



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 232/2022

Present: Sri. P.H. Kurian, Chairman
Smt. Preetha P Menon, Member

Dated 20th February 2025

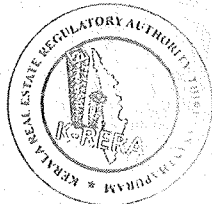
Complainant

Subair Meethale Cherukunnummal
S/o. Kunhabdulla,
Residing at Meethale Cherukunnummal House,
Payyoli, Vatakara, Kozhiikode District.

[By Adv. K.S.Vivek]

Respondents

1. S.S. New Lifestyle Properties, Builders
and Developers Pvt.Ltd.,
Door No.4/1680, IInd Floor, Doha Complex,
RC Road, Calicut-673032
Represented by its Director,
Shajahan. N., S/o Mohammed Ali,
Nalakath House, Karakode P.O.
Vazhikkadavu, Nilambur, Malappuram District.



2. Shihabudheen. N. S/o Mohammed Ali,
Nalakath House, Karakode P.O.
Vazhikkadavu, Nilambur, Malappuram District.
3. Shajahan. N., S/o Mohammed Ali,
Nalakath House, Karakode P.O.
Vazhikkadavu, Nilambur, Malappuram District.

The above Complaint came up for final hearing on 23.12.2024. The Counsel for the Complainant attended the virtual hearing. As the Respondents have not appeared, they were set exparte.

ORDER

1. The Complaint is with respect to a real estate project named "Lifestyle Tower A" at Katcheri village within Kozhikkode Corporation limit, Kozhikkode Taluk, Kozhikkode District with permit No.T.P 3/5355/2010 issued by the Town Planning officer kozhikkode. The Complainant is an allottee and 1st Respondent is the promoter and the 2nd and 3rd Respondents are brothers and also the Directors of the 1st Respondent Company. The 2nd Respondent is also the land owner. The Complainant was interested in purchasing an apartment in the above project which was under construction at that time and approached Respondent No.1. for the said purpose and respondents in their capacity as land owners/builders/promoters offered to sell apartment No. A, B, C, and D total four numbers



of separate apartment units located in the 4th floor of the “Lifestyle Tower A”. The Respondents jointly assured to complete the construction and believing the promises made, the Complainant agreed to purchase the four residential apartment units along with undivided share in the land and common facilities and amenities for a total consideration of Rs 1 Crore. Pursuant thereto the Complainant and the Respondents entered in to an agreement for sale dated 09-07-2010. Out of the total sale consideration an amount of Rs. 50,00,000/- was paid by the Complainant on 13-06-2010 and the same was acknowledged by the Respondents. Thereafter, on 15-08-2010 Complainant again paid Rs. 25,00,000/-, which was also acknowledged by the Respondent. As per agreement it was stipulated to complete the construction within 24 months from form the date of agreement, ie on 08-07-2012. Though 75% of total sale consideration was paid, completion of project was delayed indefinitely. Finally, in the year 2020, Complainant demanded back the entire sale consideration paid by him with interest, the dispute was mediated in the presence of mediators and another agreement was executed between the parties on 12.09.2020 setting out the terms and conditions of agreement. It was specifically agreed by the Respondent to pay a sum of Rs. 75,00,000/- (Rupees Seventy-five lakhs only) as compensation to the Complainant for breach of contract on the side of the Respondent. It was further agreed that out of the said total amount Rs.10,00,000/- (Rupees Ten lakh



only) would be paid within one month from the date of agreement ie by 11-10-2020 and balance Rs.15,00,000/- Rupees Fifteen lakhs only) by 11-12-2020 and the remaining Rs. 50,00,000/- (Rupees Fifty lakhs only) by within six months from date of agreement ie., by 11-03-2021. It was also agreed that the Respondent would complete the construction of one flat No. D and hand over to the Complainant within six months from the date of agreement and complete construction of other flat No. A, within one year from the date of agreement and hand over the same to the Complainant. Even after the expiry of the stipulated period the Respondent neither paid the amount nor completed construction as promised. After repeated demands, Respondent No 2 signed and issued 3 cheques of Respondent No 1 maintained with IDBI bank dated 09-04-2021 for an amount of Rs. 25,00,000/- (Rupees Twenty-five lakhs only) each towards discharge of above liability. The Complainant presented the cheques for collection with SBI, but it was dishonored and returned with three memos dated 20-07-2021. One memo with reason "alterations require drawers' authentication" and two memos with reason as "other reasons". On enquiry with the Bank, it was learnt that there was no sufficient balance for honoring the cheques. Thereafter the Complainant sent lawyer notice dated 11-08-2021 demanding payment of amount covered by three cheques and with respect to Respondent 1 and 2, the same were returned. Though the Respondent 3 received notice, he neither paid the



