



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 231/2021

Present: Sri. P H Kurian, Chairman

Sri. M. P Mathews, Member

Dated 5th December, 2022

Complainant

Krishnan S
Tulsi Plus Square,
19/89, Puthiya Road,
Kalamassery Vadakode,
Thrikkakara North,
Kanayannur Taluk, Ernakulam- 682021
(Now residing at 5/347, Meridian Palm Meadows Villa,
Near Hira Public School, Kumbalam,
Ernakulam- 682506.)

Respondents

1. Abdul Latheef
Moniyappillil,
Veliyathunad Desom, Karumalloor Village,
Paravur Taluk, Ernakulam
2. M/s Tulsi Developers India Private Ltd.
2nd Floor, Tulsi, KPRA Lane No. 5,
Single Junction, Near Collectorate, Kakkanad P O,
Pin- 682030
Represented by its Managing Director, Tulsi Das



3. Tulsi Das
2 D, Sharon Nest,
Sharica Lane, Vazhakkala P O
Pin-682030

ORDER

1. Facts of the case are as follows:- The Complainant is an Allottee of the project named 'Tulsi Nest' located at Edapally, developed by the Respondents. The Complainant entered into two separate agreements with the Respondents on 17/08/2016. The first agreement is for the purchase of 2.94 % of the undivided share of land over an extent of 8.81 Ares belonging to the 1st Respondent situated in Thrikkakkara North Village, Edapally. The sale consideration for 2.94% undivided share of land was agreed at Rs.3,83,760/- and the period of execution of the sale deed was agreed as 30 months. The second agreement is executed between the Complainant and the 2nd Respondent / Builder on 17/08/2016 for the construction of an apartment in the said land. As per the agreement, the super built-up area of the apartment agreed to be constructed in the 8th floor is 970 sq. ft. and the period for completing the construction of the apartment is 30 months and the total cost of construction of the apartment with common amenities and facilities, land cost and car parking is agreed at Rs.40,31,486. The 2nd and 3rd Respondents have agreed to complete the construction of the apartment in stages within 30 months from the date of execution of the agreement, which falls on 16/02/2019 with a further grace period of 8 months. but contrary to the terms of the agreement, the Respondents did not complete the entire works within the original period of 30 months or even in the grace period of 8 months which falls on 16/10/2019, and thereby committed breach of the agreement. Thereafter the Respondents sought an extension of the above agreements till 26/12/2020 for completing the construction and handing over the possession of the apartment in all respects. But contrary to the true facts, Respondents 2



& 3 made the Complainant believe that they shall complete the remaining construction works of the apartment at any rate within a period of 2 months from 26/12/2020 and hand over possession to the Complainant, provided if the Complainant makes a further payment of Rs.7,87,462/- immediately. Believing the words of the Respondents, the Complainant paid the aforesaid amount. Thus, as of 11/02/2021, the Complainant had paid an amount of Rs.43,62,506/- towards the entire construction costs and value of undivided share of land and also towards other charges due under the agreements. Despite the assurance given by the 2nd & 3rd Respondents, they have miserably failed to complete the remaining construction works for obtaining occupancy certificate from the Kalamassery Municipality which eventually prevented the Respondents from handing over possession of the apartment. Thereafter the Complainant sent an email to the 2nd & 3rd Respondents seeking status of the apartment, for which the 2nd Respondent replied with a statement seeking further payments from the Complainant towards the balance amount due towards statutory charges and other charges without completing the entire works of the apartment.

