



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 97/2022**

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

Dated 20<sup>th</sup> December, 2022

**Complainant**

Arif A M  
Assainarakath House,  
Kundazhiyur,  
Thrissur- 680616

**Respondents**

1. M/s Shoppers International Pvt. Ltd  
Represented by its Managing Director  
Door No. XI/292, Veluthoor Desom P O  
Thrissur-680012
2. Mr. P P Sunny,  
Managing Director of  
Shoppers International Malls Private Limited,  
Pengipaambil House,  
Thekumthala Road, Kaloor P O,  
Elamkulam, Kanayannur Taluk,  
Ernakulam- 682 017



The above Complaint came up for hearing on 31/10/2022. The Counsel for the Complainant and the Respondent along with the counsel attended the hearing.

### ORDER

1. The facts of the case are as follows:- The Complainant is the allottee in the project "ELROI Luxury Apartments" situated at Thrissur developed by the Respondents in the year 2015. The Respondents obtained the building permit on 09.02.2015 from Thrissur Municipality for the construction of a multi-stored commercial cum residential building. Based on the proposal put forward by the Respondent, the Complainant decided to purchase one flat in the 3<sup>rd</sup> floor Type D of 1985 sq.ft in the said project. On 28.09.2019, an agreement for construction was executed between the Respondent and Complainant which details the terms and conditions of construction of the apartment for a total consideration of Rs. 1,17,15,800/-including GST. It was also promised that the cost of construction is inclusive of the infrastructure development and common facilities to the said project such as internal facilities, drains, water supply lines, security etc. Though the agreement has mentioned the total cost at Rs. 1,17,15,800/-, the complainant actually paid Rs. 1,80,00,000/-. As instructed by the Respondent the Complainant purchased the undivided interest in schedule A



property which is 1.798% of undivided right, title and interest in schedule A property equivalent to 0.465 Ares of land which is Schedule B property for a consideration of Rs. 62,84,200/-, to construct and hold the residential apartment No. 3 D with a super built-up area of 184.41 Sq. meters in the 3<sup>rd</sup> floor of the above said building along with right to use the common areas and facilities and the right to use one executive car parking facility on the second basement for a consideration of Rs. 29,77,500/- and exclusive right to use terrace portion having an area of 104.97 sq.mtrs for a consideration of Rs. 25,000/- as prescribed as schedule C property. Even though the Complainant has made advance payment of Rupees 25 Lakhs and subsequent payments to the Respondent as per the Annexure 1 of the Agreement, the Respondent has miserably failed to complete the apartment as agreed. A letter was issued to the respondent informing the amount paid so far.

2. The Complainant submitted that as per Clause 12 of the Agreement for Construction, the handing over period was 16 weeks from the commitment period after the execution of the Agreement for construction. As per Clause 18 of the Agreement for Construction, the Builder had undertaken to complete the said construction within 18 months with a grace period of 3 months. Therefore, it is evident that there is a delay in completing the work and handing over the apartment within the agreed time period. It was assured by the



Respondent that the keys of the apartment will be handed over within August 2018 as per the proposal. Though the Complainant issued several communications explaining the grievances, the Respondents never replied to the same. According to the Complainant, he is a businessman and during the pandemic, he was not able to uphold his business. According to the Complaint he had arranged the entire sale consideration by availing personal loans from a bank paying high commercial interest @8.65%. As per the Complainant cheque issued to the Respondents for security purposes was deposited in the bank and a notice dated 25/11/2021 was issued in view of the dishonored cheque. It was further submitted that the Respondents miserably failed to complete the work within the stipulated time as per the agreement. The Complainant as per clause 12 of the agreement is entitled to get the apartment completed or to receive Rs. 4 per sq.ft per month as liquidated damages till the date of actual handing over. The Complainant is also entitled to get suitable compensation for the delay in completing the construction. The relief sought by the Complainants are

- (1) To direct the respondent to complete the construction of the Apartment situated on the 3<sup>rd</sup> floor Type D allotted to the complainant in 'El Roi' with all common amenities and facilities as promised in specifications in the Agreement for Construction, advertisement etc., and



hand over the same to the complainant within the time limit fixed by the Authority.

