



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No.98/2022**

Present: Sri. M.P Mathews, Member

Dated 20<sup>th</sup> February, 2023.

## Complainant

Mariamamma Stephen,  
PO Box No. 2424, Dubai. UAE.  
Now residing at House No. 481 d,  
Attupurathu Puthenvilayil,  
Rainbow Garden, Unichira,  
Thrikkakara North (Part),  
Changampuzha, Ernakulam PIN-682033

(By Adv. C K Thomas)

## Respondents

1. M/s.P.T.C Builders,  
PTC Towers,  
S.S Covil Road, Thampanoor,  
Thiruvananthapuram- 695 004.  
(Represented by its Managing Partner).
2. Biju Jacob,  
Managing Partner,  
M/s.P.T.C Builders,  
PTC Towers,  
S.S Covil Road, Thampanoor,  
Thiruvananthapuram- 695 004.

(By Adv.V.Ajakumar).

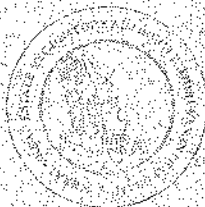


The above Complaint came up for virtual hearing today. Counsel for the Complainant and counsel for the Respondents attended the hearing.

### **ORDER**

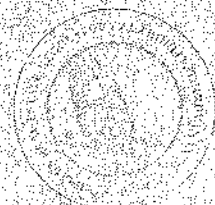
1. The Complainant is an allottee of project named 'PTC Western Ghats' located at Pathanamthitta District, developed by the Respondents. The said project is registered with the Authority under section 3 of the Act, (Registration No. K-RERA/PRJ/011/2021).

2. On 23.11.2013, the Respondents entered into a contract with the complainant for sale of a flat/residential property identified as No. 4F including a car parking space on the basement/ground floor and 1.48% of undivided interest in the complex, in the multistorey residential complex named PTC Western Ghats (12 storeys) to be constructed in Pathanamthitta town, for a total consideration of Rs.49,00,000/-. The Respondents have promised among other things, top quality construction with all facilities conforming to all municipal / governmental rules and regulations, and completion of works in all respects and delivery for occupation by July 2015, with a grace period of six months. Time is the one of the essence of the contract and Prompt installment payment on intimation from the builder was also the essence of the contract.



3. The Complainant further submitted that on receipt of intimation from respondents, installment payments were promptly made towards cost of the apartment, totaling to Rs. 27,44,000/- as on 12.8.2015. However, as the progress of the work was not as expected vis-a-vis the delivery schedule, the complainant protested and cautioned the respondents about the slow progress of the work. Ultimately, contrary to the promises made by the respondents, the construction was not complete and possession of the flat was not handed over even by January 2016, when the grace period of six months expired. Consequently, the complainant made no further payment. While the status remained so, the 1<sup>st</sup> Respondent by legal notice dated 04/05/2018 and levelling unsustainable and baseless allegations vis-à-vis Contract, admitted receipt of Rs.27,44,000/- from the Complainant towards the cost of the flat but also demanded further payment. The said legal notice was followed by a letter dated 04/06/2018 from the 1<sup>st</sup> Respondent stating that their agreement dated 23/11/2013 with Complainant for construction and delivery of the apartment has been cancelled and that the amount received by them is being refunded. But no amount was refunded.

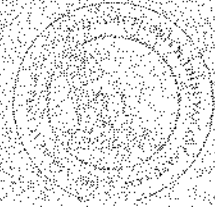
4. The complainant submitted that she has made all the due instalment payments towards the cost of the apartment promptly, as stated in the contract, on receipt of intimation from respondents, till stipulated date of delivery and discharged all her



obligations and it is only the respondents who committed a breach of contract by failing to complete the work and hand over the apartment for occupation, latest by January 2016 as undertaken. The respondents can neither take advantage of their own failure for not completing the construction or handing over the flat for occupation; nor can they escape from their liability by claiming to cancel the contract. In fact, the unilateral cancellation of the contract by the builders is nothing but an admission of their failure to discharge their obligations under the contract and as such, the respondents are liable to refund an amount of Rs.27,44,000/- to the complainant, along with simple interest at a rate mutually agreed to in the contract (18% per annum) from 15.11.2013 to 28.2.2022. working up Rs. 36,65,367. Hence this Complaint.

5. The reliefs sought by the Complainant is to Direct the respondents to refund the principal amount of Rs. 27,44,000/- (Rupees Twenty-seven lakh forty-four thousand) received from complainant towards the cost of the apartment together with interest @ 18% per annum from 15/11/2013 to 28/02/2022.

6. The Respondents 1 & 2 have filed written statement stating that the above Complaint is not maintainable either in law or on facts. An allottee like the Complainant, who have deliberately violated his obligations under section 19 of the Act cannot file a complaint for return of the part paid amount towards



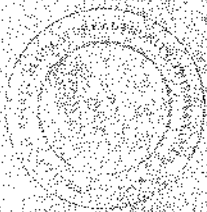
cost of the construction which was already utilised for the construction based on the promise given by the Complainant. In spite of breach of promise by the Complainant to pay the amount of consideration, the 1<sup>st</sup> Respondent has invested its own funds by availing loans at higher rate of interest and completed the construction and obtained occupancy certificate for the building and requested the Complainant to take possession of the Apartment No.4F by paying the balance amount with interest. But the Complainants refused to pay the balance amount to the 1<sup>st</sup> Respondent and to take possession of the apartment.

