



**K E R A L A R E A L E S T A T E R E G U L A T O R Y A U T H O R I T Y
T H I R U V A N A N T H A P U R A M**

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

Complaints No. 189/2020, 5/2020, 249/2020 & 242/2020

Dated 27th January, 2025

Complainants in Complaint No. 189/2020 (REFA No. 1 of 2022)

1. Dr.Venu Velayudhan,
TC 8/2056(1), Mantra BN-275,
Pongumoodu, Bapooji Nagar,
Mahilasamajam Road, Medical College P.O,
Thiruvananthapuram-695 011.
2. Anitha Venu
Tc 8/2056(1), Mantra, BN-275,
Pongumoodu, Bapooji Nagar,
Mahilasamajam Road, Medical College P.O,
Thiruvananthapuram- 695 011
[Adv. V. Philip Mathews]

Respondents

1. M/s PTC Developers, PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.



2. Biju Jacob, Managing Partner,
M/s PTC Developers PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.
[Adv. Ajakumar, Sidharth A. Menon, Vasil T.K.]

Complainants in Complaint No. 5/2020 (REFA No.19 of 2022)

1. Dr.P.J Koshy
Vakayar Estate, Vakayar P.O, Konni,
Pathanamthitta- 689 698

2. Annie Koshy,
Vakayar Estate, Vakayar P.O, Konni.
Pathanamthitta-689 698

[By Adv. V. Philip Mathews]

Respondents

1. M/s PTC Developers, PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

2. Biju Jacob, Managing Partner,
M/s PTC Developers PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

[By Adv. Ajakumar, Sidharth A. Menon, Vasil T.K.]

Complainant in Complaint No. 249/2020 (REFA No. 31 of 2022)

John T. Varghese
S/o T.S Varghese, TC 4/2016
Mummys Colony, Kowdiar,
Thiruvananthapuram-695 025
[By Adv. V. Philip Mathews]



Respondents

1. M/s PTC Developers, PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

2. Biju Jacob, Managing Partner,
M/s PTC Developers PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

[By Adv. Ajakumar, Sidharth A. Menon, Vasil T.K.]

Complainant in Complaint No. 242/2020 (REFA No. 32 of 2022)

T. Varghese Samuel,
S/o T.S Varghese,
TC 4/2016, Mummys Colony, Kowdiar,
Thiruvannanthapuram-695 025.

[By Adv. Philip Mathews]

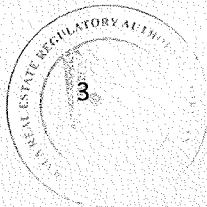
Respondents

1. M/s PTC Developers, PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

2. Biju Jacob, Managing Partner,
M/s PTC Developers PTC Towers,
S.S Kovil Road, Thampanoor P.O,
Thiruvananthapuram- 695004.

[By Adv. Ajakumar, Sidharth A. Menon, Vasil T.K.]

The above Complaints came up for final hearing on
25.07.2024 for which both the Counsels were present.



ORDER

1. As the above Complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and for passing a Common Order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

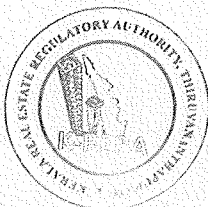
2. The Complainants are the allottees/owners who agreed to purchase/purchased apartments in the project named AQUA VISTA at Akkulam, Thiruvananthapuram developed/promoted by the Respondents. The Complainants initially filed Complaints before this Authority on various dates during 2020 seeking relief to complete the construction of the apartments as shown in the brochure within a time limit and in case of failure to do so to direct Respondents to return the sum with 10% interest from 01.12.2012 till date of return and take necessary steps to register the project before RERA. The Authority considered altogether 16 Complaints and passed common order on 08.11.2021. The order of the Authority was challenged in appeal by the above four Complainants/Appellants before the Hon'ble Kerala Real Estate Appellate Tribunal [herein after referred to as 'the Tribunal'] as REFA Nos 1, 19, 31 & 32 of 2022. By allowing the contentions of the Complainants/Appellants in Appeal, that the Authority would have come to a definite finding u/s 3 of the Real Estate