- (2) To refund the amount paid by the complainant ie 1,80,00,000/- along with the interest computed at the rate of 18% per annum computed from the date of receipt of the amount by the respondent till the payment of the same.

3. The Respondents filed an objection and submitted that the Complainant is not entitled to any of the reliefs sought in the Complaint. According to the Respondents, they had taken up the construction of a multi-storied commercial cum residential building named 'El Roi' with a car park, and common amenities, and it was constructed on 25.88 Ares of land situated in Sy. No. 2016 was jointly owned by Mrs. Madhuri Varma, the Late Mr. K. Krishnan Kutty, and the 1<sup>st</sup> Respondent Company. It was further submitted that the Respondent had obtained a building permit dated 09.09.2015 and the construction was completed with all the permits and approvals obtained for the project. As per the Respondents, the Complainant was bound to pay Rs. 1,80,00,000/- which included Rs. 62,84,200/- for the purchase of 1.798% undivided share in the property, equivalent to 0.465 Ares, and an Agreement for sale was entered into on 03.10.2019 for that purpose. The Complaint had paid Rs. 16,392,867/- to the Respondents as on the date of execution of Annexure E, Sale



Deed, and a Cheque for an amount of Rs. 16,07,133/- for the balance consideration was also handed over as stated by the Respondents. The Respondents claim that they had completed the construction of the apartment on time as guaranteed in the Agreement for construction and the completion certificate dated 18.12.2020 and occupancy certificate dated 24.03.2021 was issued by the Thrissur Corporation. It was submitted by the Respondents though the above information was passed on the Complaint there was no response from the side of the Complainant. The cheque for Rs. 16,07,133/- was presented and returned with the remark "Funds Insufficient". Subsequently, a notice was issued to the Complainant, but the Complainants, instead of paying the balance amount, had sent a reply raising untenable contentions. Thereafter, a suit for recovery was filed and the same is pending before Commercial Court, Thrissur. In the suit, an attachment was ordered in IA 2 of 2022, and the said apartment is conditionally attached. As per the Respondents, they are liable to hand over the possession of the apartment only after the dues are cleared by the purchaser as per clause 5 of the agreement.

4. The Respondents further submitted that as per clause 18 of the construction agreement, they are bound to complete the construction within 18 months with a grace period of 3 months and they were able to complete the project within 28.03.2021 with a grace period up to 28.06.2021. It was



due to the nonpayment of the balance consideration that the apartment was not handed over to the Complainant. The allegation that apartment was promised to be completed as early as on August 2018 is absolutely false sowing to the fact that the Agreement for construction was only entered upon on 28.9.2019. The proviso to section 18 of the Act, 2016 under which the Complaint is preferred, is not automatically attracted, in every case of alleged delay. The same can only operate, if an allottee has paid his dues in full, and is in compliance with provisions of the Act,2016. Under section 19(6) of the Act, Allottee is duty bound to pay within the timelines prepared in the agreement, which the Complainant herein failed to do. In this regard, as per order dated 12.08.2021 in REFA 27 of 2021 is also significant, to the extent it was held that the provisions of the Act cannot be invoked for return of money/ interest/compensation, in a situation where the Allottee has failed to pay his dues. The Complainant is not entitled to any reliefs claimed and it was prayed to dismiss the Complaint with exemplary costs.