2. The reliefs sought by the Complainant are (1) *to pass an order directing the Respondents to complete the construction of the apartment building 'Tulsi Nest' in all respects with common areas and facilities in accordance with the terms and conditions of the agreement at any rate within a period of three months from the date of the order and register sale deed in favour of the Complainant after receiving the balance amount due towards statutory charges, deposits and other charges due.* (2) *to pass an order directing the Respondents to pay interest for the amount of Rs.43,62,506/- paid by the Complainant from 11/02/2021 till the date of handing over possession of the apartment and on registration of sale deed by the 1st Respondent in favour of the Complainant.*



3. The 2nd and 3rd Respondents have filed objection and denied the allegations of the Complainant and submitted that the above Complaint is not maintainable either in law or on facts and the Respondents have completed the construction of the apartment complex in December 2021 and the Municipal Council, Kalamassery has issued occupancy Certificate on 16/12/2021. So, the above Complaint has become infructuous and the same is liable to be dismissed. It was further submitted that the period of construction was extended by the parties up to 26/12/2020. Due to Covid -19, the Supreme Court of India has extended and exempted the period between 15/02/2020 till 28/02/2022 for the performance of all contracts. Hence there is no delay in completing the construction of the apartment complex. The apartment complex is situated very near 'Edapally Thodu' and it is a low-lying area. The construction activities of the apartment complex were very badly affected due to the 2018 flood and 2019 flood. The entire construction machineries and materials stored in the site got damaged due to the said floods and the Respondents were compelled to clear the site and to bring the fresh machineries for competing for the construction. Thereafter Covid-19 has badly affected the construction industry, which resulted in a shortage of 'man power' and 'construction materials. Apart from that the operations of the quarries and metal crushers were unexpectedly closed down due to government orders, many times, which has very badly affected the building construction industry. The construction of the apartment complex has been delayed solely due to the aforesaid events. But during these periods the Respondents periodically informed the customers regarding the progress of work and the delay. The allegations against the Respondents that they failed to complete the construction of the said apartment-8D is not correct and hence denied. The Respondent has completed the said apartment by December 2021 and also obtained Occupancy certificate on 16/12/2021 from the Kalamassery Municipality. There was shortage of staff in the office of Kalamassery



Municipality during 2020-2022 period as the area, especially its office was badly affected by Covid-19. It is admitted by the respondent that agreements were executed with the Complainant but according to the respondents they have not wilfully delayed the construction of the apartment complex. It is further submitted by the respondents that in the 2018 and 2019 floods, the basement of the work site was flooded with water for weeks, which resulted in damages for machinery, raw materials and the Respondents had sustained huge loss, due to restoration of the damaged machinery and cleaning the premises for restarting the construction. According to the respondents after the flood, there was scarcity in supply of raw materials and labour. The Respondents vide email dated 14/02/2022, intimated the complainant that they are ready to execute the sale deed and to put the Complainant in possession of the apartment and demanded balance payment.

4. The said project named 'Tulsi Nest' is registered with the Authority under section 3 of the Real Estate Regulation & Development Act, 2016 vide Registration No. K-RERA/PRJ/ERN/055/2022 and the date of expiry of registration was 30/06/2022. The Authority, under order dated 28/04/2022 in Complaint 231/2022, directed the Respondents to complete the entire works on or before 30.06.2022. The complainant was also directed to pay the balance amount due to the Respondents towards the amount of consideration or charges, if any as per the agreement executed between them. The case was posted to 30.06.2022 for hearing the interest claim of the Complainant. After hearing the learned counsel for the Complainant and the Respondents, the case was taken for orders. Time was granted to the counsels for filing the argument notes. According to the Respondents, the possession of the apartment was handed over to the Complainant on 28/02/2022. The Respondent further admits the fact that the period of completing the Construction was 04/03/2021. The Complainants are claiming interest on



delay in handing over possession of the apartment from 11/02/2021 till 25/02/2022, under Sec 18 of the Act, 2016. The documents produced by the Complainant is marked as Exhibit A1 to A6. The documents produced by the Respondent is marked as Exhibit B1 to B6.