money nor sent any reply. Hence the Complainant filed Complaint u/s 138 of NI Act, before the JFCM Court Payyoli against R2 and R3 and the same is pending consideration. Now, it was learnt that the Respondent sold the above property to third parties and they had taken possession. Apartment 4A appears to be in the possession of M/s Emerald Properties and Estates, 4B in the possession of one Sreenivasan. C., 4C in the possession Ms. Shehna Kareem and 4D in the possession of Dr. M.V. Muraleedharan and Dr. C.V.Radhadhevi. The Complainant has requested an interim order of conditional attachment of the property pending final disposal of the Complaint, since the Complainant had paid consideration, there is a statutory charge on the apartments. The value of property has increased more than 300% enhancement and suffered approximate loss of Rs. 2,50,00,000/-. The reliefs sought for by the Complainant are i) directing the Respondents to pay an amount of Rs.75,00,000/- along with interest at the rate of 10% per annum from 15-08-2010 till date of payment, ii) to pass an interim order of conditional attachment pending disposal of Complaint. The Complainant has produced copies of agreements and payment details.

2. In spite of getting ample time, the Respondents have not filed any objection/reply statement to the Complaint. 1st Respondent is a Private Limited company, 2nd Respondent is the builder/developer/promoter, representing the 1st Respondent



Company and 3rd Respondent is the land owner. The Authority found that the above said project is not yet registered before the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 [herein after referred to as the Act, 2016] even after repeated directions in this regard by the Authority. A show-cause notice was earlier issued by the Authority to the Respondents/Builders vide Letter No 649/K-RERA/ 2021, while considering another Complaint No. 296/2020. As the Respondents failed to answer the said show cause notice, the Authority heard the matter along with Complaint No 296/2020 filed by one of the allottees of the project. After the hearing on 02-08-2021, the Respondents/promoters were directed to register the project within two months from 02-08-2021. The Respondents/ Promoters failed to comply with the directions and continuously violated the statutory provision under section 3 of the Act, 2016, by not registering the project, a further notice was issued on 23.02.2022 for appearing before the Authority, but the Respondent/Promoter failed to attend the hearing on 08-04-2022 and the Authority directed its two technical officers to inspect the project. The officers after inspection, submitted report dated 23-05-2022, where in it was stated that the occupancy certificate has not been obtained so far and found that the project is an ongoing one and is required to be registered as per section 3 of the Act, 2016. Meanwhile Kozhikode Municipal Corporation vide letter dated 26-04-2022 informed the Authority that occupancy



certificate cannot be issued since the construction was deviated from the approved permit and based on audit report, the building has to be demolished and provisional notice was issued for unauthorized construction. A further notice of hearing dated 02-08-2022 was issued to the Respondents/Builders before proceeding with penal action under section 59 (1) of the Act, but, the Respondents/Promoter grievously failed to attend the hearing either on 16-09-2022 or subsequently on 09-12-2022. However, the Respondent No 2 and his Counsel were present during the hearing of Complaints No. 232/2022, 237/2022, 238/2022 & 280/2022 held on 23.03.2023. The Authority informed of the notices already issued and made him aware of the legal implications of non-registering the project and continuously violating the Orders of the Authority as well as violating the Provisions of the Act, 2016. The Respondent/promoter assured the Authority to register the project, and requested two months' time for registration. Hence, vide order dated 20-04-2023 in the Suo moto proceedings the Authority directed the Respondent/Promoter to register the project before 31-05-2023. However, it is found that the Respondent/Promoter has not registered the project so far or furnished any explanation for not registering the project, within the stipulated time. The Authority has already conducted sufficient inquiries in this regard and found that the project in question is an "ongoing real estate project" for which occupancy certificate is not yet obtained and hence the



project falls under the purview of the Act, 2016. The Real Estate Project is required to be registered before the Authority as provided under Section 3 of the Act, 2016. The Respondents by not registering the project despite several directions from this Authority have committed an offence of violation of Section 3 of the Act, 2016. Hence, the Authority found that they are liable to be punished u/s 59(1) of the Act, 2016. The Authority, invoking section 37 of the Act, 2016, under interim order in Complaints No. 237/2022, 238/2022 & 280/2022 dated 31-05-2023 directed the Respondents to register the project 'Lifestyle Tower I' within two weeks from the date of receipt of the order and to remit a penalty of Rupees 10 lakhs (Rupees Ten Lakhs) to the penalty account of the Authority along with the application for Registration, for violating Section 3 of the Act, 2016. Even after the said direction the Respondent failed to register the project under Section 3 of the Act, 2016. This Authority, on 03.06.2024 has decided to initiate proceedings under Section 59(2) of the Act, 2016 against the Respondents/promoters for continuous violation of Section 3 of the Act, 2016. Thus, criminal complaint filed in Judicial First-Class Magistrate Court IV Kozhikkode.

3. During the final hearing, the Counsel for Complainant submitted that the unit agreed is now in the possession of some other allottees and no sale deed executed with the Complainant. Thus, the Counsel for the Complainant sought



refund of money paid with interest. After detailed hearing and perusal of records placed before the Authority, the following points came up for consideration:

1) Whether the Respondents/Promoters failed to complete or was unable to hand over possession of the apartment to the Complainant in accordance with the terms of the agreement for sale or duly completed by the date specified therein or not?

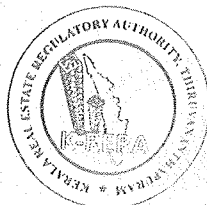
2) Whether the Complainant herein is entitled to withdraw from the project at this stage and entitled for refund of the amount paid with interest as provided under Section 18 (1) of the Act 2016 or not?

4. **Points No. 1 & 2:** - The relief sought is for direction to refund the amount of Rs. 75,00,000/- paid by the Complainant along with interest from the date of payment till the date of receipt of the amount. Section 18(1) of the Act 2016 stipulates that *"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, 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 the 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.” As per Section 19(4) of the Act 2016, *“the allottee shall be entitled to claim the refund of the amount paid with interest at such rate as may be prescribed, 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 the agreement for sale”*. Hence, Section 18(1) is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. In this case the Complainant selected the second option, to withdraw from the project and to claim refund with interest.

5. The documents produced by the Complainant are marked as Exhibit A1 to A10. The Respondents have not produced any document. The copy of Sale Agreement dated 09-7-2010 between the Complainant and the Respondents is produced and



marked as **Exhibit A1**. As per Exhibit A1, 4.668% of undivided interest in 55 cents of land with right of common areas facilities and benefits along with apartment A,B,C,& D on the 4th floor of Life Style Tower 1 having super built up area of 6752 Sq ft to be constructed as per permit No. TP3/5355 dated 31-01-2010 issued by the Calicut Corporation and the proportionate share of all common areas and facilities and one car parking space under the stilts were offered to the Complainant. It is stated in the agreement that the Complainant had paid Rs. 50,00,000/- as advance to the 1st Respondents towards sale consideration and the balance amount was to be settled as per Annexure 1 attached to the agreement. The total amount due as per the payment schedule is 1,00,00,000/- plus sales tax and VAT and service cost which is stated as 6 to 8 % of the gross value. It is clear from the payment schedule that the final instalment was due on 09-01- 2011 and the advance of 50 lakh was received on 09-07-2010. It was further stated in the agreement that the execution of the sale for transfer of title and delivery of possession of the property shall be completed in all respects within 24 months from the date of the agreement. The copy of subsequent sale agreement dated 12.09.2020 entered in to between the Respondents 1 to 3 with the Complainant, is marked as **Exhibit A2**. As per the said agreement, the Respondents had agreed to sell and the Complainant had agreed to purchase Apartment No. A, B, C, & D in the fourth floor of the Life Style Tower A together with proportionate undivided share of land and other common amenities



