

**In the Office of the Adjudicating Officer  
KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**



**Present:  
T.U. MATHUKUTTY B.Sc., LL.B  
Adjudicating Officer**

**(Tuesday, the 14<sup>th</sup> day of September, 2021)**

**ORDER IN CCP NO.127/2020**

**Complainant:**

M/s. Parthas, a registered Partnership Firm,  
Registered Office at T.C. 38/155  
Power House Road, Chalai P.O.  
Thiruvananthapuram – represented by its Partner Mr.Abishek Arjunan  
S/o Srinivas Arjunan  
residing at Parthas, House Nos.33,34, T.C. 5/2353-1  
Golf Links Road, Thiruvananthapuram – 695 003

By Advocate : Sri. V. Ajakumar

**Respondents:**

1. M/s. Great India Estates (P) Ltd.  
Registered Office at 1<sup>st</sup> Floor, New Corporation Building  
Palayam, Thiruvananthapuram – 695 013  
represented by its Director Mr.E.Iqbal, S/o Late J.M. Elias  
residing at Mullassery House, Sasthavattom  
Veiloor Village, Thiruvananthapuram
2. Mrs. Tabitha Sarah Alex  
W/o Mr. Alex K. Thomas, Home Maker  
residing at Kalluvila, AR, T.C. 5/2270(4),  
Kadappathala Nagar, Kowdiar, Thiruvananthapuram – 695 003
3. Mr. Issac E. Kalathil  
S/o Late V.K. Eapen  
residing at T.C. 5/2537, TKV Nagar  
Golf Links Road, Kowdiar, Thiruvananthapuram

4. Mrs. Elizabeth Issac  
W/o Issac E. Kalathil  
residing at T.C. 5/2537, TKV Nagar  
Golf Links Road, Kowdiar, Thiruvananthapuram
5. Mr. Rohan Eapen  
S/o Mr. Issac E. Kalathil  
residing at T.C. 5/2537, TKV Nagar  
Golf Links Road, Kowdiar, Thiruvananthapuram
6. Mr. Rueben Eapen  
S/o Mr. Issac E. Kalathil  
residing at T.C. 5/2537, TKV Nagar  
Golf Links Road, Kowdiar, Thiruvananthapuram

R1 by Advocates : Sri. A. Abdul Kharim and Sri. Sameer Kharim

R2 to R6 – Ex-parte.

### **ORDER**

1. The factual matrix of the complaint can be depicted as follows:- The complainant is a registered partnership firm named 'M/s. Parthas' engaged in textile business. The 1<sup>st</sup> respondent is a construction company known by the name "M/s. Great India Estates Pvt.Ltd.", represented by its Director. The respondents 3 to 6 are the owners in possession of 34.360 cents of dry land comprised in Re-survey No.24/192 and 24/193 of Perookada Village in Thiruvananthapuram. The 1<sup>st</sup> respondent/builder and the respondents 3 to 6/land owners jointly executed an agreement dated 24.12.2009 permitting the 1<sup>st</sup> respondent/builder to develop the said land and to construct a multi-storied apartment complex in it. It is specifically stipulated in the said agreement that the 1<sup>st</sup> respondent has to commence construction of building within 45 days and to complete its construction within 33 months. Thereupon, the 1<sup>st</sup> respondent obtained an approved plan and permit for construction of the multi-storied apartment project in the



name and style of 'GIE Grand Asteria'. Thereafter, the respondents 1 and 2 entered into an agreement dated 28.09.2010 whereby the 1<sup>st</sup> respondent agreed to sell and the 2<sup>nd</sup> respondent agreed to purchase apartment No.12 on the 12<sup>th</sup> floor in the proposed building along with the proportionate undivided right over the land for a total sum of Rs.1,59,58,000/- (Rupees One Crore Fiftynine Lakhs and Fiftyeight Thousand only) and the 1<sup>st</sup> respondent agreed to complete the construction of the apartment and to deliver its possession before September, 2013, subject to the payment of the stipulated amount. While the construction of the building was in progress, the 1<sup>st</sup> respondent proposed to re-allot the aforesaid apartment No.12 to the complainant firm. Pursuant to it, the aforesaid Flat No.12 was re-allotted to the complainant as per the tri-partite agreement dated 21.07.2016 executed by the complainant and respondents 1 and 2 for a total consideration of Rs.2,54,38,000/- (Rupees Two Crore Fiftyfour Thousand Lakhs and Thirtyeight Thousand only) and the complainant paid the entire sale consideration for the same to the 1<sup>st</sup> respondent by way of fund transfer from the bank account. The 1<sup>st</sup> respondent failed to complete the apartment and to deliver its possession to the complainant inspite of repeated demands and consistent follow up. The complainant, therefore, lodged the present complaint against the respondents for return of amount with interest, to recover the compensation provided under the Act and the cost of the proceedings.

2. The 1<sup>st</sup> respondent filed written statement contending as follows: The complaint is not maintainable either in law or facts. The 1<sup>st</sup> respondent launched the apartment project named 'GIE Grand Asteria' in the prime location of Kowdiar in

Thiruvananthapuram City and completed 95% of civil work as per the agreement with the allottees. It is true that the complainant entered into tri-partite agreement for sale with the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent to purchase an apartment. Originally, the said apartment was sought to be purchased by the 2<sup>nd</sup> respondent, as per the agreement dated 28.09.2010, wherein, the 1<sup>st</sup> respondent agreed to complete and hand over the apartment by September 2013. But the project could not be completed as expected due to the various reasons beyond the control of the 1<sup>st</sup> respondent. Nearly after three years from the agreed date of completion of project, the complainant expressed willingness to purchase the apartment in the project. The complainant entered into tri-partite agreement dated 27.07.2016 with the 1<sup>st</sup> and 2<sup>nd</sup> respondent with the full knowledge regarding the delay and sloth in handing over the apartment and uncertainty in completing the project. In the above circumstances, no specific date was mentioned in the said agreement regarding either the completion of the project or handing over of the apartment in favour of the complainant. An allottee can seek return of amount with interest only if the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of agreement as laid down in sub-section (1) of Section 18 and sub-section (4) of Section 19 of Real Estate (Regulation and Development) Act. Since the agreement relied on by the complainant does not mention any date for completion of apartment or handing over of its possession, the complainant cannot successfully claim for return of amount with interest and compensation provided under the Act by seeking shelter either under sub-section (1) of Section 18 or sub-section (4) of Section 19 of the Act. The tri-partite



agreement executed by complainant and respondents 1 and 2 already got frustrated. E-mail communication of the 1<sup>st</sup> respondent to the complainant suggesting a date of completion of project as December 2018 does not form part of the tri-partite agreement relied on by the complainant. There is no deficiency in service or any unfair trade practice on the side of the 1<sup>st</sup> respondent. There is no infraction of any provisions of Real Estate (Regulation and Development) Act by the 1<sup>st</sup> respondent. The complaint is devoid any merits and bonafies. It is liable to be dismissed with costs.

3. The respondents 2 to 6 remained ex-parte.

4. The points that arise for consideration are:-

(1) Whether complaint is maintainable?

(2) Whether the complainant entitled to get the reliefs as sought in the complaint? If so, in what manner?

5 Parties did not adduce any oral evidence. Exts.A1 to A6 were marked on the side of complainant. Respondents did not produce any document.

6. Heard the learned counsel on both sides. Perused the records.

### **Points 1 and 2**

7. Ext.A1 is the copy of joint venture agreement dated 24.12.2009 executed by the 1<sup>st</sup> respondent/builder and respondents 3 to 6/land owners to develop the land in order to launch the 1<sup>st</sup> respondent's multi-storied apartment project named 'GIE Grand Asteria'. Thereupon, the 1<sup>st</sup> respondent/builder obtained building permit, evidenced by Ext.A2, from Thiruvananthapuram Municipality to commence the work.

The 2<sup>nd</sup> respondent, who booked apartment No.12 on the 12<sup>th</sup> floor in the proposed building and the 1<sup>st</sup> respondent/builder jointly executed an agreement dated 28.09.2010, evidenced by Ext.A3, showing its sale consideration, payment schedule, time of completion of building and delivery of possession of apartment. The 1<sup>st</sup> respondent, thereafter, agreed to sell and the complainant agreed to purchase the apartment so booked by the 2<sup>nd</sup> respondent with the consent of 2<sup>nd</sup> respondent and they jointly executed tri-partite agreement dated 27.07.2016 relating to it, evidenced by Ext.A4, showing the sale consideration, the payment Rs.75,00,000/- (Rupees Seventyfive Lakhs only) towards the part of sale consideration, the payment schedule etc. Pursuant to it, the complainant paid the entire sale consideration of Rs.2,54,38,000/- as evident from Ext.A5, the copy of the ledger account. Thereafter, the 1<sup>st</sup> respondent/builder sent email communication dated 25.11.2017, vide Exrt.A6, to the complainant re-iterating that the apartment will be handed over by September 2018 and the project will be handed over by December 2018. The complainant lodged the present complaint against the respondents for return of amount with interest and to recover the compensation and the cost of the proceedings alleging that the 1<sup>st</sup> respondent/builder failed to complete the apartment and to deliver its possession inspite of repeated demands and consistent follow up. The learned counsel for complainant drew my attention to Exts.A1 to A6 to substantiate his plea that the complainant has succeeded in establishing a case coming under sub-section (1) of Section 18 as well as sub-section (4) of Section 19 of the Act and the complainant is entitled to get all the reliefs sought in the complaint on account of it.



8. The learned counsel for the 1<sup>st</sup> respondent/builder, on the other hand, vehemently urged that by knowing fully well that the construction of building was delayed for more than three years from the agreed date of completion shown in Ext.A3 agreement dated 28.09.2010, the complainant agreed to purchase the apartment by executing Ext.A4 tri-partite agreement dated 27.07.2016 without mentioning any date regarding the completion of the apartment and delivery of its possession and in such circumstance, the complainant cannot successfully bank upon either sub-section(1) of Section 18 or sub-section (4) of Section 19 for the return of amount with interest and to recover the compensation provided under the Act and the complaint is liable to be dismissed on that solitary ground. It is further contended that the date of completion of building and handing over of possession of apartment shown in Ext.A5 email communication sent by 1<sup>st</sup> respondent to the complainant is only a mere suggestion and Ext.A5 email communication cannot be relied on and acted upon for the reason that it does not form part of Ext.A4 tri-partite agreement executed by parties. It is also contended that there is no deficiency in service or any unfair trade practice on the side of the 1<sup>st</sup> respondent and the complainant cannot seek the aid of this forum in the absence of any infraction of any provisions of the Act and Rules.

9. When Ext.A4 tri-partite agreement governing the parties in respect of the apartment in question was in force and there was failure to complete the apartment and to deliver its possession, the newly enacted Real Estate (Regulation and Development) Act and Kerala Real Estate (Regulation and Development) Rules governing the Real Estate sector for the redressal grievance of allottees came into

force. Admittedly, the Real Estate (Regulation and Development) Act and Rules are squarely applicable to the present case. Hon'ble Real Estate Appellate Tribunal, Kerala, held in the order dated 14.07.2021 in RFA Nos. 21 & 27 of 2021 that "in case where compensation is claimed by an allottee in addition to return of amount with interest, the jurisdiction to decide that claim shall be with the Adjudicating Officer attached to the RERA". Ext.A4 tri-partite agreement and the receipt of entire sale consideration are admitted by the 1<sup>st</sup> respondent. The dispute centres around only the complainant's entitlement to get relief either under sub-section (1) of Section 18 (1) or sub-section (4) of Section 19 of the Act. There is no dispute that failure to construct the apartment or inability to give its possession by the promoter in accordance with the agreement for sale confers right on the allottee to seek relief of return of amount with interest and to recover compensation provided under the Act as laid down under sub-section (1) of Section 18 and sub-section (4) of Section 19 of the Act. It is worthwhile to note that immediately after the execution of Ext.A4 tri-partite agreement; the complainant paid the entire sale consideration as stipulated in it.

