THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
PREM BUILDERS (PTY) LTD
(Rep herein by Mr. Premji Dabasia)

CPA.12.119

Complainant – Mr. Naddy Marie
Respondent – Prem Builders (Pty) Ltd

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Mrs. Chantale Grange – Director for Legal Affairs (FTC)
Ms. Emily Mousbe – Legal Officer (FTC)

For the Respondent
Ms. Samantha Aglae – Attorney-At-Law
Mr. Premji Dabasia

RULING

[1]The Fair Trading Commission registered a formal complaint on the 24th of July, 2012 lodged by Mr .Naddy Marie, the complainant herein (See Exhibits 1 & 3) against Prem Builders (Pty) Ltd, a licensed Class III Building Contractor and now respondent (See Exhibit 3), which alleges of a breach of contract. Following investigations conducted by the Commission several undisputed elements of the complaint were ascertained.

[2]On the 24th of November, 2010 the complainant signed a contract agreement with the respondent for the building of a three bedroom house on parcel C6122 situated at La Pleine St Andre for the sum of SR. 693, 523/- to be completed within six months from the commencement date (See Exhibits 5, 6, 7 & 8). The complainant, on the 30th of December, 2010, disbursed to the respondent the sum of SR.139,704.60/- being advance payment for the contract (See Exhibit 9). Upon commencement of construction works in January 2011 the respondent noticed that the soil on the premises was not firm enough thus unsuitable for construction. The complainant had to re-profile the site which was completed in April, 2011 (See Exhibit 10). The complainant informed the respondent several times that the site was ready for construction to continue but to no avail. The complainant decided to terminate the contract and his letter dated 22nd May, 2012 to the respondent regarding the matter cited violation of deadlines and the respondent's refusal to communicate with him as reasons prompting him to terminate the contract dated 24th November, 2010 (See Exhibit 11). The complainant also requested a refund of SR. 130, 704. 60/- from the sum of SR.139.704.60/- disbursed to the respondent, deducting SR. 9, 000/- for preliminary excavation works conducted on the site (See Exhibit 13). When this failed, the complainant sought the services of Mr. Frank Ally, Attorney-At-Law, who wrote to the respondent on the 10th of July, 2012 again with no reply (See Exhibit 12). Thereafter, the Commission wrote to the respondent on the 23rd of August, 2012 once more requesting the same refund (See Exhibit 15) to which end the respondent submitted an official statement on the 27th of August, 2012 to the effect that he agrees to refund to the complainant the sum of SR.130.704.60/- (See Exhibit 16). When respondent did not honour this word, the Commission finally secured his presence at its offices on the 11th of December, 2012 whereby the respondent for a second time submitted an official statement expressing that he would refund to the complainant the required sum in monthly instalments of SR. 20, 000/- starting from the 28th of December, 2012 (See Exhibit 17). To date not a single instalment has been paid.

[3]The case came before the Board of Commissioners for hearing on the 29th of January, 2014. Mrs. Chantale Grange, the Director for Legal Affairs and Ms. Emily Mousbé the Legal Officer, both from the Fair Trading Commission presented the Commission's case on behalf of the complainant, Mr. Naddy Marie who was also present. The Commission is of the view that the respondent has contravened Section 40(1)(a) by failing to perform and complete a service in a timely manner and failing to provide to the consumer a timely notice of any unavoidable delay. The Commission recommended pursuant to Section 40(2) of the Consumer

Protection Act, 2010 the respondent be ordered to refund to the complainant the sum of SR. 130, 704. 60/- and to impose penalties as set out in Section 67(1) of the same Act while having regards to Section 67(3) of the Act.

[4]Mrs. Samantha Aglae, Attorney-At-Law, represented the respondent whose ultimate stance was that although acknowledging taking the complainant's money and is ready and willing to refund the requested amount of SR. 130, 704. 60/- he should not be penalized for causing the delay given that he had been ready to undertake the complainant's project and had indeed commenced the preliminary excavation works and it was through no fault of her client that works had to be stopped due to the unstable state of the soil on the complainant's premises. Mrs. Aglae argued that it was only normal that the respondent being a contractor, to take on other projects while he waited for the complainant to stabilise the soil and that it was unfortunate that by the time he was ready the respondent had been taken up with other projects. She concluded by stressing that the respondent was not responsible for the delay therefore should not be fined as per Section 67(1) of the Consumer Protection Act, 2010.

[5]The Board of Commissioners went through the evidence adduced by both parties and deliberated on the matter. The Board takes note of the immediate willingness of the respondent to refund the complainant, both during the hearing and the mediation period of the case, which brings one to wonder why the respondent has not acted on his undertaking dating as far back as August, 2012 rather than allowing the case to get to the level of a Board hearing. We agree with Mrs. Aglae that the original delay to carry out the construction of the complainant's house was not due to the respondent, the evidence is clear, the undisputed behaviour of the respondent after having been informed by the complainant in May, 2012 that the re-profiling of soil had been conducted, he should have resumed construction works. The Board concludes that the respondent behaviour is not acceptable, and so was the delay in refunding the complainant. He did not even inform the complainant that he had other commitments and advised an appropriate time when he could resume work on the project. This is undoubtedly the result of non-compliance on the part of the respondent.

[6]Taking into consideration all the circumstances of the case the Board of Commissioners finds that the respondent, Prem Builders (Pty) Ltd, has contravened Section 40(1)(a) of the Consumer Protection Act, 2010. It is hereby ordered that the **respondent refunds to the complainant, Mr. Naddy Maric,**

the sum of SR. 130, 704. 60/-. Additionally, in accordance with Section 67(1) of the same Act, the Board of Commissioners **shall impose a fine of SR. 15, 000/-** on the respondent as penalty for the said contravention. **All payments are to be made to the offices of the Fair Trading Commission on or before the 30th of May, 2014.**

[7]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Commission Act, 2009).

[8]We rule accordingly.

Pronounced by us on the ....4th..... day of March, 2014.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner