



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 12/23

Present: Sri. P. H. Kurian, Chairman
Smt. Preetha P. Menon, Member

Dated 1st April, 2024

Complainants

Anjali Square Apartment Owners Association
'Anjali Square' Apartment, Azhankal,
Karumam P O, Thiruvananthapuram-695002
Represented by its Secretary Rajendra Nath
Residing at F-4 'Anjali Square' Apartment, Azhankal,
Karumam P O, Thiruvananthapuram-695002
[By Advocates: Rajan Pottayil, Rejy R, Yamuna Rani V.G, and
Dr. Gopi Krishna S.]

Respondents

1. K A Shekhar
Uma Nivas, T C 56/666(6),
Anjali Avenue,
Vinayakanagar, Neeramankara,
Pappanamcode P O,
Thiruvananthapuram-695018
2. Murukan G
T C 55/1176, Flat No. G1,
E Block, Anjali Garden,
Maruthoorkadavu, Karamana P O,
Thiruvananthapuram-695002.



The Complainant's Counsel Adv G. Rajan Pottayil and the representative of the Complainant Association appeared online and the 1st Respondent/Promoter and the 2nd Respondent purchaser of one flat and the Assistant Engineer Smt. Lekshmi T.N, and Overseer Sri. Reny Paul from Zonal office Nemom, Thiruvananthapuram Corporation attended directly for the hearing this day before the Authority.

ORDER

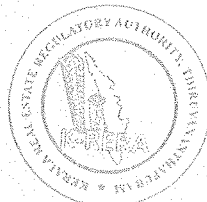
1. Facts of the Complaint: The Complainant is an Association of Flats owners in the project 'Anjali Square' developed by the 1st Respondent/Builder. 2nd Respondent is the purchaser of flat No C1 in the Anjali Square Apartment. According to the Complainant, the apartment is situated in the land admeasuring 8.58 Ares of land in Nemom Village, Thiruvananthapuram. The property was originally belonged to the mother of the 1st Respondent and she executed a POA in favour of the 1st Respondent. The apartment consists of 18 flats in three floors as per approved plan. The cellar portion of the apartment has been exclusively left apart as car parking area for 17 flats and each flat has independent TC numbers allotted by the Thiruvananthapuram Corporation. While so, the 1st Respondent had managed to get 2 additional TC numbers in the cellar portion including the car parking area in violation of the approved plan, building permit and the Building Rules. T C No.64/777(2) was



allotted in respect of security room and TC No. 64/77(3) was allotted in respect of electric pump room and car parking in the cellar portion. Thereafter the 1st Respondent managed to insert the name of the original title holder in the Thandapper Records in 2020 and the nomenclature of the rooms in the cellar portion had been converted as 2 BHK flat in the electronic records of the Thiruvananthapuram Corporation. After the death of the original owner, the 1st Respondent transferred the ownership of one unauthorized room to the 2nd Respondent by executing a sale deed dated 22.08.2022 and on aggrieved, the Complainant association filed Complaint before the Corporation for cancellation of TC No 64/77(2) and TC No 64/77 (3) and after enquiry it was found that the TC numbers were forged and issued provisional orders dated 21.01.2022 cancelling the TC numbers and thereafter final orders dated 29.08.2022. The 1st Respondent obtained tax receipt dated 10.05.2022 and alienated a portion of the flat in the cellar portion bearing TC No 64/77(3) (new TC No 52/3809) to the 2nd Respondent for sale consideration by executing sale deed dated 22.08.2022. The 2nd Respondent filed suit as OS No. 1632/2022 in the Munsiff's Court Thiruvananthapuram seeking order of injunction against the Complainant. The 2nd Respondent trespassed in to the premises of the 'Anjaly Square' apartment causing nuisance to the Complainant and its members and forcefully entered in to the room in the cellar portion and tried to park car in the parking area which has been allotted to 17 owners