5. The matter was heard on 31/10/2022, and the possibility of settling the issues between them was discussed, However, since we have not received any information from the complainant regarding the settlement of issues and handing over of the apartment, this Authority cannot



sit over the Complaint after the expiry of the 30 days promised for settlement. Hence the Complaint is decided on merits. The documents produced by the Complainant are marked as Exhibit A1 to A8. The documents produced by the Respondents are marked as Exhibit B1 to B7. **Exhibit B2** is the agreement for the sale of an undivided share in land dated 3.10.2019 executed between the Complainant, the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> respondent, and the landowners for the sale of 1.798 % undivided share in 25.88 Ares of land. **Exhibit A3** is the agreement for construction executed on 28.09.2019 between the complainant and the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent for construction of the apartment described in Schedule B attached to the agreement for a total consideration of Rs. 1,17,15,800 including GST. It is mentioned in the above agreement that the consideration is exclusive of the consideration for the sale of undivided share of land to the 1<sup>st</sup> respondent as in the payment schedule appended to the agreement as Annexure 1. It is also mentioned in the agreement that the sale deed for the undivided share in the land and property as described in Schedule B attached to the agreement shall be deposited with the 1<sup>st</sup> respondent as collateral security against the total consideration along with the other charges contemplated in the agreement. The 1<sup>st</sup> Respondent had undertaken to ensure handing over possession of the construction to the Complainant within 30





days after completion. The period of completion as per the agreement is 18 months with a grace period of 3 months. The completion date can be taken on 28.06.2021. **Exhibit A5** is the sale deed dated 11/11/2019 executed by the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent and the landowners transferring 1.79 % undivided share in 25.88 Ares of land and built-up area of 184.41 Sq. mtrs situated on the 3<sup>rd</sup> floor of the building named El Roi together with the right to use the common areas and facilities, an exclusive car parking facility on the 2<sup>nd</sup> basement, and exclusive right to use the terrace portion having an area of 104.97 sq. mts for a total consideration of Rs. 92,86,700/-. It is stated in the sale deed that the property more particularly described in Schedules B and C in the sale deed is conveyed to the Complainant through the sale deed after having received the full and final sale consideration of Rs. 92,86,700/-. **Exhibit B3** is the occupancy certificate dated 24.03.2021 issued by the local body. It is clear that the sale deed was executed before obtaining the occupancy certificate.

6. According to the Complainants, the total cost as per the agreement was Rs. 1,17,15,800/- against which an amount of Rs. 1,80,00,000/- was paid. **Exhibit A6** is the letter dated 10.11.2019 forwarded by the Complainant to the 1<sup>st</sup> respondent and landowners in which the details of payments made along with the cheque number is shown



altogether there are 6 transaction shown in the letter for a total amount of 1,78,82,133 against which the last transaction of Rs. 16,07,133/- is without the date of the cheque. **Exhibit B5** is the letter intimating the dishonor of the cheque for Rs. 16,07,133/. **Exhibit B6** is the plaint presented before the hon'ble Commercial Court, Thrissur by the 1<sup>st</sup> Respondent praying for a decree to recover an amount of Rs. 16,31,240/- with future interest at 12 % for Rs. 16,07,133/- from the Complainant. **Exhibit B7** is the attachment order in I A 2/2022 in CS 18/2022.

7. The project is registered under section 3 of the Act,2016 with registration number K-RERA/PRJ/TSR/129/2022. Therefore, there is no dispute in the fact that the Real Estate project falls within the jurisdiction of this authority, and the Real Estate (Regulations & Development) Act,2016, the Real Estate (Regulations & Development) Rules,2018, and the regulations made there are applicable to the project. The Agreement is executed on 03.10.2019 after the Rules, 2018 was notified on 14.06.2018. As per the Exhibit A6 letter dated 10/11/2019, the details of payment made before the execution of the Agreement on 31/01/2018 & 17/04/2018 is Rs. 25,00,000/- .As per section 13(1) of the Act,2016 "*(1), A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a*



*person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.” As per section 13(2) of the Act, 2016 “ (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”*