5. **Exhibit A1** is the Agreement for sale dated 17/08/2016 entered into between the 1st Respondent, 2nd respondent represented by its Managing Director, the 3rd Respondent, and the Complainant for 2.94 percent undivided and indivisible right, title, interest, and ownership over 8.81 Ares of property referred to in Schedule A. The total sale consideration was Rs. 3,83,760/- and the conveyance was to be executed within 30 months from the date of approval of the revised building permit by the municipality. It was further stated in the Agreement for sale that the agreement executed by the Purchasers for the construction of B schedule apartment though distinct and separate and interdependent and that the non-performance of one shall result in and be construed as a breach of the other.

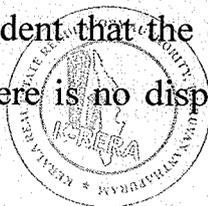
6. **Exhibit A2** is the Agreement for construction dated 17/08/2016 entered into between the 2nd Respondent represented by its Managing Director, the 3rd Respondent and the Complainant for the construction of D type 2 bedroom apartment number 8 D having a super built-up area of 970 sq. ft on the 8th Floor of the residential apartment complex known as 'Tulsi Nest' with car parking and the right to use the common area and common facilities provided in the said property referred to in Schedule A and in the apartment complex for total consideration of 36,47,726/-. The total consideration payable as per the agreement to sell undivided share over the land and the agreement for construction dated 17/08/2016 was Rs. 40,31,486/-. According to the complainant he had paid 43,62,506 as on 11/02/2021 that included the KSEB, KWA, and other charges of Rs. 2,73,035.



Respondents admitted as having received Rs 43,62,506 as per the payment statement mailed to the complainant which is inclusive of KSEB, KWA, and other charges of Rs. 2,73,035, and GST/Service Tax.

ANNEXURE B-PAYMENT SCHEDULE		
1	On Agreement	1017325
2	Balance- 3014161	
3	On Completion of Foundation 6%	241852
4	On Completion of Basement Floor Slab Casting 5%	201115
5	On Completion of Ground Floor Slab Casting 5%	201115
6	On Completion of 1st Floor Slab Casting 5%	201115
7	On Completion of 2nd Floor Slab Casting 5%	201115
8	On Completion of 3rd Floor Slab Casting 5%	201115
9	On Completion of 4th Floor Slab Casting 5%	201115
10	On Completion of 5th Floor Slab Casting 5%	201115
11	On Completion of 6th Floor Slab Casting 5%	201115
12	On Completion of 7th Floor Slab Casting 5%	201115
13	On Completion of 8th Floor Slab Casting 5%	160379
14	On Completion of 9th Floor Slab Casting 5%	160379
15	On Completion of Internal Plastering of the flat 4%	160379
16	On Completion of External Plastering 4%	160379
17	On Completion of Tiling of the apartment 4%	160379
18	On Handing over 4%	160379
	Total Construction cost and land cost	4031486

7. As per the agreement for construction, the construction work of Tulsi Nest together with the common amenities was to be completed within 30 months from the date of approval of the revised permit and a grace period of 8 months above the period fixed for completing the construction. According to the Respondent, possession was handed over on 28/02/2022 and the sale deed was registered on 23/03/2022. It is also agreed by the Respondent that the date of the revised building permit was 04/01/2017. Hence there is no dispute in the fact that the completion date



offered was 04/03/2020. **Exhibit B1** is the occupancy certificate dated 16/12/2021 obtained from the Kalamassery Municipality.

8. Under Section 6 of the Act,2016, an extension of registration can be granted on an application made by the promoter due to force majeure. As per the agreement for construction, it is stated that the non-completion of the project within the stipulated time due to force majeure shall impose no liability on the promoter/Respondent. The Authority had issued two orders No. K-RERA/T3/102/2020 dated 15/05/2020 and 19/07/2021 and taken cognize of the adverse effect of covid 19 pandemic and the lockdown on the Real Estate Project in the state and resolved to treat this as an event of force majeure as per the provisions of the Act,2016. The promoters were given the option to extend the completion date by one year under the above orders. According to the Respondent, the project is very near to "Edapally Thodu" and it was affected by the 2018 and 2019 floods. Considering the fact that the agreement was executed on 17/08/2016 and the revised approval was received on 04/01/2017, the date of commencement of the period for execution of the construction works, due weightage needs to be given to this aspect which is also defined within the expression force majeure under the explanation under section 6 of the Act,2016.

