of e-mail dated 12.9.2019 issued by the 1st
Respondent to the Complainant
- Exhibit A8: The copy of letter dated 22.11.2019 issued by the
1st Respondent to the Complainant.
- Exhibit A9: The copy of e-mail dated 25.11.2019 issued by the
1st Respondent to the Complainant
- Exhibit A10: The copy of email dated 14.03.2020 from the
Respondents to the complainant as final settlement
- Exhibit A11: The copy of email dated 17.03.2020 issued by the
Complainant to the 1st Respondent
- Exhibit A12: The copy of e-mail dated 18.03.2020 issued by the
1st Respondent to the Complainant.



- Exhibit A13: The copy of e-mail dated 20.03.2020 at 9.08 am by the 1st Respondent to the Complainant.
- Exhibit A14: The copy of e-mail dated 20.03.2020 at 11.11 am by the Complainant to the 1st Respondent.
- Exhibit A15: The copy of e-mail dated 20.03.2020 at 1.19 pm by the 1st Respondent to the Complainant.
- Exhibit A16: The copy of e-mail dated 20.03.2020 at 14.29 pm by the Complainant to the 1st Respondent.
- Exhibit A17: The copy of e-mail dated 20.03.2020 at 2.07 pm by the Complainant to the 1st Respondent
- Exhibit A18: The copy of e-mail dated 20.03.2020 at 3.02 pm by the 1st Respondent to the Complainant.
- Exhibit A19: The copy of e-mail dated 21.07.2020 by the 1st Respondent to the Complainant.

Exhibits on the side of the Respondents

- Exhibit B1: The copy of e-mail dated 23.05.2017 by the 1st Respondent to the Complainant.
- Exhibit B2: The copy of e-mail dated 10.11.2017 issued by the 1st Respondent to the Complainant.
- Exhibit B3: The copy of e-mail dated 13.11.2017 issued by the 1st Respondent to the Complainant.
- Exhibit B4: The copy of e-mail dated 08.12.2017 issued by the Complainant to the 1st Respondent.



- Exhibit B5: The copy of e-mail dated 18.12.2017 issued by the 1st Respondent to the Complainant.
- Exhibit B6: The copy of e-mail dated 20.12.2017.
- Exhibit B7: The copy of email 05.01.2018.
- Exhibit B8: The copy of e-mail dated 09.01.2018 by the 1st Respondent to the Complainant.
- Exhibit B9: The copy of e-mail dated 21.02.2018 by the 1st Respondent to the Complainant.
- Exhibit B10: The copy of e-mail dated 19.03.2018 issued through Meridian Studio.
- Exhibit B11: The copy of e-mail dated 17.04.2018 by the 1st Respondent to the Complainant.
- Exhibit B12: The copy of Consent to operate dated 03.08.2018 from the Pollution Control Board District office Ernakulam.
- Exhibit B13: The copy of e-mail dated 21.02.2019 by the 1st Respondent to the Complainant.
- Exhibit B14: The copy of Certificate of Approval to the project dated 16.04.2019 from the Fire and Rescue Department.
- Exhibit B15: The copy of email dated 28.05.2019 from VP Operations to the Complainant.
- Exhibit B16: The copy of letter dated 04.06.2019 from one Sri. Dinesh.
- Exhibit B17: The copy of Partial Occupancy certificate to the project dated 04.09.2019



Exhibit: B18: The copy of e-mail dated 07.09.2019 issued by the 1st Respondent to the Complainant.

Exhibit B19: The copy of e-mail dated 12.09.2019 issued by the 1st Respondent to the Complainant.

Exhibit B20: The copy of e-mail dated 25.11.2019 issued by the 1st Respondent to the Complainant.

Exhibit B21: The copy of e-mail dated 17.12.2019 issued by the 1st Respondent to the Complainant.

Exhibit B22: The copy of tax paid receipt dated 23.09.2019, from Maradu Municipality.

Exhibit B23: The copy of water connection bill for the reading on 15.12.2021.

Exhibit B24: The copy of Ledger Account from 1.4.2010 to 18.08.2022.

Exhibits on the official side

Exhibit X1: The copy of occupancy certificate dated 14.02.2020.

Exhibit X2: The copy of Form 6 statement dated 12.04.2022.