(Regulation and Development) Act, 2016 [herein after referred to as 'the Act, 2016'] and that the Authority also would have to examine the alternative claims or prayers made by the Complainants, the Tribunal in its Order REFA. Nos.1,19,31 and 32 of 2022 dated 12th day of April, 2023 observed that various claims made by the Complainants/Appellants would have to be examined in the light of the various provisions of law, and in view of the serious disputes as to whether the project in question is an ongoing one liable to be registered under the law, or whether the project is a finished one with all the required facilities and amenities, and for which all statutory certificates and clearances had been obtained by the Promoter, the Tribunal set aside the Order passed by the Authority on 08-11-2021 in the above four Complaints and remanded to this Authority for fresh consideration, enquiry and decision according to law.

3. The Authority considered the above four Complaints afresh and after hearing both parties on 04.05.2024 observed that, in order to decide the matters raised in Appeal, the issue of registrability of the project u/s 3 of the Act, 2016 has to be formally decided. Accordingly, the Authority through interim order dated 31.05.2023 directed the Respondents to show-cause as to why the real estate project "AQUA VISTA" is not registered u/s 3 of the Act, 2016.

4. The Respondents submitted explanation dated 20.06.2023 in response to the interim direction of the



Authority dated 31.05.2023, in which it stated as follows: Ongoing projects as stated under Section 3 are ongoing as on the date of commencement of Section 3 of the Act i.e. 01.05.2017 and for which the Completion Certificate has not been issued by the competent authority till 01.05.2017. The competent authority to issue the Completion Certificate under the local law (KMBR) is the registered Architect of the project and the authority to issue occupancy certificate based on the said completion certificate after due verification is the Secretary of the Local Body. But as per the Real Estate (Regulation and Development) Act 2016 the competent authority to issue the completion certificate is the local body which issues the permit. So, once the local body issues occupancy certificate before 01.05.2017 certifying that the building was completed as on 11.01.2013 i.e. even before the commencement of the Act, the said project cannot be treated as an ongoing project as on 01/05/2017. The building “PTC Aqua Vista” Aakkulam was completed on 11.01.2013 and the same is verified and accepted by the local body, Thiruvananthapuram Corporation in the occupancy on 20.05.2014, which was received by the Thiruvananthapuram Corporation on 12.06.2014. Thiruvananthapuram Corporation delayed the issuance of occupancy certificate due to objections raised by AAI for want of AAI height clearance (NOC). The building was constructed in accordance with the building



permit No. Zu3/826/07 dated 04/10/2007 issued by Thiruvananthapuram Corporation. Based on the above building permit the structure of the building and the major civil works were completed by March 2010 itself. The Respondents received a letter dated 27.05.2011 from Airport Director of Thiruvananthapuram Airport stating that “PTC Aqua Vista” at Cheruvakkal Village, Thiruvananthapuram was constructed without obtaining mandatory NOC for the height clearance from Airport Authority of India, which is against the Government of India Gazette Notification dated 14.01.2010 issued by the Ministry of Civil Aviation, Government of India and Aircraft Act 1934, and they have instructed us to apply for height clearance. Since notice dated 27.05.2011 was issued to the Respondents, against the construction of our building by the Airport Authority of India, the Respondents had applied for the issue of No Objection Certificate (height clearance) in February 2015. AAI had issued height clearance for 49.26 m, totally ignoring the fact that the building was completed in the year 2010 itself. Two building at Akkulam almost at the same co-ordinates got height clearance of AAI (Heera Constructions Company (P) Ltd. – 105.05m and Sree Dhanya Homes (P) Ltd. -91.00m) after Aeronautical study. But as far as PTC Aqua Vista is concerned the construction permitted as per permit is up to 91 meters as per the then existing KMBR norms but the Respondents constructed only up to 83.45 meters. The



