

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ERNAKULAM**

Dated this the 24th day of October, 2024

25

Filed on: 01.02. 2024

PRESENT

Shri. D.B. Binu
Shri. V. Ramachandran
Smt. Sreevidhia T.N

Hon'ble President
Hon'ble Member
Hon'ble Member

C.C. NO. OF 111 of 2024

COMPLAINANTS

1. Karuppuswami, S/o Ramaswami, aged 50 years, 783, Udaya Colony, Gandhi Nagar Kadavanthara P.O, Ernakulam District, Kerala, Pin-682020.
2. Kannamma, W/o Karuppuswami, aged 47 years, 783,, Udaya Colony, Gandhi Nagar, Kadavanthara P.O, Ernakulam District, Kerala, Pin-682020.

(Complainants Rep. by Adv. Srinath S. Subramanian, Adv. Aswany Ujwal, Adv. Jibin P George, Adv. Sreelakshmi R, Advocates, Second Floor, TKM Park, Convent Junction, Market Road, Kochi 682011.)

OPPOSITE PARTIES

1. Thodiyil Builders, represented by Nithin Krishnan, Alappat Road, Ravipuram, Ernakulam District, Pin-682 016.
2. Nithin Krishnan, S/o Gopalakrishnan, aged unknown, Krishnabhavan, Karithala Road, Panampilly Nagar, Kanayannoor Taluk, Elamkulam Village, Ernakulam District, Pin-682 314.

FINAL ORDER

D.B. Binu, President

1. A brief statement of facts of this complaint is as stated below:

This complaint is filed under Section 35 of the Consumer Protection Act, 2019, by the complainants, residents of Ernakulam District. The first complainant is the owner of a property in Elamkulam Village (Plot No. 52, Slum Udaya Colony) with a building under the Gandhi Nagar Housing Scheme. The opposite parties include a construction firm (first opposite party) represented by an individual contractor (second opposite party).

The complainants entrusted the opposite parties with constructing a residential house on the above property under an agreement dated 23.11.2020 for Rs. 10.5 lakhs, later unilaterally increased to Rs. 12 lakhs by the opposite parties without the first complainant's consent. Despite receiving the entire payment, the opposite parties failed to complete the construction as agreed. Several police complaints were lodged, leading the second opposite party to promise completion by 15.12.2022, a commitment recorded at the Kadavanthara Police Station.

The complainants obtained the construction funds through various sources, including grants from Cochin Corporation and loans from financial institutions, by pledging gold ornaments and borrowing from relatives. Despite their limited knowledge of construction, the complainants relied on the promises of the opposite parties, who delivered substandard work. Notably, the uneven staircase leading to the second floor made it impractical for daily use.

The mental and financial burden caused by the opposite parties' failure to deliver the completed house has been immense, forcing the complainants to start repaying the loans taken for the construction. Despite a lawyer's notice issued on 22.11.2023, the opposite parties have not remedied the situation, showing gross negligence and deficiency in service.

The complainants now seek completion of the construction, reimbursement of the Rs. 12 lakhs with interest, and compensation of Rs. 7 lakhs for mental agony and financial loss. They also request Rs. 50,000 as litigation costs.

2. NOTICE:

The Commission issued a notice to the opposite parties. However, the opposite parties failed to submit their version, and the case proceeded ex- parte.

3. **Evidence:**

The complainants have submitted a proof affidavit along with nine documents. The documents filed with the complaint are marked as **Exhibits A1 to A9**. The Expert Commission Report also marked as **Exhibit C1**.

- **Exhibit A1:** True copy of Sale Deed No.8010/2005 dated 28.11.2005, executed by Greater Cochin Development Authority, represented by K Aloysius Mathew, in favour of Karuppuswami, registered at Sub Registrar Office, Ernakulam.
- **Exhibit A2:** Digitally signed copy of the Land Tax Receipt for the year 2023-24, issued by the Elamkulam Village Office on 21.11.2023, paid by Karuppuswami.
- **Exhibit A3:** True copy of the Agreement dated 23.11.2020, executed between Nithin Krishnan and Karuppuswami.
- **Exhibit A4:** Acknowledgment receipt of the complaint submitted by the complainants, dated 07.03.2022.
- **Exhibit A5:** True copy of the complaint register, duly countersigned by the Inspector, SHO, Kadavanthara Police Station.
- **Exhibit A6:** Residence-Inspection Report issued on 25.11.2023 by Akhil Paul, Chartered Engineer (India), Membership No. AM1747927.
- **Exhibit A7:** True copy of the lawyer notice dated 22.11.2023, issued by the complainants to the opposite parties.
- **Exhibit A8:** Original returned postal cover of the lawyer notice sent to the First Opposite Party.
- **Exhibit A9:** Original acknowledgement card confirming delivery of the lawyer notice to the Second Opposite Party.
- **Exhibit C1:** The Expert Commission Report.

4. **Points for Consideration:**

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 party to the complainant?
- iii. If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv. Costs of the proceedings if any?

5. ARGUMENT NOTE SUBMITTED BY THE COUNSEL FOR THE COMPLAINANTS

(Mr. Srinath S. Subramanian – Legal Aid Counsel)

The opposite parties are building contractors. The first opposite party is a construction firm represented by the second opposite party.

The first complainant is the absolute owner of a property measuring 0.3193 Ares in Survey No. 369, Elamkulam Village, Plot No. 52, Slum Udaya Colony, with a building bearing Corporation Door No. C.C.38/783 under the Gandhi Nagar Housing Scheme. This ownership is confirmed through **EXHIBIT-A1**, a copy of the Sale Deed No. 8010/2005 dated 28.11.2005. A digitally signed land tax receipt for 2023-24 is attached as **EXHIBIT-A2**.

The complainants entrusted the opposite parties with constructing a residential house on the property through an Agreement dated 23.11.2020 for Rs. 10.5 lakhs. However, without the complainant's consent, the amount was increased to Rs. 12 lakhs by altering the agreement, as visible in **EXHIBIT-A3**. Despite assurances to complete the project within the original budget, the complainants were coerced into paying the additional amount out of fear of being left without shelter for their two daughters.

The complainants submitted multiple complaints to the police when the opposite parties failed to complete the work. An acknowledgment of a police complaint dated 07.03.2022 is attached as **EXHIBIT-A4**. The second opposite party later agreed, in writing, at Kadavanthara Police Station, to

complete the construction by 15.12.2022. This is recorded in the police complaint register, submitted as **EXHIBIT-A5**.

The complainants arranged the funds through various sources, including grants from the Cochin Corporation, Udhaya Bhavan, loans from the Ernakulam Urban Co-operative Society, Ayalkootam, and the Central Bank of India, along with pledging gold ornaments and borrowing from relatives, exhausting their life savings.

Despite receiving the full Rs. 12 lakhs, the opposite parties failed to complete the work. Furthermore, the construction was substandard, with deviations from the agreed materials, as detailed in the commission report marked as **EXHIBIT-A6**. Significant defects included an uneven staircase to the second floor, making daily use difficult. Additionally, a water storage tank was improperly built in the veranda, violating the building plan and posing health risks from potential contamination during the rainy season.

In light of the failure to deliver as promised, the complainants issued a legal notice on 22.11.2023, submitted as **EXHIBIT-A7**. Although served on the second opposite party, the notice to the first opposite party was returned with the remark "Not Known." Despite this notice, the opposite parties have taken no corrective action, forcing the complainants to file this complaint for relief.

Precedents support the complainants' case. ***In Dr. George Easow vs. Managing Director, M/s Selene, the Hon'ble National Consumer Disputes Redressal Commission*** directed the refund of deposits with 9% interest per annum. Similarly, in ***Vinod Gupta vs. Emaar MGF Land Limited and Gautam Saha vs. Anant Raj Industries Limited***, refunds with interest were ordered for non-completion and delayed possession.

The opposite parties have committed gross deficiency of service, causing severe mental and financial hardship. The complainants seek:

- (i) Refund of Rs. 12 lakhs along with interest at 10% from the agreement date and compensation for the cost of reworking substandard construction.
- (ii) Compensation of Rs. 7,00,000 for mental agony, financial loss, and punitive damages.
- (iii) Litigation costs of Rs. 50,000.

The complainants request this Commission to direct the opposite parties to complete the construction per the agreement or refund the full amount with interest and award compensation and costs as prayed.

We have also noticed that Notices were issued from the Commission to the opposite parties but did not file their version. Hence the opposite parties set ex-parte. The complainant had produced 9 documents marked as **Exbt.A-1 to A-9.** All in support of his case. However, the opposite parties did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex-prate order passed against it. It was further stated that this illegal, arbitrary and unjustified act of the Opposite Parties amounted to deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainants.

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 complainants stand unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainants. **The Hon'ble National Consumer Disputes Redressal Commission in its Order dated 09/10/2017 in RP No. 579/2017 (2017(4) C.P.R 590) also held a similar stance.**

RELEVANT PORTION OF THE EXPERT COMMISSION REPORT (EXHIBIT C1)

The remaining works to be done in the house

Sl. No.	Specification of work to be done	Estimated cost of work
1.	Cleaning the roof top with a pressure water cleaner	2000
2.	Apply 2 coats of Dr.Fixit brand crack sealer on dry and clean roof top with roller brush	4000
3.	Remove the Fungal deposits in the parapet inner, outer walls with pressure water gun	2000
4.	Provide duct ventilation with an exhaust fan for toilet at Ground floor	8000
5.	Provide 1000 litre water tank with stand at roof top	13000
6.	Provide flush tank 2 nos. Wash basin 2 nos, Concealed plumbing works, Kitchen sink, Water taps, Shower, water closets, IWC 1, EWC 1, waste water soak pit-2 nos	50000
7.	Provide Main switch board with earthing, Light fittings, fan, Exhaust fan	30000
8.	Demolish the existing stair and cast a new one, provided with approved quality tile finish with plastered soffit and sides and finished with 2 coats of good quality plastic emulsion paints over a coat of cement primer	60000
9.	Provide 2 coats of cement putty work over the plastered wall with a final coat of cement primer	12000
10.	Painting exterior and interior wall with 2 coats of branded plastic emulsion paint and painting the window grill works with 2 coats of Enamel paint over a coat of metal primer	4000
11.	Provide Wooden panelled door shutter for front and back doors with 2 coats of satin finish PU paint over a coat of oil based primer with 100 mm brass hinges, tower bolt, Mortise lock etc.. complete	25000
12.	Provide wooden window shutters with panelled and glazed shutters with all fittings	30000
13.	Provide granite top steps in front of house with side cladding, end cornice work, polishing etc... complete	20000
14.	Provide stainless steel back rest for upstairs balcony	14000
	Total Estimated cost (Rupees two lakh seventy four thousand only)	2,74,000/-

We have meticulously considered the detailed submissions made by both parties and thoroughly reviewed the entire record of evidence, including the argument notes presented.

i). **Maintainability of the Complaint:**

The complainants, as consumers, agreed with the opposite parties to build a residential house. This transaction qualifies as a “service” under Section 2(42) of the Consumer Protection Act, 2019. Since the opposite parties agreed to provide construction services for consideration, the complaint is maintainable under Section 35 of the Act.

Further, the complainants’ grievance pertains to non-completion of construction, substandard workmanship, and unauthorized increase in cost, which falls under the scope of deficiency in service and unfair trade practice as defined under the Act.

ii). **Deficiency in Service and Negligence:**

The agreement between the complainants and the opposite parties (**Exhibit A3**) stipulated construction for Rs. 10.5 lakhs, but the opposite parties unilaterally increased the amount to Rs. 12 lakhs without the complainants’ consent. Despite receiving the entire payment, the opposite parties failed to complete the project within the agreed timeframe.

The Residence Inspection Report (**Exhibit A6**) reveals several construction defects, including an uneven staircase and improper water storage arrangements, rendering the building unusable as intended. Such defects amount to substandard service and breach of contractual obligations, constituting deficiency in service under the Consumer Protection Act, 2019.

The complainants also issued a legal notice (**Exhibit A7**), demanding rectification of the defects and completion of the work, but the opposite

parties failed to respond. This conduct reflects both negligence and unfair trade practices under Sections 2(11) and 2(47) of the Act.

