



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaint No. 88/2022

Dated -27th July 2022

Present: Sri.M.P.Mathews, Member

Complainant

Dr. Priyanjali Prabhakaran,
Dharmapram, Near Asram,
Engineering College P.O,
Thiruvananthapuram-695 016.

(By Adv.Sajeesh Kumar)

Respondents

1. M/s Raj Tech Developers Builders Pvt.Ltd,
TC 18/797, Manasapuri, Vayalilkada Road,
Kuravankonam, Kowdiar P.O,
Thiruvananthapuram-695 003.
(Represented by its Managing Director, E.Albert Raj).
2. E.Albert Raj,
Managing Director,
TC 18/797, Manasapuri, Vayalilkada Road,
Kuravankonam, Kowdiar P.O,
Thiruvananthapuram-695 003.

(By Adv P Santhosh Kumar)



The above Complaint was finally heard on 28/05/2022. Counsel for the Complainant and Respondent attended the virtual hearing.

ORDER

1. Complainant is an allottee of project named 'Thakshashila' located at Pangappara village, Thiruvananthapuram District. The said project is registered with the Authority under section 3 of the Act vide Registration No. K-RERA/PRJ/123/2021.
2. The facts of the Complaint is as follows :- The first respondent company entered into a Joint Development Agreement dated 14/01/2015 with property owners by names Ramachandran Nair G and Muhammed Abdul Khadir with respect to A and B schedule properties covering a total extent of 16 Ares of properties in Re. Sy. Nos. 344/6,344/20 and 344/6-1 of Pangappara Village, Thiruvananthapuram Taluk. On the basis of the terms and conditions and recitals made mentioned in the Joint Venture Agreement, a General Power of Attorney was executed by the land owners in favour of the developers on 14/01/2015 and upon the strength of the said General Power of Attorney, the second respondent had entered into an agreement for sale with the Complainant on 19/05/2017 with respect to 'B Schedule', 435 Sq. Ft of undivided right over the 'A schedule' property of 16 Ares of land comprised in Re.Sy.No.344/6, 344/20, 344/6-1 of Pangappara Village, Thiruvananthapuram Taluk and also executed another agreement with the Complainant for the construction of Apartment No. F 1 on the first floor of a big residential apartment project named as "LIFEWAY" having an area of 1774 Sq. and 454 Sq. Ft open terrace and one covered car parking No.28 on the upper basement floor which is described in the agreement. As per the agreement the Respondents have agreed to handed over the flat on or before

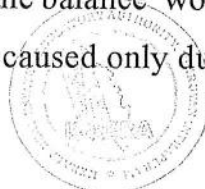


21/07/2019 and the first payment of Rs.1,00,000/- was made on 8/09/2016 as advance and thereafter paid all the payments regularly as per the payment schedule issued by the company without making even a single default and consequently paid a total amount of Rs 46,38,338/- out of the total amount of Rs. 82,82,760/- including tax. Even after the completion of 6 years of time of Joint venture Agreement, the developers are not able to complete their project or at least complete its basic structure. So the respondent have lost their legal right to continue with the project and land owners have lost their faith on the developers and the Complainant has every right to rescind the contract and he has received information from reliable sources that the land owners are not ready to co-operate with the respondent builder as the project is enormously delayed and also for the reason that the project has already been illegally handed over to a new builder by name M/s Shanoor Builders and the project itself was renamed as "THAKSHASHILA". Though the Complainant had paid all the installments regularly according to the payment schedule furnished by the company, the respondents have cheated the Complainant and failed to keep their promise alive and tried to prolong the project by saying false and flimsy excuses and could not attain the speed of construction at any time or at least improve the level of building structure as promised. While so the company has voluntarily prepared for another experiment by modifying the structure of the building and most of the three bed room flats were converted into two bed room flats and thereby increasing the total number of flats for sale and for which fresh plan was prepared and obtained another building permit vide BA/620/17/18 dated 02/08/2018 valid up to 21/07/2019 without any information or knowledge of the Complainant or any other customers and arbitrarily changed the structure, alignment and even the face of the flat accepted by all the customers were changed. The Complainant reasonably suspects that the said unwanted modifications and changes without any logical sense might have been introduced by the management under the misguidance



or inexperienced technical advice and in the meantime the project happened to be a stagnant structure.