10. It is significant to note that what is stated at clause No.4 in Ext.A4 tri-partite agreement executed by respondents 1, 2 and the complainant, as parties 1, 2 and 3 therein respectively, is that "on realization of the total sale consideration of Rs.2,54,38,000/- (Rupees Two Crore Fiftyfour Lakhs and Thirtyeight Thousand only) agreed between the first party and third party herein, the first party shall have no manner of claim or right over the Flat and common area attached thereto and **shall forthwith** execute such deeds in favour the third party as is required by them



relinquishing all her right over the scheduled property and indemnifying the third party from all claims if any subsisting till the date of payment of the entire sale consideration.

***First party cause the Second party to have the sale deed to be registered in favour of the third party and on intimation in writing by the first party to the second party the second party shall deliver possession and execute sale deed in respect of the schedule property without any damages to the said property in favour of third party at the cost and expense of third party'***. The entire sale

consideration was paid, by way of three instalments, as stipulated in Ext.A4 tri-partite agreement as shown and described in Ext.A5. The last and final payment was made, as third instalment, on 29.12.2016 as shown in it. So the entire sale consideration was paid before 29.12.2016. A mere perusal of above recitals of said Clause in Ext.A4 is more than sufficient to show that the 1<sup>st</sup> respondent was bound to complete construction of the apartment and to deliver its possession soon after the payment of the entire sale consideration by the complainant. In spite of last and final payment on 29.12.2016 to the 1<sup>st</sup> respondent/builder and sending Ext.A5 email on 25.11.2017 by the 1<sup>st</sup> respondent to the complainant assuring to hand over the apartment by September 2018, the 1<sup>st</sup> respondent/builder failed to complete the building and to hand over the possession of the apartment in violation of Ext.A4 tri-partite agreement. In view of the above facts and circumstances, it has to be held that the complainant has established a case falling under sub-section(1) of Section 18 and sub-section(4) of Section 19 of the Act for the return of amount with interest and to recover the compensation provided under the Act. Even though, there was failure to complete the

apartment and to deliver its possession to the complainant despite the receipt of entire sale consideration and long after the expiry of the stipulated period to do so, it was pleaded and argued on the side of the 1<sup>st</sup> respondent that there was no insufficiency of service or unfair trade practice as if it was an excellent example of meritorious sufficiency of service and fair trade practice. All the contentions raised by the 1<sup>st</sup> respondent in his written statement are meritless and not legally sustainable. The 1<sup>st</sup> respondent is solely responsible for the failure to complete the apartment and to deliver its possession.

11. The liability cast upon the promoter in the event of allottee establishing a case falling u/s 18(1) (a) or 19(4) of the Act is not only to return the amount received by him in respect of the apartment but also to pay its interest as provided under the Act. The rate of interest so payable by the promoter to the allottee is the SBI's Benchmark Prime Lending Rate plus two percent from the date of payment till the date of actual payment as laid down in Rule 18(1) and (2) of Kerala Real Estate (Regulation and Development) Rules 2018. The present SBI's Benchmark Prime Lending Rate is 12.05%. So the 1<sup>st</sup> respondent is legally bound to return the amount with interest at the rate of 14.05% from the date of payment till the date of actual payment. Hence, the 1<sup>st</sup> respondent is liable to return a sum of Rs.75,00,000/- (Rupees Seventyfive Lakhs only) with simple interest at the rate of 14.05% from 11.07.2016 and Rs.1,79,38,000/- (Rupees One Crore Seventynine Lakhs and Thirtyeight Thousand only) with simple interest at the rate of 14.05% from 11.11.2016 and Rs.9,48,000/- (Rupees Nine Lakhs Fortyeight Thousand only) with simple interest at the rate of



14.05% from 29.12.2016 to the complainant till the date of actual payment or realization.