7. The Respondents further submitted that it is admitted by the 3<sup>rd</sup> Respondent that the 1<sup>st</sup> Respondent is the only person permitted to effect construction on his land by collecting money from the intending purchasers and a power of attorney was executed by the 3<sup>rd</sup> Respondent in favour of the 2<sup>nd</sup> Respondent in that regard. True copies of joint venture agreement and power of attorney are produced. It is the bounden duty of the 3<sup>rd</sup> Respondent to answer the claims of the allottees, and also the claims of the Respondents 1 & 2 for the breach of terms of joint venture agreement. The above Complaint is filed in active collusion with the 3<sup>rd</sup> Respondent to purposefully harass the Respondents 1 & 2 and to make unjust enrichment in this regard and evade payments due to the 1<sup>st</sup> Respondent.



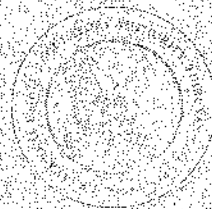
8. It was further submitted that the above Complaint is bad for misjoinder of necessary party. The land owner and the permit holder Mr. Jacob Mathew is a necessary party in this Complaint. The Complainant who has deliberately defaulted the due payments have no right to file a complaint for return of the part paid amount with interest. There is no obligation on the part of the Respondents to complete the construction before July 2015 with a grace period of 6 months as alleged. It is specifically made mentioned in the clause relating to the tentative date of completion that 'The time limit is subject to the timely payment by the allottee and also it is subjected to the unforeseen circumstances such as natural calamities, court orders, prohibitory orders from the Government and other authorities and under all circumstances wherein the builder is prevented from completing the project'. The construction could not be progressed as expected as the soil of the land on excavation for construction of foundation was found to be rocky and about 19 months were taken to blast the rocks and remove the same for construction of foundation. As there is a school nearby only controlled blasting after school hours is permitted and there was also substantial delay on the part of the authorities to issue permits to the 3<sup>rd</sup> Respondent for blasting and removal of rocks.

9. The Respondents further submitted that by facing all unforeseen hindrances and fighting litigations with the land lord the 1<sup>st</sup> Respondent has completed the construction in



27/07/2017 leaving only minor finishing works investing huge fund taken as loan the allottees including the Complainant have in collusion with the land lord has refused to pay the balance amount due. After completion a meeting of the allottees and landlord was convened in April 2018 and the Respondents requested the allottees to pay atleast 85% of the promised due under the agreement. Accordingly a notice dated 04/05/2018 was issued to the Complainant demanding further payments. But the Complainant has not made any further payments nor send any reply to the said notice. As there is no response to the above notice the Respondents have issued a notice dated 04/06/2018 intimating its option to cancel the agreement and if she opts to accept the cancellation the amount received will be refunded after deducting the damages and costs due to the 1<sup>st</sup> Respondent in that regard on realotment of the apartment. As there is positive response to the letter dated 04/06/2018 from the Complainant, the Respondents decided to complete the construction of the apartment by investing funds taken as loan and has decided to demand payments on getting occupancy for the building. Later after inspection the Pathanamthitta Municipality has issued occupancy Certificate on 30/07/2020.

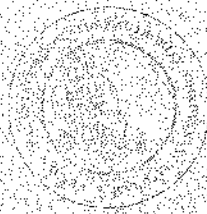
10. The Respondents further submitted that the Complainant is bound to take possession of the apartment within two months from the date of issue of occupancy certificate by paying the balance amount due to the Respondents as per section 19



of the Act, 2016. If the Complainant is unable to pay the balance amount she shall report the same to the 1<sup>st</sup> Respondent and shall accept the cancellation acknowledging the same and shall accept the refund after deducting the damages payable to the 1<sup>st</sup> Respondent due to the defaults on her part. Till date the Complainant has not opted for the same. Copies of building permit dated 29/08/2013, joint venture agreement dated 10/09/2013, General power of attorney, copy of completion certificate filed by the land owner along with the Architect certifying completion of construction and copy of Occupancy Certificate are the documents produced from the part of the Respondents.

11. The Complainant had filed rejoinder and submitted that there is the basic principle called Privity of Contract which is between the Complainant and Respondents only. No one else can be dragged in. The Complainant duly made payments demanded till the stipulated delivery date. On the other hand it is Respondents who not only failed to deliver the flat by January 2016 as committed, But also did the illegal act of cancelling the contract unilaterally, attracting Section 18 of the Act.

12. The Authority heard the learned counsel for both the parties and gave careful consideration to the submissions, and perused the material documents available on record. The documents produced from the part of the Complainant is marked as Exbt.A1 to





A6. The documents produced from the part of the Respondents are marked as Exbt.B1 to B5.

