



# REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No: 50/2021**

Dated 6<sup>th</sup> October, 2021

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

## Complainant

Syed Shameerur Rahman  
18/1116A Rahman House,  
Jail Road, Puthiyara P.O  
Kozhikode, Kerala- 673004

## Respondents

1. M/s TC-ONE Properties and Projects Pvt Ltd  
Commercial Building, TC One Tower  
Near Metro Cardiac Hospital, Palazhi,  
Kozhikode, Kerala- 673014
2. Mr. Noufal Ahmed  
Director, TC ONE Properties and Projects Pvt Ltd  
Villa No: 1, Leslie Villas,  
Karaparamba P.O, Kozhikode,  
Kerala- 673014



## ORDER

1. The Case of the Complainant is as follows: - A sale agreement was executed between the Complainant and the Respondent on 13/06/2016 for the sale of Apartment No.3M on the 3<sup>rd</sup> floor with super built area of 687 Sq. ft. with car parking in "TC One Skywalk Tower II" located at Olavanna Village, Kozhikode Taluk. Copy of agreement produced. As per the agreement and advertised in brochure, the apartment is to be constructed as per the layout shown in the brochure. Further an understanding was made with the builder on customizing the apartment by adding an extra partition in the bedroom area on the same agreed 687 sq. ft. and hence the M unit on 3<sup>rd</sup> floor was revised as per the layout. The project was progressing slowly in 2017-2018 period and was not per the schedule and hence my payments to the builder were not per the schedule as well. A total of Rs.23,000,00/- was paid to the builder on different occasions dated from 21/04/2016 to 29/01/2021 out of the total consideration of Rs.33,000,00/- Even during Covid time the payment of Rs.4,40,000/- was made on different occasions, even though the work at the project site was stalled or was at a lower pace. Even after post Covid, the payment of Rs.1,000,00/- was made and since the work at the project site was nearing completion, the Complainant visited project site on 06/02/2021 to view its progress, but he was shocked to know that there was nothing as 3M apartment with 687 sq. ft on the 3<sup>rd</sup> floor. On enquiry it was revealed that the builder has changed the project plan for the 3<sup>rd</sup> floor and the Apartment 3M was merged with nearby flat 3L and was being made into a larger flat and the same was renamed as 3K. Further, the builder has assigned a different flat 3F2 to the Complainant, without his consent, which does not even match with the layout plan of 3M. The builder has made the changes without the approval of the Complainant and cheated the Complainant. The builder has merged those flats by



adding extra doors between M unit and L unit, which can be easily reverted to its original plan. The payment receipt till 01/01/2019 came in the name of 3M Apartment but from 02/02/2019 it was changed to 3F2 Apartment. when the Complainant insisted the builder to provide the same 3M Apartment as mentioned in the agreement, the Respondents offered two alternatives, (1) flat in the 3<sup>rd</sup> floor which does not even match with the 3M Apartment's layout which does not have a balcony and (2) a flat in the ground floor which matches the layout of 3M Apartment. But the Complainant is not interested in both the options as both the options do not adhere or satisfy the needs of the Complainant and as per the agreement he has full right to claim the 3M Apartment with 687 sq.ft with car parking. The relief sought by the Complainant is that the builder should adhere to the sales agreement and provide M unit Apartment on the 3<sup>rd</sup> floor with the agreed revised layout and car parking to the Complainant. Copies of payment receipts, copy of revised layout of 3M apartment, copy of brochure given by the Respondent, copy of photos showing the status of the project and copy of 3<sup>rd</sup> floor plan are also produced by the Complainant.