in the entire building complex and the A Schedule Property. The Respondents have assured the Complainant to complete construction and transfer the apartment unit for a total consideration of Rupees One crore. It was stated in the agreement that the parties had already entered in to an agreement for sale dated 09.07.2010 and the Respondents could not complete the construction of apartment as per the agreement and the parties talked over the matter through mediators and both decide to renew the agreement. It was acknowledged in the agreement itself that the Respondents received Rs 50,00,000/-/- on 13.06.2010 and Rs. 25,00,000/- on 15.08.2010 from the Complainant as consideration. It was agreed to complete flat No. D and promised to hand over within six months from the date of agreement. It was agreed to complete another flat No. A and hand over within one year from the date of agreement and also agreed to pay Rs. 75,00,000/- as compensation to the Complainant for breach of contract on the side of the Respondents. The Respondents agreed to pay Rs 10 lakhs within one month, 15 lakhs within three months, and balance within six months to the Complainant from the date of agreement. The super built up area of A & D apartment agreed to hand over was 3337 sq ft and the proportionate undivided share in the common areas and facilities in the building and car parking space No. 4 under the stilts in the ground floor. The copy of Receipt dated 13-06-2010 issued by Respondent to the Complainant is marked as **Exhibit A3**. The copy of Cheque bearing No. 098101

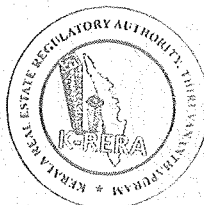


issued by the 3rd Respondent dated 09-04-2021 in their account with IDBI Bank, Kottoli Branch, Mavoor Road, Kozhikode is marked as **Exhibit A4**. The copy of Cheque bearing No. 098102 issued by Respondent dated 09-04-2021 in their account with IDBI Bank, Kottoli Branch, Mavoor Road, Kozhikode is marked as **Exhibit A5**. The copy of Cheque bearing No. 098103 issued by Respondent dated 09-04-2021 in his account with IDBI Bank, Kottoli Branch, Mavoor Road, Kozhikode is marked as **Exhibit A6**. The copy of return memo dated 20-07-2021 with respect to cheque bearing No. 98101 issued by the State Bank of India, Meladi Branch, Payyoli is marked as **Exhibit A7**. The copy of return memo dated 20-07-2021 with respect to cheque No 98102 issued by the State Bank of India, Meladi Branch, Payyoli is marked as **Exhibit A8**. The copy of return memo dated 20-07-2021 with respect to cheque No 98103 issued by the State Bank of India, Meladi Branch, Payyoli is marked as **Exhibit A9**. True copy of Copy of lawyer notice dated 11-08-2021 issued to Respondent on behalf of Complainant is marked as **Exhibit A10**.

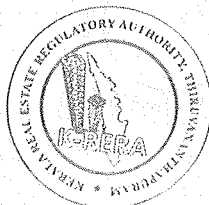
6. The first agreement was executed on 09.07.2010 and the date of promised completion was 24 months form the date of agreement, hence the completion date was 08.07.2012. The total amount of consideration agreed was Rs. 1,00,00,000/- As per the payment schedule the proposed date of first payment was on 26.01.2010 and the proposed last payment date was on



09.01.2011. Here the Complainant had paid a total amount of Rs 75,00,000/- in two instalments one Rs 50,00,000/- on 13.06.2010 and another Rs. 25,00,000/- on 15.08.2010. In the Exhibit A2 agreement it was admitted that the above amounts were received from the Complainant. Thus 75% of the consideration was paid well in advance by the Complainant. It was stated in the Exhibit A2 subsequent agreement that the parties had already entered in to an agreement for sale dated 09.07.2010 and the Respondents could not complete the construction of apartment as per the agreement and the parties talked over the matter through mediators and both decide to renew the agreement. Further it can also be seen that the Respondents had violated the provisions in the 2nd agreement and they could not complete the construction of apartment and hand over the same as promised in the second agreement also. The dishonouring of Exhibits A4 to A6 cheques presented by the Complainant and the three memos as Exhibits A7 to A9 and non-furnishing of replies by the Respondents to the lawyer notice sent by the Complainant as Exhibit A10 shows that the Respondents are intentionally cheating the Complainant and miserably failed to comply with the promises the made in the subsequent agreement through Exhibit A2. Thus, it has been established beyond doubt that the Respondent/Promoter had miserably failed to complete the project as promised, even though the amount of Rs. 75,00,000/- was paid on or before 15.08.2010, as per the terms of agreement entered in to between them.