of the apartment. Thus, the Complainant Association filed a Complaint before the JFCM Court against the Respondents. Actually, the apartment consists of 18 flats as per building permit No ZN/2/BA-149/07, which has 17 car parking area. The cellar area is exclusively set apart for basic infra structure facilities but rooms are constructed causing obstruction. The builders had handed over construction of 18 flats to the owners as per building permit approved by the Corporation, for construction purpose the cellar portion was used by the builder, as his running office, it is his duty to hand over the cellar to the owners of the 18 flats for car parking and common amenities. The 1st Respondent has transferred a portion of cellar bearing old TC No 64/77(3) to the 2nd Respondent for Rs. 12,45,100/- without specific title and authority over the same. The 1st Respondent neither took consent from the owners nor took any permit from the Corporation for alteration of built up area and for amending the building plan. The Respondents 1 and 2 have no absolute right, title and interest over any portion of the building premises used by the Complainant and its members as common amenities. Since the car parking area is under the possession and enjoyment of flat owners, no portion of the cellar cannot be alienated by the builder. The 1st Respondent is bound to hand over the entire apartment after completion as per building plan approved by the Corporation. The completion certificate and occupancy certificate had not been given to the Complainant association and its members. The 1st Respondent



was occupying a portion of the cellar for his personal use causing obstruction to the Complainant and owners of 18 flats. The builder has no right to alienate undivided share to third parties as per violation of Act and Rules. The relief sought for is to issue direction to the Respondent to hand over completion certificate and occupancy certificate of 18 flats in 'Anjali Square' and to allow the Complainant and the owners of the 18 flats in 'Anjali Square' to make use of the entire common area and car parking area in the cellar portion and the apartment premises and to declare the transfer of ownership of cellar room as illegal and cancel sale deed and award compensation to the Complainant and issue order preventing the Respondents from taking possession and enjoyment of the cellar rooms. Complainant produced copies of letters/orders issued by the Corporation dated 29.08.2022, 21.01.2022 & 30.03.2022 sale deed dated 22.08.2022, building permit, Power of Attorney issued by the mother of the Complaint 2nd Respondent in his favour, true copies of and tax receipts dated 18-09-1018 & 07.01.2020, true copy of property tax receipts dated 11.03.2026 issued by the Thiruvananthapuram, registration letter of the Complainant Association & copy of sale deed dated 13.12.2007.

2. The Respondent No. 1 had filed objection to the Complaint and denied the allegations. It was submitted that this Authority has no jurisdiction to consider the Complaint for the reason that the real estate project in question was completed and



completion certificate was issued by the Thiruvananthapuram Corporation during April 2009 and 18 units of flats were conveyed to different allottees in 2009 who are the members of the Complainant. One unit of flat was kept in the possession of the 1st Respondent builder which was later sold to 2nd Respondent in 2022. The Real Estate (Regulation and Development) Act, 2016 came in to force on 25th March, 2016 and therefore the project in question will not come under the ambit of the Act, to apply its legal mandates. It was also submitted that as per Section 3 of the Act, ongoing projects that commenced prior to the Act and in respect of which completion certificate has not been issued are covered under the Act. The Act has limited retrospective operation with respect to ongoing real estate projects and in respect of which no completion certificate was issued. The project in dispute is not an ongoing project but a project which was completed in 2009 and completion certificate was issued by the Thiruvananthapuram Corporation in 2009 and 18 units of the flats were conveyed to different allottees under different sale deeds. The limited retrospective operation of the Act was discussed by the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Ors*, in which it was held that the Act is applicable to ongoing real estate project in respect of which no completion certificate was issued by the competent authority concerned. It was also submitted that the Complainant had admitted that builder had already handed over 18 flats to 18



owners as per building permit approved by the Corporation. The flats in question can be transferred to the allottees only after getting the completion certificate and assigning of building numbers by the Corporation. Till 2022 the Complainant has no qualm of objection against the builder with respect to the construction and services offered to the allottees. The 1st Respondent sold apartment bearing T C No 64/77(3) to the 2nd Respondent under sale deed No. 1864/2022 and the Complainant picked up quarrels with the 1st Respondent which culminated in to a civil suit as OS No 1631/2022 before the Munsiff's Court Thiruvananthapuram. The Complaint before this Authority is instituted by the Complainant as a counter blast to the said civil suit. Moreover, the Complainant filed petition before the Thiruvananthapuram Corporation which resulted in to the cancellation of the TC numbers of flats purchased by the 2nd Respondent and the 2nd Respondent filed appeal before the Tribunal for Local Self Government Institutions, Thiruvananthapuram as Appeal No 67/2023. The Tribunal stayed the proceedings of the Corporation on 31-01-2023. The dispute raised by the Complainant in this Complaint are matters to be considered by the respective judicial forums in pursuant of the pending proceedings on OS No. 1631/2022 and 67/2023. The Complainant suppressed the pendency of above suit and proceedings with a malafide motive to mislead this Authority to pass erroneous orders. The reliefs sought by the Complainant are