6. Relevant Case Laws:

In the case of Emmar MGF Land Ltd. & Ors. vs. Amit Puri - [II (2015) CPJ 568 (NC)], the Hon'ble National Commission has held that after the promised date of delivery, it is the discretion of the Complainant whether to accept the offer of possession, if any or to seek a refund of the amounts paid by him with some reasonable compensation and it is well within his right to seek for refund of the principal amount with interest and compensation.

In Lucknow Development Authority v. M.K. Gupta: (1994) 1 SCC 243, the Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure and Anr. v. Trevor D'Lima and Ors. : (2018) 5 SCC 442 the Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek a refund of the amount paid by him, along with compensation.

The failure to deliver promised services within the stipulated time results in mental agony, justifying compensation.

These precedents affirm that construction delays and substandard work warrant compensation for mental agony and financial losses.

The opposite parties failed to file their written version or appear before the Commission despite being duly served with notice. As per the ruling in 2017 (4) CPR 590 (NC), non-response from the opposite party

amounts to admission of allegations. Hence, the complainants' claims remain unchallenged and are deemed true.

The complainants arranged funds through loans, gold pledges, and personal borrowing, expecting timely completion of the house. The mental agony and financial hardship caused due to the opposite parties' failure to complete the construction, despite full payment, are evident.

iii). Reliefs Awarded:

In light of the evidence and legal precedents, the Commission awards the reliefs to the complainants.

7. Liability of the Opposite Parties:

The opposite parties are found liable for:

Breach of contract by unilaterally increasing the cost and failing to complete the construction.

Deficiency in service by delivering substandard work and deviating from agreed standards.

Unfair trade practice by coercing the complainants into paying additional amounts.

Mental agony and financial loss suffered by the complainants due to delayed construction and defective workmanship.

The hardships endured by the complainants go beyond mere financial loss—they represent the emotional toll of broken trust and shattered hopes. A home is not just a structure but a dream nurtured over the years, and the failure to deliver it on time, coupled with substandard construction, has caused immense distress. The complainants, having exhausted their savings, borrowed heavily, and sacrificed personal assets, were left grappling with frustration and mental agony. Their plight is a stark reminder of the

vulnerability of ordinary individuals who place their faith in service providers, only to be betrayed by negligence and indifference. Justice, therefore, must not only compensate for the monetary loss but also acknowledge the emotional suffering they endured, restoring faith in the system and reaffirming the rights of consumers.

We find that issues (i) to (iv) are decided in favour of the complainants, as there has been a serious deficiency in service on the part of the opposite parties. The negligence and failure to honour their contractual obligations have caused the complainants significant inconvenience, mental agony, hardships, and financial loss. Having placed their trust in the opposite parties, the complainants have been left emotionally distressed and financially burdened, which is unacceptable. This Commission acknowledges the stress and suffering endured by the complainants and holds the opposite parties accountable for their negligence and unfair conduct. Accordingly, the complainants are entitled to appropriate relief to restore their dignity and mitigate their losses.

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 complainants.

Hence, the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund ₹12,00,000/- (Rupees twelve lakhs only) paid by the complainants.
- II. The Opposite Parties shall pay ₹1,00,000/- (Rupees one lakh only) to the complainants as compensation for mental agony, financial loss, and punitive damages. This amount is awarded for the deficiency in service, unfair trade practices, and the emotional and physical hardships endured by the complainants.
- III. The Opposite Parties shall also pay ₹20,000/- (Rupees twenty thousand only) towards the cost of the proceedings.

The opposite parties shall be jointly and severally liable for the above-mentioned payments, which must be complied with within 45 days from the date of receipt of a copy of this order. Failure to comply with the payment orders under points (I) and (II) will result in interest at the rate of 9% per annum from the date of filing the complaint (01.02. 2024) until full payment is made.

Pronounced on this the 24th day of October 2024.

D.B. Binu, President

V. Ramachandran, Member

Sreevidhia T.N., Member

APPENDIX

COMPLAINANT'S EVIDENCE

- **Exhibit A1:** True copy of Sale Deed No.8010/2005 dated 28.11.2005, executed by Greater Cochin Development Authority, represented by K Aloysius Mathew, in favour of Karuppuswami, registered at Sub Registrar Office, Ernakulam.
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