7. The Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/s Newtech Promoters & Developers Pvt. Ltd. vs State of UP & Ors., observed as follows: *"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/home buyer, 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"*. In these circumstances, the complainant herein is entitled to withdraw from the project under Section 18 of the Act 2016, and claim the return of the amount paid to the Respondents along with interest from the date of receipt of payment by the promotor till refund to the complainant with interest. The Complainant is found entitled to get refund with interest for the delayed handing over of possession and the Respondents are liable to pay refund with interest to the complainant as per the proviso to Section 18(1) of the Act, 2016.



Points No. 1 & 2 are answered accordingly in favour of the Complainant.

8. The interest payable by the Respondents to the allottees is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 15.15%. Hence, the allowable interest rate is $15.15\% + 2\% = 16.15\%$. The relevant portions of Rule 18 of the said Rules is extracted below: *“(1) The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India’s Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.”* But the Complainant has claimed interest at the rate of 10% only in the Complaint from 15.08.2010. The Complainant is entitled for the refund and interest from the respective date of payment till date of realisation.



9. From Exhibit A2 subsequent agreement, it is clear that the Respondents had received an amount of Rs.75,00,000/- from the Complainant. The details of the payment made to the respondents is scheduled below:-

<u>Date</u>	<u>Amount</u>
13-06-2010	Rs. 50,00,000/-
15-08-2010	Rs.25,00,000/-
<hr/>	
Total	Rs.75,00,000/-
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10. Hence, the Complainant is entitled for refund of the amount of Rs. 75,00,000/- paid by him along with interest at the rate of 10% Percent per annum, as simple interest from the respective dates of payment till date of realization of amount.

11. The Authority, after going through the facts and circumstances of the case and the examining the documents placed on record and by invoking Section 37 of the Act, 2016 hereby directs as follows:

- i) The Respondents shall return the total amount of, **Rs.75,00,000/-** received by them, as scheduled above, **with simple interest @ 10% per annum**, to the Complainant, from the respective dates of payment, as




shown in the schedule above, till the date of realisation of amount.

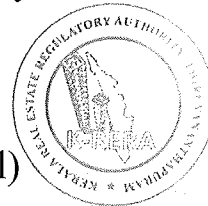
- ii) If the Respondents fail to pay the aforesaid sum with interest as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder.

Sd/-
Preetha P. Menon
Member.

Sd/-
P. H. Kurian
Chairman

True Copy/Forwarded By/Order/


Secretary (legal)



APPENDIX

Exhibits marked on the side of the Complainant

- Exhibit A1: The copy of sale agreement dated 09-7-2010.
- Exhibit A2: The copy of sale agreement dated 12-09-2020
- Exhibit A3: The copy of receipt dated 13-06-2010 issued by
Respondent to the Complainant
- Exhibit A4: The copy of Cheque bearing No. 098101 issued by
Respondent dated 09-04-2021
- Exhibit A5: The copy of Cheque bearing No. 098102 issued by
Respondent dated 09-04-2021.
- Exhibit A6: The copy of Cheque bearing No. 098103 issued by
Respondent dated 09-04-2021
- Exhibit A7: The copy of return memo dated 20-07-2021 with respect
to Cheque bearing No 98101
- Exhibit A8: The copy of return memo dated 20-07-2021 with respect
to Cheque bearing No. 98102
- Exhibit A9: The copy of return memo dated 20-07-2021 with respect
to Cheque bearing No 98103
- Exhibit A10: The copy of Copy of lawyer notice dated 11-08-2021
issued to Respondent on behalf of Complainant

Exhibits marked on the side of the Respondents

NIL