9. The Complainant had also not disputed the fact that the project work was affected due to the floods of 2018 and 2019. Hence it is confirmed that the completion date as per the agreement was not honoured, due to the flood that affected the work in 2018 and 2019 and the period of completion got extended through the period when Covid 19 pandemic situation affected the work. Considering the above factors that affected the work the claim of the complaint for delay interest from 11/02/2021 is to be considered. The completion date as per the agreement was 04/03/2020 and



the respondent is eligible for an extension of one year due to the covid 19 situation as per the orders issued by the authority. Hence the completion date also needs to be revised to 04/03/2021. The Complainant is aggrieved by the fact that even after taking the entire amount of Rs. 43,62,506 on 11/02/2021, the Respondents did not complete the entire works of the apartment and failed to hand over possession of the apartment by August 2021.

10. The Respondents had argued that the Authority had no jurisdiction to entertain the complaint as far as the delayed interest is considered. The Hon'ble Supreme Court, in *M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others* has established the fact that "when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint".

11. According to the payment schedule furnished by the Complainant, an amount of Rs. 27,13,461 was made up to 23/12/2019. The date of completion as envisaged as per the agreement was 04/03/2020 and the balance amount was paid by 11/02/2021. The complainant was expecting completion and handing over in August 2021, after settling the full payment on 11/02/2022, and when this did not happen, he filed the complaint before the Authority on 06/09/2021, claiming interest on delay in handing over possession of the apartment under Sec 18(1) of the Act, 2016 from 11/02/2021 to 25/02/2022. Under Sec 18(1) of the Act, 2016, the complainant is eligible to claim from the promoter interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Rule 18(1) of the Kerala Rules, 2018 prescribes the annual rate of interest payable by the promoter to the allottee as SBIPLR plus 2%, to be computed as simple interest. The complainant has limited his claim to 14.2%. Taking into



consideration the floods of 2018 and 2019 that affected the progress of the work and the Covid 19 pandemic situation, the authority after considering the arguments of the learned counsels and the perusal of documents made available, under section 37 of the Kerala Real Estate(Regulations & Development) Act,2016 directs as follows:

- 1) The Respondents 2 and 3 shall pay to the complainant interest @14.2% simple interest for every month of delay on Rs. 40,31,486 paid by the Complainant to the Respondent from 01/08/2021 to 25/2/2022.

Sd/-
Sri M.P Mathews
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits marked from the Side of Complainants

- Ext.A1- Copy of agreement of sale dated 17/08/2016.
- Ext.A2- Copy of agreement for construction dated 17/08/2016.
- Ext.A3- Copy of statement of account scheduled dated
24/07/2020.
- Ext.A4- Copy of reply mail dated 16/08/2021 sent by 2nd
Respondent.
- Ext.A5 -statement of apartment No.8D.
- Ext.A6 - Copy of Payment schedule pertaining to apartment
No.8D forwarded by the 2nd Respondent.

Exhibits marked from the side of Respondents

- Ext.B1 - Copy of Occupancy Certificate dated 16/12/2021.
- Ext.B2 – Affidavit filed by the 3rd Respondent.
- Ext. B3- Building permit dated 04/01/2017.
- Ext. B4- Sale Deed dated 19/03/2022
- Ext. B5- Certificate issued Kalamassery Corporation dated
17/02/2022.
- Ext. B6- email communication dated 15/02/2022.





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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT ON THE PROGRESS OF WORK

FOR THE YEAR 1900

BY

ROBERT A. MILLIKAN

AND

WALTER D. HENNING

CHICAGO, ILL., 1901

PRINTED BY THE UNIVERSITY OF CHICAGO PRESS

1901

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