not maintainable for the reason that this Authority has no jurisdiction under the Act, 2016 and the matter in issue before this Authority is an issue directly and substantially involved in previously instituted litigations pending before the Civil Court and the Tribunal for Local Self Government Institutions. In view of the above it was submitted to dismiss the Complaint with costs. The 2nd Respondent has not filed any written statement.

3. The Authority directed the Secretary, Thiruvananthapuram Corporation to appear in person or through authorized officer with file concerned in the hearing and to submit report with all supporting documents of the project. The representative of the Secretary attended the hearing on 16.08.2023, 20.12.2023 & 01.04.2024. The Secretary, Thiruvananthapuram Corporation submitted report dated 12.12.2023, in which it was stated that though the cellular floor was parking area as per the approved plan, it was found that the parking area was transformed and used as 'AS Builders' and the unauthorized TC numbers allotted as TC 64/77(2) and 64/77(3) to the building had been cancelled and a case as O P No. 991/22 is pending before Ombudsman for Local Self Government Institutions. It was also submitted that the building permit was issued from the zonal office at Thiruvallam and it was submitted that the file concerned is not available in that office. It was further submitted that no file with respect to the occupancy certificate is there in the zonal office at Thiruvallam and Nemom. Also



submitted that a case as Apl No. 67/23 is also pending before the Tribunal for Local Self Government Institutions, Thiruvananthapuram.

4. When the case was posted this day on which the Complainant's Counsel and representative of the Complainant Association appeared online and the 1st Respondent/Promoter and the 2nd Respondent, purchaser of one of the flat and Assistant Engineer, Overseer, of Zonal Office Nemom, Thiruvananthapuram Corporation attended directly for the hearing. The main point raised by the Complainant Association was that they were not handed over with the occupancy certificate so far. The 1st Respondent has raised the issue of maintainability of the Complaint and argued that the project is not an ongoing project, comes under the purview of the Act, 2016 since the members of the Complainant Association took over possession, started residing there in the project and paying tax in their own names from the year 2008 itself. Hence, it has been decided to consider the issue of maintainability as preliminary issue and pass orders on it.

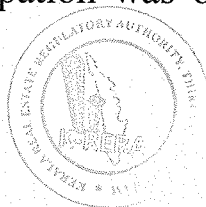
5. We heard both parties in detail on the issue of maintainability of the above Complaint and the documents produced by the Complainant are marked as **Exhibit A1 to A9** and the document produced from the side of the 1st Respondent is marked as **Exhibit B1** and the documents produced on the official side are marked as **Exhibit X1 and X2**. The copy of letter



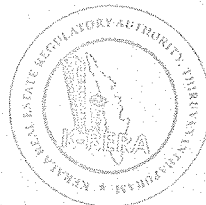
from the Corporation dated 29-08-2022 cancelling the building numbers TC 64/77(2) and TC 64/77(3) is produced and marked as **Exhibit A1**. The copy of building plan as per permit No ZN/2/BA-149/07 dated 07.02.2007 is produced and marked as **Exhibit A2**. The copy of land tax receipt dated 18.09.2018 issued by the Village officer Nemom, collecting land tax in respect of 18 allottees of the project in question is produced and marked as **Exhibit A3**. The copy of registration certificate in respect of the Complainant Association issued by the Registrar of Societies, Thiruvananthapuram dated 07.12.2011 is produced and marked as **Exhibit A4**. The copy of sale deed dated 13-12-2007 executed by Smt. Uma Arumugham land owner, through the 1st Respondent, her Power of Attorney holder and the promoter, in favour of Sri T.G. Rajendranath, who is representing the Complainant Association as its Secretary and his wife Smt. R. Lekshmi is produced and marked as **Exhibit A5**. As per Exhibit A5, the undivided share of land comprising an area of 1.080 cents (0.44 Are) was transferred. In the Schedule attached to Exhibit A4, it was specified that the transfer was with building TC No 64/77(13) and the building was constructed during 2007 and it was with water connection. The copy of letter dated 31.03.2023 from the Corporation issued to the Secretary of the Complainant Association is produced and marked as **Exhibit A6**. As per Exhibit A6, issued as reply to an application under Right to Information Act, 2005, the Secretary Thiruvananthapuram