Executive Engineer and Superintending Engineer of Thiruvananthapuram Corporation issued a letter dated 06.05.2015 and letter dated 11.05.2015 to the AAI duly intimating that the building permit was issued in 2007 and the structure was completed before 2010 and the other civil work were completed in 2010 in accordance with the building permit and height restriction may be reviewed. The Respondents had submitted appeal before the Appellate Committee on 12.04.2013 along with application fees of Rs. 2,24,720/- and meeting was conducted by AAI on 30.07.2015. The decision of the Appellate Committee was "The building height above permissible elevation of 49.26m AMSL as constructed by the applicant is unauthorized. AAI to take up the matter with State Authorities asking them how they are issuing construction permits to buildings with heights higher than those permissible under Government of India Notification". On 31.7.2015 the Secretary, Thiruvananthapuram Corporation intimated the Government Secretary, LSGD that from 2006 to 2012 building permit was issued to 12 flats at Aakkulam near the lake. Permits were issued based on site elevation certificate and KMBR Rule 33 table 3. Permit was not issued and construction was not done in violation. In the layout approval of CTP/RTP also it was not mentioned that Airport NOC to be obtained for the above flats before issuing building permit. So, it is advisable to issue occupancy to the above buildings. Airport



NOC cannot be insisted either by the Corporation or by AAI. On 04.03.2016, Department of LSGD Government of Kerala issued a G.O.(MS) No.51/2016 LSGD in which it was allowed to issue occupancy to the above building if there were no other violations. But as per the letter No. 507399/RA2/2016/LSGD dated 13.04.2016, the said G.O. was directed to be kept in abeyance. The copies of the said Govt orders were produced. As there was no decision from AAI and the above said G.O. was kept in abeyance, Respondents had approached Hon'ble High Court of Kerala and filed W.P.(C) No. 7236/2017 (D). The Hon'ble High Court of Kerala issued interim order dated 06.04.2017 for issuing Occupancy Certificate to the building within three weeks. Accordingly, Occupancy Certificate and apartment numbers were issued by Thiruvananthapuram Corporation. The copy of order dated 06.04.2017 of the Hon'ble High Court and the copy of Occupancy Certificate were produced. As stipulated in the High Court order dated 06.04.2017, the Respondents informed all allottees about the order and accepting the same all have taken possession of their apartments. Again on 14.10.2016, the Respondents have applied for Aeronautical study, along with application fees of Rs. 2,30,000/-. But it was not considered raising an objection that the building was already constructed. This aspect is also pending consideration in W.P.(C) No. 7236/2017(D). One of the apartment owners of "PTC Aqua Vista Aakkulam" Shri.



Kunnil Sukumar (a defaulter of payment) filed a Writ Appeal in the Hon'ble High Court of Kerala (W.A.No.903/2019) through Adv. V. Philip Mathew, seeking an interim order staying the operation and implementation of interim order dated 06/04/2017 in W.P.(C) No. 7236/2017 and to direct the 2nd Respondent to withdraw/cancel the occupancy certificate granted to the residential apartment constructed by the 1st respondent based on building permit No. Zu3/826/07 dated 04.10.2007 pending disposal of Writ Appeal. But the said Writ Appeal was dismissed. The true copy of the judgment in W.A.No.903/2019 was produced. Since the attempt of Mr. Kunnil Sukumar and his associates to demolish the apartment failed before the Division Bench, they have filed Complaint based on the observation in the W.A. No.903/2019 to try a chance through this Authority to see whether they could achieve the demolition through this Authority. As the occupancy certificate and apartment numbers based on the interim order in W.P.(C) No. 7236/2017 was issued and Thiruvananthapuram Corporation had accepted and recorded that the building was completed on 11.01.2013, Section 3 of the Act, 2016 is not applicable to the building "PTC Aqua Vista" Aakkulam. According to the Respondents the occupancy certificate was issued on 26.04.2017 ie. before the commencement of Section 3 of the Act, 2016. According to them the Hon'ble High Court of Kerala has termed the



