

STATE OF KERALA

**IN THE COURT OF THE JUDGE, COMMERCIAL COURT
(PRINCIPAL SUB JUDGE), ERNAKULAM**

Present:

Smt. Rehana Rajivan., Judge, Commercial Court (Principal Sub Judge)
Friday, the 23rd day of June, 2023/ 2nd Ashada 1945

COMMERCIAL SUIT No. 41/2022

Plaintiff:

James Thomas.T.T, S/o Koruth Thomas, 58 yrs, Thazhumpal
Thundiyl, Koipuram.P.O, Thiruvalla, Koipuram desom,
Pathanamthitta Dist. 68953.

By Advs. Mathew.B. Kurian, Sunil.N

Defendants:

1. M/s Tiknar Homes Pvt. Ltd., 1st floor, Profnet Plaza, Mamangalam
Kara, Edappally South Village, Kochi-25. Rep. by its Director
Sindhu Narayanankutty.
2. Sindhu Narayanankutty, D/o Sankarankutty Menon, Director,
Tiknar Homes (P) Ltd. 26/507 d, Enclave, Near Yatch Club, River
View Drive, Konthuruthy, Thevara-13.
3. M.K. Narayanankutty, Director, Tiknar Homes (P) Ltd. 26/507 d,
Enclave, Near Yatch Club, River View Drive, Konthuruthy,
Thevara-13.
4. Seawood Developers Pvt. Ltd., Ramachandran Niwas, Sector 12-A,
Koparkhairne, Navi Mumbai. Rep. by its Managing Director.

No Vakalath

This suit having been come up for hearing before me on 23.06.2023 and
the Court on the same day delivered the following:

JUDGMENT

The suit is filed for recovery of money of Rs.23,56,876/- together with interest and costs from the defendants.

2. **The gist of the plaintiff's case:** The plaintiff is working abroad for the last more than 30 years. The first and third defendants are company incorporated under the Indian Companies Act. The plaintiff was in search of some residential apartments for his own purpose. The 4th defendant company is the owner of the immovable property having an extent of 40.33 ares equivalent to 99.655 cents in block NO.8 in Thengode Kara in Kakkanad village made up of 4.68 ares equivalent to 11.560 cents in Re.Sy No.699/1, 34.03 ares equivalent to 84.095 cents in Re.Sy No.699/15 and 1.62 ares equivalent to 4 cents in Re.Sy No.699/20 in Kakkanad village. The first defendant company as a builder and the 4th defendant company as the owner of the said property. The offers made by the defendants 1 to 3 the plaintiff got interested in the property and agreed to entered into an agreement for purchase of the property. The plaintiff agreed to purchase 1692/231665 undivided share in all that land having a total extent of 40.33 ares equivalent to 99.655 cents in block No.8 in Thengode Kara in Kakkanad village made up of 11.560 cents in Re.Sy No.699/1, 84.095 cents in Re.Sy No.699/15 and 4 cents in Re.Sy No.699/20 together with proportionate share in all non built up improvements thereon and all easements and other similar rights appurtenant thereto. As per the agreement the first defendant agreed to construct an apartment having a super built up area of 157.21 sq.meters in the 17th floor of a multi storied building named TIKNAR Seawood Voyage in the said property. The total amount for the apartment was fixed as Rs.37,33,240/- and the plaintiff had paid an amount of rs.14,93,296/- to the first defendant. As per the agreement the entire construction have to be

completed by the defendants before 30.11.2012. After the receipt of the amount from the plaintiff, the defendants have not even started any work in the plaint schedule property. Thereafter it was informed by the defendants that the first and 4th defendant cancelled their joint development agreement and they abandoned the project and the defendants agreed to return the amounts with interest. The first defendant through the third defendant issued five cheques to the plaintiff towards the repayment of the amount received from him. The defendants have issued cheques of IDBI Bank bearing cheque No.366373 dated 20.10.2018 and 366374 dated 23.11.2018 for Rs.5,00,000/- each, cheque No.366375 dated 31.12.2018 for Rs.4,93,296/- towards the principal amount due and cheque No.854999 dated 29.12.2018 drawn on canara bank for Rs.8,63,580/- towards admitted interest to the plaintiff. On presentation the cheques were dishonored due to insufficient funds in the account. The plaintiff sent lawyer notice to the defendants. But the notices were returned unserved. The plaintiff is entitled to get Rs.23,56,876/- from the defendants. The plaintiff is entitled to recover the same with interest. Hence the suit.

3. The defendants are declared ex-parte.

4. From the plaintiff's side, PW1 was examined and Exts.A1 to A8 series were marked.

5. The plaint claim stands proved by the oral evidence of PW1 and Exts.A1 to A8 series and I find it just and proper to allow the plaintiff to realise the amount together with interest @ 12% per annum.

6. In the result, the suit is decreed with costs of the plaintiff as follows:-

The defendant is directed to pay Rs.23,56,876/- (Rupees twenty three lakhs fifty six thousand eight hundred and seventy six only) together with interest at the rate of 12% per annum from the date of suit viz 17.01.2022, till the date of decree and 6% per annum from the date of the decree till the date of realisation to the plaintiff within one month from the date of decree, failing which the plaintiff is entitled to realise the same from the defendants and their assets, through the process of court.

(Dictated to the confidential Asst. transcribed and typed by her, corrected and pronounced by me in open court on this the 23rd day of June, 2023).

Sd/-
Rehana Rajivan
Judge, Commercial Court
(Principal Sub Judge)

APPENDIX :

Exhibits marked from the side of plaintiff:

A1	21.07.2017	Copy of endorsement
A2	10.07.2018	Copy of endorsement
A3	20.10.2018	Cheque No. 366373 with memo
A4	23.11.2018	Cheque No. 366374 with memo
A5	31.12.2018	Cheque No. 366375 with memo
A6	29.12.2018	Cheque No. 854999 with memo
A7	01.12.2021	Copy of Lawyer notice
A8	--	Unserved envelop (4 nos.)

series

Exhibits marked form the side of defendant: NIL

Witness examined from the side of plaintiff:

PW1 21.06.2023 James Thomas

Witness examined from the side of defendant: NIL

Id/-
Judge, Commercial Court
(Principal Sub Judge)

Typed by : Comp. by :

CS No. 41/2022
Judgment Dated: 23.06.2023