13. Exbt.A1 is the copy of agreement for sale and construction entered into between the 1<sup>st</sup> Respondent represented by its managing partner and the Complainant. As per the said agreement the 1<sup>st</sup> Respondent /builder agreed to sell the Flat No.4F in the project 'PTC Western Ghats', having super built up area of 1371 sq. ft, situated in the 4<sup>th</sup> floor and a car parking marked as 4F along with 1.48 of undivided interest in the A schedule property for a total consideration of Rs.49,00,000/-. It was also stated in the agreement that 'the Respondents / Builder shall complete the Construction of the building complex in an occupiable condition with facilities mentioned in the C schedule by **July 2015** with a grace period of 6 months'. Thus the Respondents were to complete the project by January 2016.

14. Exbt.A5 is the copy of Legal notice dated 04/05/2018 issued to the Complainant by the Respondents demanding the balance payment due to the Respondents towards the cost of apartment. In the above notice the Respondents admitted the receipt of payment of Rs.27,44,000/- made by the Complainant. It was also stated in the notice that the construction of the apartment is nearing completion and the Respondents have submitted application for completion certificate for obtaining occupancy



certificate and numbering of the apartments, before the Pathanamthitta Municipality.

15. Exbt.A6 is the copy of letter dated 04/06/2018 issued to the Complainant by the Respondents regarding the cancellation of the agreement dated 23/11/2013 executed between the Complainant and the Respondents and cancellation of provisional allotment of apartment No.4F in the project, due to non payment of the balance amount to the Respondents towards the cost of the apartment. Though the 1<sup>st</sup> Respondent had cancelled the allotment the payment received was not refunded. The Complainant is entitled to withdraw from the project under section 18 if the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of the agreement. The promised date of completion as per the Exbt.A1 agreement was July 2016 with a grace period of 6 months. However the occupancy certificate was received only on 30/07/2020, the Complainant is entitled to withdraw from the project and claim refund of the amount paid by him along with interest as per section 18 of the Act, 2016.

16. Exbt.A4 is the copy of payment receipts issued by the Respondents from which, it is clear that the Complainant had paid an amount of Rs.27,44,000/- to the Respondents as cost of apartment No.4F and proportionate share over the land and other amenities in the said project. The Respondents have not raised any



objection on payments made against Exbt.A1 agreement. The details of the payment made to the respondents were as follows:-

Payment Schedule

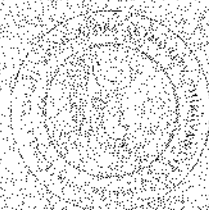
<u>Date</u>	<u>Amount</u>
15/11/2013	Rs.1,00,000.00
27/12/2013	Rs.4,00,000.00
27/12/2013	Rs.4,80,000.00
05/06/2014	Rs.2,94,000.00
29/12/2014	Rs.2,94,000.00
27/02/2015	Rs.2,94,000.00
10/04/2015	Rs.2,94,000.00
11/06/2015	Rs.2,94,000.00
12/08/2015	Rs.2,94,000.00
<b>Total</b>	<b>Rs.27,44,000.00</b>

17. The promised date of completion as per the Exbt.A1 agreement was July 2015 with a grace period of 6 months and occupancy certificate for the project was obtained only on 30/07/2020, the Complaint is entitled to withdraw from the project and claim refund of the amount paid with interest as per section 18 of the Act, 2016. 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*

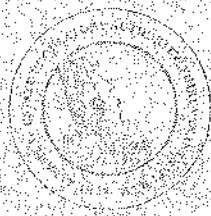


*discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, 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"*.

18. 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 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”*. 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.



19. Hence, the Complainant herein is entitled to get refund of the amount paid by him along with 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 14.15% with effect from 15/12/2022. The Complainant is entitled to get 16.15% 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. Hence it is found that the Respondent's 1 and 2 are liable to pay Rs.27,44,000/- along with 16.15 % (14.15 (current BPLR rate) +2%) simple interest from the date of receipt of payment by the Respondents.

20. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issues the directions as follows: -

1. The Respondents 1& 2 shall refund the amount of **Rs.27,44,000/-** to the Complainant with simple interest @ 16.15% per annum on the payments made as per the above payment schedule, from the date of each 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.

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 deed of agreement for sale & Construction dated 23/11/2013.

Ext.A2- Copy of letter dated 15/11/2013 issued to the Complainant.

Ext.A3- Copy of email dated 01/01/2016 issued to the Respondents.

Ext.A4 series - Copy of payment receipts.

Ext.A5- Copy of legal notice dated 04/05/2018 issued to the Complainant.

Ext.A6- Copy of letter dated 04/06/2018 issued to the Complainant.

**Exhibits marked from the side of Respondents 1 & 2**

Ext.B1- Copy of building permit dated 29/08/2013

Ext.B2- Copy of Land Owner's Agreement dated 10/09/2013

Ext.B3- Copy of power of Attorney.

Ext.B4- Copy of Completion certificate filed by the land owner along with the Architect certifying completion of construction.

Ext.B5- Copy of Occupancy Certificate dated 30/07/2020.