2. The Respondents filed counter statement and submitted that the Complaint is not maintainable either in law or on facts. It is admitted that they entered into an agreement with the Complainant on 13/06/2021 for the sale of an Apartment, for a total consideration of Rs.33,000,00/-. The Complainant was not prompt and regular for the payments. As per the stipulations if the Complainant is not paid the payments in due dates the Respondent has the right to terminate the agreement, which is also incorporated in page 6 para 1 of the agreement. Due to the non-payment of amounts the Respondent met huge financial loss. Hence the respondents terminated the agreement and informed him. It is false that



the Complainant made a visit to the site on 06/02/2021 to view the work and was shocked to know that the 3M Flat was changed and merged with 3L. Under the instructions of the local administrations and licensing authorities the Respondents compelled to alter a small change in the lay out. The change was also informed to all the affected customers and obtained their consents. 3M Apartment was changed to 3F2. The said apartment has the same facilities of 3M and an extra area of 8 Sq.ft. the Complainants visited the site and satisfied with the new lay out. After the acceptance of the new 3F2 apartment he paid some amounts to the consideration. Subsequently he became very irregular in payments. After several demands through personally and E-mails the Respondent issued lawyers notice to the Complainant for payment. But he failed to comply the same. At last, the Respondent terminated the Sale agreement and the same was informed to the Complainant and after that the Complainant filed this case. There is a stipulation in the agreement that all the disputes arising between the parties shall be referred to the Arbitration. Hence the Complaint is liable to be dismissed and the Complainant can approach for Arbitration. The Complainant has no right to approach this Authority with the terminated agreement. The Respondent produced Details of payment received, copy of Sale Agreement, Email Communications, Payment receipts, Advocate Notice dated 27/02/2021 & Copy of Brochure

3. The Complainant filed reply statement to the counter filed by the Respondent and submitted that without his consent the Respondent has changed the floor plan. As per the agreement the completion date of the project was 31/12/2018. The Respondent has not completed the project till now. Without proper progress in the work, it is not legally valid for the Respondent to demand timely payment from the Complainant. So, the grounds mentioned by the Respondent for



terminating the agreement is not legally valid and the Complainant was ready to pay the balance amount during his visit to the project site in February 2021. But the Complainant was reassigned to a different Apartment (3F2), without his consent. So, with such a dispute in progress, it is not legally valid for the Respondent to terminate the agreement with non-completion of work. It is completely false that 3F2 Flat is similar to 3M as mentioned by the Respondent. 3M Flat comes with a balcony space which is not available in 3F2 and the view from 3M is a non-hindered, good view. But the view for the 3F2 is not so good and will be hindered by the Respondents upcoming buildings. Hence 2F2 Flat is not a good substitute of 3M Flat. Copy of bank statement and salary slip of the Complainant is produced to prove that he has sufficient means to pay the balance amount of Rs.10,000,00/-

4. The Authority vide interim order dated 20/04/2021, directed the Complainant to inform the Authority, his option either to withdraw from the project and apply for refund or to continue with the project, after discussion with the Respondent. In compliance of the said order dated 20/04/2021, the Complainant has filed a statement dated 25/04/2021 in which he submitted that he wishes to withdraw from the project and prayed for a direction to the Respondent to issue a full refund of Rs.23,000,00/- (Rupees Twenty-Three Lakhs only) paid by him to the Respondent along with interest @ 14.15% from the date of payment. After detailed hearing on 12/07/2021, the Authority directed the Respondent to pay the amount above mentioned along with interest to the Complainant. The Respondent requested for permission to pay the amount in installments which was not admissible to the Complainant who submitted his urgent need of the amount for purchasing a new Flat. In view of the above and with the consent of both the parties the Authority vide order dated 12.07.21,



issued directions as follows: (1)The Respondent shall pay Rs.23,000,00/- (Rupees Twenty Three Lakhs Only) to the Complainant before the next posting date and submits the compliance report (2) The Complainant shall submit detailed calculation of interest claim after serving copy of the same to the Respondent and the Respondent shall file their counter statement after giving copy to the Complainant within one week from the date of receipt of this order.

5. In compliance of the said order dated 12/07/2021, the Respondent has also filed a report stating that he has transferred Rs.23,000,00/- through NEFT to the account of the Complainant and the Complainant has also filed interest calculation statement claiming a total interest amount of Rs.7,000,00/- from the Respondent. The Respondent also filed additional Counter statement, in which he submitted that the statement filed by the Complainant is not maintainable and the Complainant has unilaterally withdrawn from the sale agreement without any valid reason. Though the mistake was done by the Complainant by non-payment of amount as per the sale agreement, the Respondent is only liable to pay the advance amount after deducting the booking amount and he is not entitled to get any interest. The Respondent has faced financial issues and thereby forced to allot the Flat to some other person with a lesser consideration. The present SBI PLR is 7% only. The Complainant has no right to claim interest or penalty as claimed. After hearing the Authority vide order dated 12/08/2021, issued directions as follows: - (1) The Respondent shall arrange a meeting with the Complainant and discuss in detail and settle the amount of interest within 15 days from the date of receipt of this order (2) The Respondent shall submit the outcome / result of the meeting in the form of an affidavit before the next posting. In compliance of the said order, the Respondent has filed affidavit stating that