Corporation has informed the Complainant that the file in respect of completion certificate with respect to building permit No ZN2/BA-149/07 could not be traced out. The copy of minutes of the first Annual general body meeting of the members of the Complainant Association held on 06.04.2008 is produced and marked as **Exhibit A7**. As per the Exhibit A7 minutes, eleven members including the 1st Respondent and the Secretary representing the Complainant Association were participated in the meeting, and all the participants in token of having attended the meeting and agreed to its decisions and put their signature and in the meeting, it was decided to appoint two security personals for day and night security purpose and one sweeper for cleaning the flat and was decided to establish water pressure filter to purify water from the well. It was also decided to carry expenses equally by the flat owners. The salary of the security personals was fixed as Rs. 8000/- and that of the sweeper as Rs. 2000/- per month, for the purpose it was also decided to collect Rs. 10000/- as deposit from each flat owner. The meeting also decided to draft a constitution for the association. The copy of Property tax Assessment Index Sheet dated 06.12.2007 in File No ZTR1/3622/07 is produced and marked as **Exhibit A8**. As per Exhibit A8, the number and date of building permit in respect of proposed TC No 64/77(13) in the name of owner Uma Arumughan was ZN2/BA/149/07/ 07.2.07 and the date of completion/occupation was on 13.11.2007 and the total plinth



area was 85M2 and the annual rental value for the year 2007-2008 was assessed as Rs. 4080/- and the tax assessed was Rs 245 plus LC. The building having the proposed TC number is one of the flats in the project in question. The copy of land tax receipt issued by the Village Officer Nemom on 05.01.2008 in favour of Sri Rajendranath, the Secretary of the Complainant Association and his wife Lekshmi is produced and marked as **Exhibit A9**. As per Exhibit A9, the land tax for 1/18 undivided share of land was paid by Rajendranath, the Secretary of the Complainant Association and his wife Lakshmi during the year 2008 itself. The copy of sale deed No. 146/1/2008 produced by the 1st Respondent is marked as **Exhibit B1**. As per Exhibit B1 sale deed, it was stated that the building was completed by 2007 and building as TC No. 64/77(16) was also mentioned. The Report of the Secretary, Nemom Zonal Office of the Corporation Thiruvananthapuram dated 12.12.2023 is produced is marked as **Exhibit X1**. In this Exhibit, it was submitted that the building numbers to buildings TC 64/77(2) and TC 64/77(3) have been cancelled and reported that in this respect a case as OP No 991/22 is pending before the Tribunal for Local Self Government Institutions, Thiruvananthapuram. It was also submitted that the file in respect of building permit No ZN2/BA/149/07 and issuance of the occupancy certificate for the project in question is not available in that office. The copy of report of the Secretary, Nemom Zonal Office of the Corporation Thiruvananthapuram, dated 26.03.2024



is produced is marked as **Exhibit X2**, as per which, the Secretary, Nemom Zonal Office of the Corporation Thiruvananthapuram has submitted TC number details of 17 flats in the said project.

6. With respect to the maintainability of the above complaint, we have to consider the point “whether the project in question is an ongoing project and comes under the purview of the Real Estate (Regulation and Development) Act 2016 or not?” According to Section 2(zn) of the Real Estate (Regulation and Development) Act 2016 [herein after referred to as the Act, 2016] the ***"real estate project"*** means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.” Section 3 (1) of the Act 2016 stipulates that “No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate



has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”. The provisions under Section 3 of the Act 2016 came into force on 01.05.2017. Section 3 deals with prior registration of real estate project with the Real Estate Regulatory Authority. Sub section (1) of Section 3 interdicts the promoters from advertising, marketing, booking, selling, offering for sale or inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority. Going by the mandate of the 1st proviso therein the projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, are bound to apply for registration. Hence, we have to verify in this case whether the project in question was an ongoing project as on 01.05.2017 and whether the occupancy certificate was obtained for the said project as on that date or not?