12. The 1<sup>st</sup> respondent is not only bound to return the amount with interest but also liable to pay compensation as provided u/s 18(1) and 19(4) of the Act. As 1<sup>st</sup> respondent failed to complete the apartment and deliver its possession as stipulated in Ext.A4 agreement, he patently made the breach of contract. The complainant, who thereby suffered, is entitled to get compensation for the loss and damage sustained in consequence thereof. The fact that the 1<sup>st</sup> respondent refused to return the amount with interest and compensation payable by him inspite of repeated demands assumes much significance in the present case. While adjudging the compensation, certain factors as enumerated hereunder u/s 72 of the Act, have to be taken into account:-  
“(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the Adjudicating Officer considers necessary to the case in furtherance of justice”.

13. The complainant booked the apartment in the housing project launched by the 1<sup>st</sup> respondent with a fervent desire to use its own apartment without paying any rent. The complainant paid its hard earned money and savings to the 1<sup>st</sup> respondent to accomplish its above object. The complainant paid the fabulous sum of Rs.2,54,38,000/- (Rupees Two Crore Fiftyfour Lakhs and Thirtyeight Thousand only) towards sale consideration to the 1<sup>st</sup> respondent about five years back. The depletion of money value is also to be taken into account. There is escalation in costs of

construction for putting up an identical apartment in future. What the complainant hopefully desired about the apartment booked by it was not fructified due to the non-completion and non-conveyance of the apartment. The complainant was constrained to spent precious time and energy to achieve its object. The complainant's miserable plight and mental agony and pain due to non-performance of contract by the 1<sup>st</sup> respondent are to be considered in a pragmatic manner. On exhaustive consideration of the various factors enumerated u/s 72 of the Act and other relevant facts discussed earlier, I am of the view that a sum of Rs.5,00,000/- (Rupees Five Lakhs only) is to be awarded as just and reasonable compensation in the instant case. Compensation is so awarded as a remedial measure to make mends in terms of money for the loss occasioned by the non-performance of the contract by the 1<sup>st</sup> respondent. So, in view of what has been stated above, the complaint is allowed in the manner indicated below.

14. **In the result**, the 1<sup>st</sup> respondent/promoter is directed to return (1) Rs. 75,00,000/- (Rupees Seventyfive Lakhs only) with simple interest at the rate of 14.05% from 11.07.2016; (2) Rs.1,79,38,000/- (Rupees One Crore Seventynine Lakhs and Thirtyeight Thousand only) with simple interest at the rate of 14.05% from 11.11.2016 and (3) Rs.9,48,000/- (Rupees Nine Lakhs Fortyeight Thousand only) with simple interest at the rate of 14.05% from 29.12.2016 till the date of actual payment or realization to the complainant. The 1<sup>st</sup> respondent/promoter is also directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation and Rs. 10,000/- (Rupees Ten Thousand only) towards cost of the present proceedings to the



complainant. If the 1<sup>st</sup> respondent/promoter 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 1<sup>st</sup> respondent/promoter and its assets by executing this decree as provided under the Real Estate (Regulation and Development) Act and Rules.

Dated this the 14<sup>th</sup> day of September, 2021.

Dictated to the Confidential Assistant, typed by him and corrected by me.



*[Signature]*  
**T.U. MATHUKUTTY**  
Adjudicating Officer

### **APPENDIX**

#### ***Exhibits on the side of the complainant:***

- A1 : True copy of agreement dated 24.12.2009 executed by 1<sup>st</sup> respondent and respondents 3 to 6
- A2 : True copy of approved permit dated 05.11.2009 issued by Secretary, Trivandrum Corporation.
- A3 : True copy of agreement dated 28.09.2010 executed by the respondents 1 & 2
- A4 : True copy of Tri-partite agreement dated 27.7.2016 executed by the complainant, 1<sup>st</sup> and 2<sup>nd</sup> respondent.
- A5 : True copy of ledger account showing the details of fund transfer from the bank account of complainant.
- A6 : True copy of e-mail communication dated 25.11.2012 sent by the 1<sup>st</sup> respondent to the complainant.

#### ***Exhibits on the side of the respondents : Nil***



*[Signature]*  
**Adjudicating Officer**