



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Judgement dated 10.08.2018 of the Hon'ble High Court of Kerala in WP(C) No. 27219/2018 filed by Sri. Prathab.V.Chacko - Complied with - Orders issued.

Local Self Government (IB) Department

G.O.(Rt) No. 1574 /2019/LSGD Dated, Thiruvananthapuram, 25 .07.2019.

- Read :-
- 1) Judgement dated 10.08.2018 in WP(C)No. 27219/2018 filed by Sri. Prathab.V.Chacko .
 - 2) Letter No:C/427/19/K.Dis. dated 08.03.2019 of the Town Planner, Kottayam.
 - 3) Letter No:TCPCTP/221/2019-E1 dated 16-03-2019 from the Chief Town Planner
 - 4) Legal opinion No: 27169/opinionD3/2018/Law dated 10-07-2019 from Law(Opinion D)Dept.
 - 5) Legal opinion dated 12-07-2019 furnished by Senior Government Pleader in WP(C) No:27219/2018.
 - 6) Letter from A.G.No:R3-WP(C) No:27219/2018 dated 24-07-2019.

ORDER

Sri. Prathab V. Chacko , Kottayam filed WP (C) No: 27219/2018 before the Hon'ble High Court of Kerala seeking a direction to Real Estate Regulatory Authority to consider his claim for realisation of the amount from the builders viz. M/s Olive Builders and Developers Pvt. Ltd. It was directed vide the Judgement read as 1 above that the first Respondent , Kerala Real Estate Regulatory Authority represented by its Chairperson take up, consider and pass orders on Ext. P3 request preferred by the petitioner, with notice to

the second respondent i.e. M/s Olive Builders and Developers Pvt. Ltd. , Vashi, Nav Mumbai having branch office at Kochi and other parties shown in Ext. P3 within a period of two months from the date of receipt of a copy of the judgement.

2) In the Ext. P3 petition preferred by the petitioner, it has been prayed to realise from the respondents jointly and severally an amount of Rs.41,00,000/- along with 18% interest per annum from the dates of payment till the actual realization plus rent paid by the petitioner for 24 months @ Rs. 17,000/- per month calculated for the last 24 months, Rs.4,08,000/- with 10% interest per annum from the date of the suit till the actual realization plus an amount of Rs.25,00,000/- along with 9% interest per annum from the date of the suit till the actual realisation, for the risks and and losses suffered by the petitioner.

3) The judgement was received on 11.09.2018 and the time limit expired on 10.11.2018. Accordingly, extension petitions were preferred twice wherein time was granted up to 08.05.2019. Based on the direction in the judgment, hearings were conducted on 17.12.2018 and 11.03.2019. On 17.12.2018, Vakalath was filed on behalf of Respondent No. 2 in the Claim Petition submitted on 17.07.2018 represented by General Manager (Operations), Advocate and Shri. Shaji T M, General Manager (Operations), Respondent No.11 in the Claim Petition were present, the Petitioner and the Advocate were present. A detailed report was called for from the Chief Town Planner, Thiruvananthapuram afterwards. On 11.03.2019 the Petitioner and the Advocate, a Town Planner were present. The documents produced by both the Petitioner and the Respondent No. 2 were verified.

4) The petitioner pointed out in the Claim Petition that he had entered into a contract on 16.10.2013 at Kottayam, that he had paid Rs.41 lakhs to the Builder, that even after two years elapsed from the agreed date of delivery of the flat after its completion in fully furnished state, the respondents evaded from their obligation. He also pointed out regarding the wilful lapse on the part of the respondents. He had also produced a copy of the agreement. The representative of M/s Olive Builders and Developers Pvt. Ltd. filed objection statement on 17.12.2018 wherein it was stated that there had been delay on the part of the complainant in making payments as per payment schedules, as per the document produced, the Petitioner had paid Rs. 37, 78, 906 - till 28.04.2017 and Rs. 22, 64, 772 - is still due from him as on 15.12.2018.