occupancy as provisional only because of the pendency of the case and if the Hon'ble High Court finds that the objection raised by the AAI is unfounded and illegal the Hon'ble High Court will make the provisional occupancy as absolute occupancy and this Authority cannot adjudicate the said issue which is pending sub-judices and if this Authority makes any direction to register the project finding that provisional occupancy is not an occupancy under the Kerala Municipality Building Rules, the same will be against the order of the Hon'ble High Court of Kerala. It is stated that by conducting aeronautical study whether the PTC Aqua Vista could maintain a height of 91 meters could be decided only after the final verdict and the issue as to height restriction belatedly raised by AAI is not an issue in respect of Aqua Vista Project and similar issue is pending in respect of about 186 buildings including Government buildings in and around Thiruvananthapuram Airport. It is stated that the issue is pending consideration before the Central Government, though 91 meters were permitted in the permit they have constructed only at a height of 83.45 meters and the height above the ground level is only about 63 meters. Though the common order under challenge in the above Complaints is passed by this Authority in respect of 16 complaints, only 4 Complaints have filed appeal and in respect of other Complaints the final order was never challenged and in respect of the other complaints the order of



this Authority has become final and absolute. The Corporation had already issued occupancy accepting the date of completion as 11.01.2013. There is no provision in the KMBR to issue a second occupancy. All apartments were sold and possession was handed over before 2014-2015 and most of the allottees took sale deed in 2013-2015. This Authority can entertain a complaint as to defective construction only, if it is reported within a period of 5 years that too subject to Section 11(4) and 14(3) of the RERA Act, 2016.

5. The Complainants on 15.11.2023 has filed statement of objection against the explanation filed by the Respondents on 20.06.2023 in which it is stated as follows: Only 2 pages of Judgment in Writ Appeal No. 903/2019 dated 07/06/2019 has been produced by the Respondents. The Complainant produced copy of the full Judgment in Writ Appeal No. 903/2019 dated 07/06/2019 issued by the Hon'ble High Court of Kerala. Paragraph 5 and 6 of the judgment in W.A. 903/2019 specifically clarifies that the occupancy is only a provisional occupancy certificate and that it will not give any right for regularization. The occupancy certificate produced by the Respondents itself states that it is a provisional occupancy certificate issued based on the Hon'ble High Court order. The date of issuance of the occupancy is not mentioned in it. It is not issued by the Corporation Secretary or any competent authority. The name of the person who has signed occupancy



is not stated in it. The occupancy does not refer to any completion certificate. No completion certificate is produced also. The Corporation of Thiruvananthapuram had issued stop memo dated 16.03.2013 against the constructions of 'Aqua vista' apartments by Respondents on the ground that there is no high clearance NOC from the Airport Authority of India. A copy of stop memo number ZU3/826/07 dated 16.03.2013 issued by Corporation of Thiruvananthapuram was produced. The Corporation of Thiruvananthapuram has filed a statement before the Hon'ble High Court of Kerala in W.P.(C) No. 7236/2017 stating that occupancy certificate had not been issued to the Respondents. The copy of the statement filed by Corporation of Thiruvananthapuram in W.P.(C) No. 7236/2017 before the Hon'ble High Court of Kerala on 06/04/2017 was produced. The Airport Authority of India has filed an additional counter affidavit before the Hon'ble High Court of Kerala in W.P.(C) No. 7236/2017 stating that the appeal before the Appellate Committee has been dismissed and that aeronautical study cannot be conducted in respect of an already constructed building. The copy of the additional counter affidavit of the Airport Authority of India before the Hon'ble High Court of Kerala in W.P.(C) No. 7236/2017 was produced. The PTC 'Aqua Vista' Owner/Residents Association has filed complaint against the Respondents before the Thiruvananthapuram Corporation, to which the



