

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/21/419
(Date of Filing : 11 Nov 2021)**

1. JEKO ANTONY

ALAPATT PALATHINGAL HOUSE 21/2159-C,
MUNDEMPALLY LANE, THYKOODAM, VYTTILA

.....Complainant(s)

Versus

1. GALAXY HOMES PVT LTD.

RAJAI ROAD JUNCTION, M.G ROAD, ERNKAULAM

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 31 Jul 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 31st day of July 2023.

Filed on: 11/11/2021

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member_____

C.C. No. 419/2021

COMPLAINANT

**Jeko Antony, S/o. Antony, Alapatt Palathingal House, 21/2159-C.Mundempally Lane,
Thykoodam, Vyttila, Ernakulam District, Kochi-682019, Mob-9605578122, E-mail
ekoantony@gmail.com**

**(By Adv.Meera Rajan, Omni Justticia Law Firm, Ann's Apartment, Amulya Street,
Ernakulam, Kochi-682 018)**

[

Vs**OPPOSITE PARTIES**

1. Galaxy Homes Pvt. Ltd Galaxy Square, Sixth Floor, Rajaji Road Junction, M.G Road, Ernakulam- Pin 682035 Represented by its Managing Director, Sri. P.A Jinas, Son of Abdul Rahman,
2. Sri. P.A Jinas, Son of Abdul Rahman, Aged 49 years Galaxy House, Shareful Islam School lane, Deshbihmani Road, Edapally South Village, Pin-682017.

FINAL ORDER**D.B. Binu, President.****1). A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant booked a two-bedroom flat in a private limited construction company named "Galaxy CREST." The complainant paid an initial amount of Rs. 25,000/- as a booking fee on 8th June 2017 and later paid Rs. 7 lakhs as per the booking conditions. The company assured the complainant that they had all valid permits for constructing 9 floors and that he would get a bank loan without any issues. However, it was later revealed that the company did not have a valid building permit for the 8th floor, leading to the rejection of the complainant's son's loan application.

Upon discovering this, the complainant asked the company to refund the advance amount, and the company agreed to return it. They returned Rs. 5,00,000/- in several installments but failed to pay the remaining balance of Rs. 2,25,000/-. Despite repeated demands and a legal notice, the company did not respond or refund the balance amount, causing inconvenience, mental agony, and financial losses to the complainant.

In light of the company's deficient services and unfair trade practices, the complainant seeks relief and compensation from the Consumer Commission. The complainant requests the Commission to: a) Direct the company to refund Rs. 2,25,000/- with 12% interest per annum from 1st August 2017 until the actual date of refund. b) Order the company to pay Rs. 50,000/- as compensation for failing to perform the service despite accepting the advance amount. c) Award Rs. 20,000/- as compensation for causing mental agony and loss of business. d) Direct the company to pay Rs. 30,000/- as the cost of the proceedings.

2). Notices

The Commission issued notices to the opposite parties, but they did not file their versions. Consequently, the opposite parties are set ex-parte.

3) . Evidence

The complainant had filed a proof affidavit and 8 documents that were marked Exhibit A-1 to A-8.

Exhibit A-1: True copy of Receipt dated 8.6.2017 for an amount of Rs 25000/- issued by the opposite party.

Exhibit A-2: True copy of communication dated 1.7.2017 sent by the Manager of the opposite party.

Exhibit A-3: True copy of receipt dated 25.7.2017 for an amount of Rs 7 lakhs issued by the opposite party.

Exhibit A-4: A true copy of the receipt dated 7.8.2017 for an amount of Rs. 2,881/- as a processing fee received by the complainant from HDFC.

Exhibit A-5: A True copy of an email dated 24.7.2018 sent by the Deputy Manager of Opposite parties to the complainant.

Exhibit A-6: A true copy of communication dated 16.10.2018 received by the complainant from HDFC.

Exhibit A-7: A True copy of the building permit issued in the name of the opposite party .

Exhibit A-8: A true copy of the legal notice sent by the complainant through his counsel on 8.12.2020 along with an acknowledgment card.

4) The main points to be analyzed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment.

The complainant had produced copies of the Receipts of Booking dated 8.6.2017 and 25.07.2017 for an amount of Rs 25,000/- and Rs 7, 00000/- issued by the opposite parties. (**Exhibits A-1 and A-3**). These documents revealed that the complainant had paid the requisite consideration to the opposite parties. Therefore, we are only to hold that the complainant is a consumer as defined under the Consumer Protection Act, of 2019 (Point No. i) goes against the opposite parties.

The complainant filed a case against the opposite party seeking compensation for deficient service caused by their failure to refund the complainant's money. The complainant had booked a flat and paid a partial amount, with an additional Rs. 7 lakhs after being promised valid building permits for the 8th floor. However, the opposite party did not provide the permits, resulting in the complainant's loan application being rejected. Despite receiving a partial refund of Rs. 5 lakhs, the complainant did not get the remaining Rs. 2,25,000 back. After sending a legal notice, the opposite party did not respond, causing inconvenience, mental agony, and financial loss. The complainant seeks a refund of Rs. 2,25,000 with interest, compensation for poor service, mental agony, loss of business, and the costs of the proceedings through the Commission.

The learned counsel for the complainant submitted that the complainant engaged with a private limited company that specializes in the construction and sale of flats. He booked a two-bedroom flat (Flat No.C-8) on the 8th floor in the 'Galaxy CREST' project proposed by the opposite party in Thammanam on 8th June 2017. The complainant, being the beneficiary of the flat, paid an initial booking amount of Rs. 25,000/- as per the booking condition (**Exhibit A-1**). On 1st July 2017, the complainant's son received communication from the Manager of the opposite party, instructing him to pay Rs. 7,00,000/- as per the booking conditions. In compliance with (**Exhibit A-1**), the complainant paid Rs. 7 lakhs on 25th July 2017 (**Exhibit A-3**).