the Respondent has conducted a virtual meeting with the Complainant on 24/08/2021 at 12 PM and briefed each other their situation regarding the matter including the losses they have met. The settlement amount proposed by the Respondent was not acceptable to the Complainant and the meeting was not successful.

6. After hearing both sides and perusing the documents placed on record, it is evidently found that the Respondent/Promoter has grievously failed to give the Complainant/allottee, apartment No. 3M offered as per the terms of Exbt.A1 agreement. It is also understood that the Respondent could not complete the project so far as promised with common amenities, though it was agreed to complete and hand over possession 'on or before 31.12.2018 with an additional grace period of 3 months. 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, in 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 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"*. The Section 19(4) of the Act also specifies that *"The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be*



*prescribed and compensation in the manner as provided under this Act from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".* Hence, the Complainant herein is entitled to get the refund of amount along with interest as prayed for. As mentioned above, the Respondent has already given Rs.23,00,000/- to the Complainant, in compliance of the order dated 12.07.2021 and only the interest part is to be decided now. 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. Here the Complainants have taken the current rate of  $12.15\% + 2\% = 14.15\%$  as the said rate of interest for the total period, which is found genuine and reasonable. As per the said rate, the interest amount is Rs.8,74,805/- but the Complainant has limited his claim to Rs,7,000,00/- . As discussed in the pre- paras, it is indisputably found that the Respondent/Promoter has critically failed to act according to the terms of the agreement by changing the floor plan without the consent of the Complainant and by reassigning a different Flat to him, and also failed to give possession of the apartment in accordance with the terms of the agreement for sale by and within the period specified in the agreement. Hence for the reasons stated above, it is found that the Complainant herein is entitled to get the interest for every month of delay till handing over possession or till the date specified by the Complainants in their claim statement as provided under the Proviso to Section 18 of the Act 2016. The documents produced from the part of the Complainant have been marked as





Exbt.A1 to Exbt. A8 and documents produced from the part of the Respondent have been marked as Exbt.B1 to Exbt. B6.

7. On the basis of the above facts and findings, invoking Section 34(f) & 37 of the Act, this Authority hereby passes final order as follows:

1) The Respondents shall pay an amount of **Rs.7,00,000/-** as claimed by the Complainants as the interest for the delay, **within 60 days** from the date of receipt of this order.

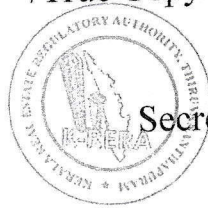
2) If the Respondent fails to pay the aforesaid sum as directed above within a period of 60 days, the Complainant is at liberty to recover the aforesaid sum from the Respondent and its assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri.M.P. Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order



*aw*  
Secretary (legal)

**Exhibits**

**Exhibits marked from the Side of Complainants**

- Ext.A1- copy of agreement for sale dated 13/06/2016.
- Ext.A2 series- copy of payment receipts
- Ext.A3 - copy of revised layout
- Ext.A4 - Copy of project brochure
- Ext.A5 - copy of project progress for period 2017-2018
- Ext.A6 - 3<sup>rd</sup> floor plan of the project TC One Skywalk Tower 2.
- Ext.A7 - Copy of TC One Client Payment due list.
- Ext.A8 - Copy of Bank Statement

**Exhibits marked from the Side of Respondent**

- Ext.B1- Details of payment received
- Ext.B2- copy of Sale Agreement
- Ext.B3 series- Email Communications.
- Ext.B4 series - Payment receipts
- Ext.B5 series - Advocate Notice dated 27/02/2021.
- Ext.B6- Copy of Brochure