There is a serious violation on the part of the promoter and the promoter is liable to punishments under the Act, 2016. The Hon'ble High Court vide judgment dated 14/07/2022 in MSA No. 4 of 2021, has the following observations “Section 38 further provides about the powers of K-RERA to impose penalty or interest in regard to any contravention of obligation cast upon the promoters, allottees and real estate agents under the Act or Rules and Regulations. So, the above provisions under the Act also would speak in volumes about the power and authority of the K-RERA to resolve the issue when a complaint is preferred or suo moto in relation to the Act and Rules. So when it has come out there is express violation of the provisions of the Act from the part of the promoter in receiving more than 10% of the sale value as advance without executing agreement by the promoter the Authority is well within its powers to resolve the issue when a Complaint is filed by an aggrieved allottee, to regulate and promote the



*Real Estate sector without again driving the allottee to civil court for redressal of the grievance to get the advance amount unauthorizedly received by the promoter."*

8. In the complaint referred to above, it is noticed that the total consideration as per the agreement was Rs. 1,17,15,800/- against which an amount of Rs. 1,80,00,000/- was paid. As per the letter dated 10.11.2019 forwarded by the Complainant to the 1<sup>st</sup> respondent and landowners in which the details of payments made along with the cheque number are shown and altogether there are 6 transactions shown in the letter for a total amount of 1,78,82,133 against which the last transaction of Rs. 16,07,133/- is without the date of the cheque. The cheque for an amount of Rs. 16,07,133 was available with the Respondent and the same was dishonored by the bank upon presentation. There is a case filed before the Hon'ble Commercial Court praying for a decree to recover this amount with interest @12% and also an attachment order of the apartment allotted to the Complainant. As per section 88 of the Act,2016, the provisions of this Act shall be an addition to and not in derogation of the provisions of any other law for the time being in force. As per the agreement the full consideration is seen paid by the Complainant to the Respondent and the apartment is transferred by sale deed 2766/2019 in favour of the Complainant. Any disputes between the parties in the cheque



bounce case can be settled through Commercial Court proceedings which are in progress. After full payment of the consideration as per the agreement, there is no justification on the part of the Respondent in holding on to the apartment owned by the Complainant.

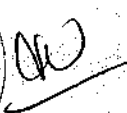
9. Considering the facts and circumstances of the case and perusing the documents, produced by the Respondents and the Complainants, the Authority under section 37 of the Act, 2016 directs the Respondent to hand over the apartment to the Complainant within 30 days on receipt of this order. The Complaint is disposed of accordingly.

Sd/-  
Sri. M P Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order/



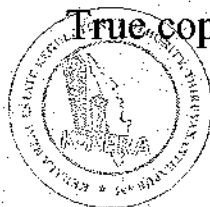
  
Secretary (Legal)

**APPENDIX****Documents produced by the Complainants**

1. Exhibit A1- True copy of the mail communication dated 23.01.2018.
2. Exhibit A2- True copy of the mail communication dated 02.02.2018.
3. Exhibit A3- True copy of the Agreement for Construction dated 28.09.2019.
4. Exhibit A4- True copy of the statement of accounts.
5. Exhibit A5- True copy of the Sale Deed No. 2766 of 2019 dated 11.11.2019.
6. Exhibit A6- True copy of the letter dated 10.11.2019.
7. Exhibit A7- True copy of the letter dated 29.05.2019 and its reply.
8. Exhibit A8- True copy of the notice dated 25/11/2021.

**Documents produced by the Respondents.**

1. Exhibit B1- True copy of the resolution dated 19.08.2021.
2. Exhibit B2- True copy of the Agreement for sale dated 03.10.2019.
3. Exhibit B3- True copy of occupancy certificate dated 24.03.2021.
4. Exhibit B4- True copy of bank memo dated 19.11.2021.



5. Exhibit B5- True copy of letter dated 25.11.2021.
6. Exhibit B6- True copy of Complaint No. C S 18 of 2022.
7. Exhibit B7- True copy of order in I A No. 2 of 2022