During the payment process, the complainant intimated to the opposite party that he had obtained a bank loan for purchasing the flat, contingent on the company having a valid building permit and connected documents from authorities. The opposite party assured the complainant that they possessed all the necessary permits for constructing 9 floors and that the complainant's loan application would be approved by any bank in Kerala. Relying on these assurances, the complainant paid Rs. 7,00,000/- as the sale consideration and applied for a loan from the HDFC Ravipuram branch. A receipt of Rs. 2,881/- as a processing fee from HDFC was issued on 7th August 2017 (Exhibits A-4).

However, in September 2017, the complainant learned that HDFC had rejected the loan application due to the absence of an approved building permit for the 8th floor. Upon investigation, the complainant found that the opposite party had no valid permit for constructing the 8th floor. The opposite party acknowledged this fact and agreed to refund the full advance amount without delay. On various dates in November and December 2017 and January 2018, the opposite party returned a total of Rs. 5,00,000/- to the complainant in multiple installments. The opposite party further assured to pay the remaining balance of Rs. 2,25,000/- promptly (Exhibit A-5).

However, despite commitments, the opposite party failed to refund the balance amount even by 15th September 2018. The complainant's son received communication from HDFC on 16th October 2018, stating that the selected property could not be funded. Upon receipt of (Exhibits A-6), the complainant realized that the rejection of the loan application was due to the absence of a valid permit for the 8th floor.

The revised building permit for the 8th floor was issued to the opposite party on 27th February 2019, after the receipt of the advance amount (Exhibits A-7). The complainant alleges that the opposite party cheated by falsely claiming to have valid permits and agreements with authorities. Despite repeated demands through emails and phone calls, the opposite party neglected to pay the remaining Rs. 2,25,000/-.

In response to the situation, the complainant sent a legal notice on 8th December 2020 but received no response (Exhibit A-8). The complainant suffered mental agony, financial loss, and inconvenience due to the opposite party's deficient services, false assurances, and non-performance.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

As per the Judgment of the Hon'ble Supreme Court of India in **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana & Ors. Vs. DLF Southern Homes Pvt. Ltd Civil Appeal No. 6239 of 2019 has held that**

“The flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to flat buyers in regard to the provision of amenities.”

The opposite parties have committed a deficiency in service and unfair trade practices. The complainant booked a two-bedroom flat with the opposite party, paid a substantial amount as per the booking conditions, and was assured of valid permits for constructing the 8th floor and a bank loan without any issues. However, it was later revealed that the company did not possess a valid building permit for the 8th floor, which led to the rejection of the complainant's son's loan application. Despite returning a portion of the advance amount, the opposite party failed to refund the remaining balance, causing inconvenience, mental agony, and financial losses to the complainant.

In today's world, home buyers are increasingly concerned about falling victim to dishonest builders, leading to a rising number of cheating and fraud cases. The uncertainty faced by less fortunate home buyers after making payments to builders extends to both timely property allocation and its quality. Smart buyers should be aware of available remedies to assist them in times of difficulty. The Government has recognized the challenges faced by home buyers and implemented appropriate measures for their protection. However, some buyers, especially those with limited means, may not be fully aware of their legal rights. Owning a beautiful home is a cherished dream for many, but it can be shattered by unscrupulous builders. The commission cannot remain passive spectators against such builders any longer.

The opposite parties had inadequately performed the service as contracted with the complainant and hence there is a deficiency in service, negligence, and failure on the part of the opposite parties in failing to provide the Complainant desired service which in turn has caused mental agony and hardship, and financial loss, to the Complainant.

We find the issues Nos. (II) to (IV) are in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- i. The opposite parties shall refund the complainant an amount of Rs. 2,25,000/- along with 9.5% interest from 1st August 2017 till the date of realization.
- ii. Opposite Parties shall pay the complainant a sum of Rs. 50,000/- as compensation for failing to provide services despite accepting the advance amount, resulting in mental agony and loss of business for the complainant.
- iii. The Opposite Parties shall also pay the complainant Rs. 10,000/- towards the cost of the proceedings.

The opposite parties shall be jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order failing which the amount ordered vide (i) and (ii) above shall attract interest @9.5% from the date of deposit till realization.

Pronounced in the Open Commission on this 31st day of July
2023

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

Appendix

Exhibit A-1: True copy of Receipt dated 8.6.2017 for an amount of Rs 25000/- issued by the opposite party.

Exhibit A-2: True copy of communication dated 1.7.2017 sent by the Manager of the opposite party.

Exhibit A-3: True copy of receipt dated 25.7.2017 for an amount of Rs 7 lakhs issued by the opposite party.

Exhibit A-4: A true copy of the receipt dated 7.8.2017 for an amount of Rs. 2,881/- as a processing fee received by the complainant from HDFC.

Exhibit A-5: A True copy of an email dated 24.7.2018 sent by the Deputy Manager of Opposite parties to the complainant.

Exhibit A-6: A true copy of communication dated 16.10.2018 received by the complainant from HDFC.

Exhibit A-7: A True copy of the building permit issued in the name of the opposite party .

Exhibit A-8: A true copy of the legal notice sent by the complainant through his counsel on 8.12.2020 along with an acknowledgment card.

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**