5) The matter was examined in detail with respect to the documents produced at the time of hearing. It was noticed that the Tripartite Loan agreement executed between Sri. Prathab.V.Chacko, M's Olive Builders and Developers Private Limited and HDFC Limited was made on 16.06.2015, the date in the "agreement for construction cum sale" between M/s Olive Builders and Developers Private Limited and Sri. Prathab.V. Chacko signed by the petitioner and marked as Exhibit. P1 in W.P© No.27219 of 2018 was as 16.10.2013. As per that, the construction work of the said apartment was to complete on or before 31-07-2016 - undivided share in all that lands having an extent of 41.45 ares of land in Resurvey No.15 in Block No.83 of Kottayam Village for a total consideration of Rs. 58,39,400 -.

6) The Petitioner demands the following amount as per the detailed account statement for claim and compensation submitted, amount remitted including interest- Rs.68,14,741/-, Rent- Rs.5,58,000/-, Total-Rs.73,72,741/-.

7) As per the site inspection report of the Town Planner, Kottayam, only 80% of the construction work has been completed, as per the approved DTP scheme for Kodimatha Area, the plot comes under land reserved for residential use and no commercial usage is permitted here; as per the general guidelines in Scheme variation of approved Master Plan for Kottayam, the construction has reportedly no violation in zoning regulation; as per the new Master Plan for Kottayam, the area reportedly comes under mixed zone – II wherein commercial / office usage up to 300 sq. m. is permissible .

8) It is clear that the 2nd respondent i.e M/s Olive Builders and Developers Pvt. Ltd. has failed to complete and deliver the apartment in time.

9) The matter was examined with respect to Real Estate (Regulation & Development) Act, 2016 and Kerala Real Estate (Regulation & Development) Rules, 2018. As per Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 if the promoter fails to complete or is unable to give possession of an apartment, plot or building, 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. As per Section 18 (3), if the promoter fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under the Act. As per Rule 18 (2) of the Real Estate (Regulation & Development) Rules, 2018, in case of payment from the promoter due to the allottee, the annual rate of interest on amount due shall be computed at the State Bank of India's Benchmark Prime Lending Rate plus two per cent and computed as simple interest from the agreed date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale. Rule 19 stipulates that any refund of money along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the rules and regulations made thereunder, shall be payable by the promoter to the allottee within forty-five days from the date on which such refund along with applicable interest and compensation, if any, becomes due.

10) In these circumstances, the second respondent i.e. M/s Olive Builders and Developers Pvt. Ltd. is directed to pay/refund the amount so far received from the petitioner with interest, the annual rate calculated as mentioned above, the State Bank of India's Benchmark Prime Lending Rate plus two per cent and computed as simple interest from the date of payment till the date of actual realisation and the rent paid by the petitioner so far,

that is for the twenty four months as pointed out in the Claim Peition and the twelve months thereafter calculated at the rate of Rs.17,000/- per month.

11) The Ext. P3 representation is disposed of accordingly and the direction in the judgement of the Hon'ble High Court of Kerala read as first paper above is complied with as above.

(By Order of the Governor)

Dr. Mithra.T. IAS

Additional Secretary. LSGD&

Interim Real Estate Authority

To

- 1) M/s Olive Builders and Developers Pvt. Ltd., registered office at 103/104. J.K Chambers, Sector 17, Vashi, Navi Mumbai represented by Sri. Shaji.T.M. General Manger (Operations), Olive House, 50/932-A, Edapally P.O, Kochi -682 024.
- 2) Sri. Prathab.V. Chacko, Vakkacheril (H), Kurichy(P.O.), Changanassery. Kottayam -686 532.
- 3) The Advocate General, Kerala, Ernakulam (with C/L)
- 4) The Principal Accountant General (E&RSA / G&SSA) Kerala, Thiruvananthapuram.
- 5) The Principal Accountant General (A&E) Kerala, Thiruvananthapuram.
- 6) Chief Town Planner, Thiruvananthapuram
- 7) Director of Urban Affairs, Thiruvananthapuram
- 8) District Collector, Kottayam
- 9) The Executive Director, Information Kerala Mission, Thiruvananthapuram (for publishing on the website)
- 10) The Information and Public Relations (Web & New Media) Department.
- 11) SF/OC.

Forwarded / By Order,


Section Officer.