7. Here in this case, it can be seen from Exhibit A2 building plan and Exhibit A8 property tax Assessment Index Sheet that the building permit was obtained during 2007 itself and construction of the building started. As per the Exhibit A8 property tax Assessment Index Sheet dated 6.12.2007, the date of completion/occupation of one of the building as TC No 64/77(13) had been assessed for the 2nd half of the year 2007- 2008, as per



which the completion/occupation date was on 13.11.2007. As per Exhibit A5 sale deed dated 13-12-2007, undivided share of land comprising an area of 1.080 cents (0.44 Are) was transferred. In the Schedule attached to this Exhibit, it was specified that the transfer was with building TC No 64/77(13) and the building was constructed during 2007 and it was with water connection. As per Exhibit A9 land tax receipt, land tax was paid by the new purchasers from 5.01.2008. As per Exhibit A7 minutes, meeting of members of owners were held on 06.04.2008 in which eleven members including the 1st Respondent along with the Secretary representing the Complainant Association were participated in the meeting, and all the participants in token of having attended and agreed to the decisions put their signature, in which it was decided to appoint two security personals for day and night security purpose and one sweeper for cleaning the flat and was decided to establish water pressure filter to purify water from the well. It was also decided to carry expenses equally by the flat owners. The salary of the security personals was fixed as Rs. 8000/- and that of the sweeper as Rs. 2000/- per month, for the purpose it was also decided to collect Rs. 10000/- as deposit from each flat owner. The meeting also decided to draft a constitution for the association. From this Exhibit it can be seen that the building and common amenities were completed before 2008 itself and were managed by the members/Association. From Exhibit A4, registration certificate of the Owners Association



dated 07.12.2011, it can be seen that the association was also formally registered before 2011. From the above documents produced, it can be rightly presumed that the construction was completed and the project was handed over to the beneficiaries much before 01.05.2017, ie, coming in to force of the Act, 2016. Even if occupancy certificate is not forthcoming, as reported by the Secretary of the Corporation, Thiruvananthapuram as per Exhibits A6 and X1, it can be rightly concluded on the basis of the documents placed on record that the project in question is not an ongoing project comes under the provisions of the Act, 2016 and hence the complaint is not maintainable as per provisions of the Act, 2016, before this Authority.

8. In view of the above facts and findings, the Complaint is hereby dismissed as not maintainable before this Authority.

Sd/-
Preetha P. Menon
Member

Sd/-
P. H. Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

Appendix

Exhibits marked from the Side of Complainant

Exhibit.A1: The copy of letter from the Corporation dated 29-08-2022 cancelling the building numbers TC 64/77(2) and TC 64/77(3) allotted to the project

Exhibit A2: The copy of building plan as per permit No ZN/2/BA-149/07 dated 07.02.2007

Exhibit A3: The copy of land tax receipt dated 18.09.2018 issued by the Village officer, Nemom.

Exhibit A4: The copy of registration certificate in respect of the Complainant Association dated 07.12.2011

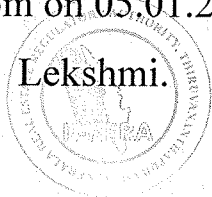
Exhibit A5: The copy of sale deed dated 13-12-2007 executed by Uma Arumugham land owner, through the 1st Respondent, in favour of Sri T.G. Rajendranath, and Smt. R.Lekshmi.

Exhibit A6: The copy of letter dated 31.03.2023 from the Corporation

Exhibit A7: The copy of minutes of the first Annual general meeting of the members of the Complainant Association held on 06.04.2008

Exhibit A8: The copy of Property tax Assessment Index Sheet dated 06.12.2007.

Exhibit A9: The copy of land tax receipt issued by the Village Officer Nemom on 05.01.2008 in favour of Sri Rajendranath and Smt. Lekshmi.



Exhibits marked from the Side of the 1st Respondent

Exhibit B1: The copy of document No 146/1/2008.

Exhibits marked from Official Side

Exhibit X1: The Report of the Secretary, Nemom Zonal Office of the
Corporation Thiruvananthapuram dated 12.12.2023

Exhibit X2: The copy of report of the Secretary, Nemom Zonal Office
of the Corporation Thiruvananthapuram, dated 26.03.2024