3. The Complainant further submitted that the respondents had compelled the Complainant to put her signature on a fresh agreement on 24/01/2019 with revised payment schedule and the applicant was forced to execute another fresh agreement for the construction of larger area of 1824 Sq. Feet instead of 1774 Sq. Feet and charged cost of construction accordingly and the date of completion of construction would be finished as on 30/12/2019. Thereafter the respondents had send an email dated 18/02/2020 and the date of completion of the construction of flat was arbitrarily changed and revised as 31/12/2020. In fact the applicant was forced to avail loan from SBI, Kesavadasapuram Branch, Thiruvananthapuram and on 25/02/2019 and 24/09/2019 the bank has transferred Rs.28,10,357/- and Rs.3,09,749/- respectively in the account of the company as against the payment certificates issued by the management. But unfortunately again on the 4th time the company had arbitrarily revised the date of completion of the project and the completion date was arbitrarily fixed as 31/06/2021. Though the applicant had vehemently opposed the postponement of the construction and completion of the building, all the demands were fell on the deaf ears of the opposite party and they never cared to consider any of the demands of the applicant and blatantly violated almost all the terms and conditions of the agreements executed and hence committed serious offence of breach of trust and breach of contract. On 18/02/2020 the first respondent had issued an email stating that "We have not achieved the completion of the project due to some financial problems and marketing issues happened for the delay, apologizing for this delay .Hence we had prepared a new schedule of work and that is forwarding herewith for continuing the process of the balance works". So the respondents are clearly admitting that such delay is caused only due to their financial crisis



as well as marketing problems and also due to their internal issues. Likewise on 27/01/2021, a meeting was held at the project site of "LIFE WAY" near Engineering College Junction and during the said meeting the management has admitted their inefficiency and their inability to construct the building in time and further agreed to pay sufficient compensation for the loss caused due to excess delay on the part of the company and thereafter the respondents had cunningly made an attempt to hand over the project to a new builder under the name and style as M/s Shanoor Builders and the said illegal act was strongly questioned and objected by almost all the purchasers including this applicant.

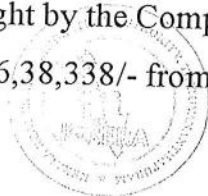
4. It was further submitted that On 24/02 2021 by way of an email, the respondents had again revealed that "construction activities at the sites is in full swing, scheduled to complete the project by August,2022. A new partner came into force with Raj Tech developers and Builders Ltd for funding the project, so as to complete the same within the schedule time". Now the Respondent has extended all their support to start the project under the control of M/s Shanoor Builders and the said builder has already convened a meeting at the project site and announced that the completion of the project is only on August, 2022 and supplied a new brochure in the name of "THAKSHASHILA" by M/s Shanoor Builders and given advertisement through newspaper daily, Radio etc. According to the Complainant the construction work was unusually delayed and work was stalled for years and years only due to the financial or marketing problems of the respondents and also due to the irresponsible attitude or sheer negligence attributed on the part of the builder and the illegal and malafide intention of the respondents leads to unfair trade practice , deficiency in service, physical, mental harassment and also caused heavy financial crisis and losses to the applicant and big amount is being lost as interest to be paid in the bank for the loan availed.



5. The Complainant further submitted that the Complainant had issued a legal notice to the Managing Director of the company claiming total amount paid to the respondents in various installment, the respondents have to take entire liability of sanctioned loan amount and its full interests with other charges and ultimately the applicant is entitled get a decent compensation amount of Rs.50,00,000/-. Even after the second respondent is accepted the legal notice issued by the Complainant, the respondents are not turned up to settle the issues. At the same time issued a reply notice with unsustainable grounds and untenable reasons. In the reply notice the respondent is denying all the legitimate demands of the Complainant by saying false and unreasonable excuses and again requesting to pay for balance payment as per payment schedule that too without even completing the building structure and in the reply notice it is clearly admitted that still the respondents are not able to complete even the basic structure of the said multi-storied building.

6. Since the respondents could not complete the residential apartment project as agreed even after resorted to several opportunities, on account of monetary loss, physical effort, continuous mental agony, defamation the applicant is entitled to get back the full amount paid for the above said apartment together with 18% interest and also sufficient compensation and the claim of compensation is limited to Rs.20,00,000/-. The respondents are also responsible for the entire loan liability of the applicant. The respondents had committed deficiency of service and committed unfair trade practice and cheated the applicant and also enormous delay is caused in completing the construction of the building which leads to huge financial loss and mental agony and hence this complaint.

7. The relief sought by the Complainant are (1) To pass an order for refund of an amount of Rs.46,38,338/- from the Respondents and their assets.



(2) To pass an order for realization of an amount of Rs.27,76,230/- as interest at the rate of 18% for the various payments made by the Complainant in favour of the Respondents. (3) To allow the Complainant to recover an amount of Rs.24,100/- from the Respondents and their assets being the amount paid by the Complainant as insurance in the bank. (4) To allow the Complainant Rs.50,000/- towards cost of legal expenses incurred.

8. The Respondent has submitted reply statement stating that the above Complaint is not maintainable either is law or on facts and further submitted that, it is admitted fact that, the complainant entered into an agreement dated 24.01.2019 with the respondents for the construction and handing over of finished Apartment No. F1 having an area of 2051 square ft with one covered car parking .The payment schedule for the cost of the apartment and undivided share and amenities was agreed to be paid by the complainant in installments, which were more detailed in the said agreement. The complainant opted to pay the installments through bank transfer dated 25.02.2019 and 24.09.2019 by way of a loan avail, in addition to the payment she has made .Thus it is evident that the complainant acted upon these said agreement and the balance amount is due to the respondents as per the said agreement. Clause 16 of the aforesaid agreement ensures the construction completed within 36 months subject to the client fulfilling his obligation as per the agreement and also subject to the situation arising out of factors beyond the control of the builder. The said period of 36 months expired only on 24.04.2022 and the obligations of the complainant were not performed within the period of agreement as agreed by her. Moreover, the respondents had started the construction in a swift and escalating manner with no wastage of time, money and energy in order to achieve the goal within the scheduled time. But due to demonetization and covid-19 there was a delay in handing over of the apartment and delay has been justified by the clause stated in the agreement



and the aforesaid contingencies. There is no breach of contract or non fulfillment terms of the agreement as alleged.

9. The Respondents further submitted that the aforesaid project was registered before the Authority and obtained Reg. No. K-RERA/PRJ/123/2021. The period of proposed date of construction of the project is on 30/09/2023. Section 4(2)(1)(C) of the RERA Act enables the promoter to give a fresh timeline independent of the time stipulated in the agreements for sale entered into between the respondents and complainants so that it is not visited with penal consequences laid down under RERA. Thus on all probabilities it can be found that there is no delay of completion of construction and hence none of the reliefs are allowable.

10. The Respondent further submitted that the project has never been illegally handed over to any new builder as alleged. It is true that the name of the project was renamed which will not affect any of the rights of the allottees. Moreover The promoter is still "Raj Tech Developers and Builders Pvt Ltd" the payments all made and to be made is in the name of the said promoter. The internal management structure of the company has changed which is permissible under the Laws, Acts and Rules. It is true that the building permit was renewed upto 22.07.2022. The earlier agreement executed by the complainant and the respondents was replaced by a new one dated 24.01.2019 signed by the complainant and the respondents. The complainant was never compelled to put her signature in the agreement. After the execution of the new agreement the complainant partly performed her part by releasing the installments through bank transfer by availing loan. The said agreement was acted upon and contrary allegation as to the legality of the agreement is highly objected and denied. The bank loan was obtained on execution of Quadripartite agreement wherein the complainant is also a party. The cut throat interest rate



of the bank loan if any now alleged was fully known to the complainant at the time of availing to the loan. It is also true that the complainant had attended a meeting with the respondent but the respondent never agreed to pay any compensation as averted. The complainant including all other allottees was made known about the administration change of the company, by introducing new Directors as construction contractors for the respondent, which is common in corporate matters and as well as provided in the agreement. The project was never been handed over to M/s Shanoor Builders as alleged and is purely a mistake of fact. The Administrative set up for the purpose of efficient management was only changed which was made known to the concerned Statutory bodies. The complainant can still release the payment in favor of Raj Tech Developers and Builders Pvt Ltd. They remain as the principal contractor and the entire project was never been sold as alleged. The respondent never admitted that the respondents are not able to complete but instead demanded for the balance statement due to the respondent. The impact of Covid -19 pandemic situation was lightly noticed by the complainant as against the real situation faced by the company.

11. The apartment project having in it 53 units in 15 floors were fully completed and the finishing work is only pending for occupation including the one booked by the complainant. The amount received from the complainant was fully utilized for the construction of the booked apartment. In addition thrice the amount received from the complainant was invested by the respondents for the booked apartment of the complainant since it is a multi storied building project, which cannot be set apart for an individual unit like that one booked by the complainant. Thus it is evident that the respondent has invested money towards the compilation of the apartment unit booked by the complainant over and above the amount received from the complainant. The



respondent is entitled to realize the amount agreed to be paid by the complainant. No document is produced from the part of the Respondents.

12. Heard both parties in detail and perused the documents produced by the Complainants and the same is marked as Exbt.A1 to A14. On going through the documents it is seen that the respondent had entered into an agreement for sale with the Complainant on 19/05/2017 with respect to 'B Schedule', 435 Sq. Ft of undivided right over the 'A schedule' property of 16 Ares of land comprised in Re.Sy.No.344/6, 344/20, 344/6-1 of Pangappara Village, Thiruvananthapuram Taluk which is marked as Exbt.A1 and also executed another agreement which is marked as Exbt.A2 with the Complainant for the construction of Apartment No. F 1 on the first floor of a big residential apartment project named as "LIFEWAY" having an area of 1774 Sq. and 454 Sq. Ft open terrace and one covered car parking No.28 on the upper basement floor. Later on 24/01/2019 another agreement was also executed between the Complainant and the Respondent, which is marked as Exbt.A3, it was stated that the builder shall complete the construction of the flat latest by 31/12/2019.

13. On perusal of documents produced by the Complainant and the details made available on the website of the Authority that the said project is not completed and occupancy certificate not received from the local body. The said project is registered with the Authority under section 3 of the Act by the Respondents vide registration No. K-RERA/PRJ/123/2021 and the registration is valid up to 30/09/2023. The permit issued by the local body stands renewed upto 21/07/2022. The Respondent has taken a stand that the project was registered before the Authority and obtained registration number and the date of completion of the project is 30/09/2023. The Supreme Court has made it very clear that the date of completion for ongoing project has to be as per the



agreement executed with the Allottees prior to the commencement of the Act. In Imperia Structures Ltd. V. Anil Patni & Anr. It is clarified that for the purposes of section 18, the period has to be reckoned in terms of the agreement and not the registration. It is admitted by the Respondent that the project was renamed as 'Thakshasila' and it will not affect any of the rights of Allottee. It was further stated by the Respondent in their reply statement that the apartment project is having 53 units in 15 floors and the finishing work is only pending for occupation of the building including the one booked by the Complainant. However the facts remains, no documentary evidence has been submitted by the Respondent, to substantiate the claim that the work has been completed and the completion certificate submitted before the local body for obtaining occupancy certificate. The Occupancy certificate shall be issued by the local body after the Respondent obtained clearance from the Fire and Clearance services and other statutory bodies as per the conditions stated in the permit.

14. From the Exbt.A14 series of documents which is the copy of payment receipts account statement of the Complainant it is clear that the Complainants have paid an amount of Rs.46,38,338/- to the Respondents as cost of apartment No.F1, in the said project developed by the Respondents. The Respondents have not raised any objection on the said documents. Details of payments made, as confirmed by the Authority based on the above documents are as detailed below:

<u>Date</u>		<u>Amount</u>
08/09/2016	-	Rs.1,00,000/-
09/02/2017	-	Rs.4,00,000/-
04/03/2017	-	Rs.4,00,000/-
24/04/2017	-	Rs.3,00,000/-



25/05/2017	-	Rs.3,18,240/-
24/02/2019 loan disbursed by SBI	-	Rs.28,10,357/-
24/09/2019 loan disbursed by SBI	-	Rs.3,09,741/-
Total		Rs. 46,38,338/-

15. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall 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”*. Here, in this case the Allottee is



entitled to withdraw from the project and claim refund of the amount paid with interest.

16. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below "*The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way 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*". On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under the Act, 2016.

17. Hence, the Complainant herein is entitled to get the refund of the above-mentioned amount along with interest and the Respondent is liable to refund the amount to the complainant along with the interest according to section



18(1) of the Act, 2016. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 12.75% with effect from 15/06/2022. The Complainant is entitled to get 14.75% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund as per Rule 18 of the Rules 2018. However the Complainant herein prayed for refund of the amount of Rs.46,38,338/- Lakhs paid by him along with interest Hence it is found that the Respondent's 1 and 2 are liable to pay Rs.46,38,338/- Lakhs along with 14.75 % (12.75 (current BPLR rate) +2%) simple interest from the date of receipt of payment by the Respondents.

18. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order: -

1. The Respondents 1& 2 shall return the amount of **Rs.46,38,338/-** to the Complainant with simple interest @ 14.75% per annum on each payment from the date of actual payment, till the date of realization.

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 Respondent No.1 and its assets & Respondents No.2 and his assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.




This order is issued without prejudice to the right of the Complainant to approach the Adjudicating officer with claims for compensation in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Sd/-
Sri.M.P.Mathews
Member

/True Copy/Forwarded By/Order




Secretary (legal)

Exhibits

Exhibits marked from the Side of Complainants

- Ext.A1 - Copy of agreement dated 19/05/2017.
- Ext.A2 - Copy of agreement dated 19/05/2017.
- Ext.A3 - Copy of construction agreement dated 24/01/2019.
- Ext.A4- Copy of draft Quadripartite agreement dated 24/01/2019
- Ext.A5 - Copy of legal notice dated 10/05/2021.
- Ext.A6 - Copy of reply notice dated 26/06/2021.
- Ext.A7 Series - Copy of various Email Communications.
- Ext.A8 - Copy of payment schedule
- Ext.A9 - Copy of Legal Notice dated 15/09/2021.
- Ext.A10 - Copy of letter dated 04/09/2019.
- Ext.A11 - Copy of letter dated 18/09/2019.
- Ext.A12 series - Copy of project work schedule.
- Ext.A13 - Copy of Brochure.
- Ext.A14 series - Copy of payment receipts & statement of account.