explanation given by the Respondents were not satisfactory and the Secretary of the Corporation issued notice dated 30/07/2021 to Respondents to appear for a hearing on 12/08/2021 before the Corporation Secretary. The copy of notice was produced. The President of Aqua vista Apartment Owners and Allottees Association (formed on the basis of interim order dated 06/01/2021 of RERA) has send an e-mail dated 15.10.2022 to the members stating that Respondents have not taken any steps for completing the works based on the list submitted by the Association. The copy of the e-mail dated 15/10/2022 was produced. The site inspection report submitted by the Officers deputed by RERA by order dated 09/09/2021 shows that the work of the building is still not complete. This Authority by Order dated 24/03/2021 held that project is not completed and that occupancy certificate has not been issued. The claims of the Respondents that occupancy certificate has been issued and the building was completed on 11.01.2013 is not correct. It is disputed and denied. The Respondents have not taken any steps for disposal of W.P.(C) No. 7236/2017. The threat regarding criminal contempt is an attempt to prevent adjudication on merits. Sale deeds have not been executed to the allottees T. John Varghese and T.V. Samuel, Complainants in Complaint Nos. 249/2020 and 242/20220 and the works in the apartment of Dr. Venu



Velayudhan, Complainant in Complaint No. 189/2020 have not been completed.

6. The Respondents on 22.05.2024 filed an additional explanation and documents as follows: The copy of the file notes of the Corporation Engineer was produced and submitted that the copy of which was obtained by them for their file keeping, to prove that the building as well as the project was completed with all civic amenities before 01.05.2017. The Corporation of Thiruvananthapuram has filed statement before the Hon'ble High Court of Kerala in W.P.(C) No. 7236/2017 stating that the building was completed in all respects as per the permit and occupancy could not be issued as NOC from AAI as insisted by the AAI is not obtained. The objection of AAI is pending consideration before the Hon'ble High Court of Kerala and the same is not a matter to be considered for this Authority to decide the application of the Act to the project which even according to the local body is completed as on 11.01.2013 as certified in the occupancy certificate issued by the local body. The building height restriction in Airport vicinity is an all India issue and it is being addressed by the builders' associations in various means in discussion with the Government of India and also with AAI of India. The notification issued to the Respondents by CREDAI regarding the height restriction relaxation from 16 floors to 48 floors in Navi Mumbai with zoning map was produced. The copies of



the new proposed colour coded zoning map of Thiruvananthapuram Airport and the minutes of the meeting of members of ANS, AAI, DGCA and representatives of CREDAI, NAREDCO furnished by CREDAI and the copy of the Government of India notification dated 29/07/2022 based on the above said decision were also produced. The following documents were produced by Respondents on 25.04.2024. 1) The copy of proceedings dated 24.02.2014 issuing sanction by Deputy Chief Electrical Inspector, Kerala State Electrical Inspectorate to the 1st Respondent. 2) The copy of the final NOC dated 24.01.2015 from fire and Rescue services issued by Commandant General of Fire & Rescue Services to the 1st Respondent. 3) The copy of the AMC dated 16.01.2017 for the period from 01.10.2016 to 30.09.2017 for lifts executed by M/s. ThyssenKrupp elevator India in favour of the 1st Respondent. 4) The copy of the AMC dated 30.01.2017 for the period from 01.10.2016 to 30.09.2017 for lifts executed by M/s. ThyssenKrupp elevator India in favour of the 1st Respondent. 5) The copy of letter dated 04.08.2021 from the TK elevator firm to the 1st Respondent showing all lifts except one were installed with ARD and handed over. 6) The copy of the work order and copy of agreement for the AMC of STP executed by M/s. Hi-Tech Bio Fertilizers India in favour of the 1st Respondent on 15.11.2017. 7) Letter dated 31.07.2015 from the Secretary, Corporation of Thiruvananthapuram to the



Government Secretary, LSGD stating that occupancy may be issued to the buildings constructed as per permit, without insisting Airport NOC.

7. During the hearing on 25.07.2024, the learned Counsel for the Complainants argued as follows: In the Complaint filed by 16 allottees, this Authority vide order dated 24.03.2021 in I.A No. 10/2020 found that project has not obtained final occupancy certificate and the project is not completed and that Complaints are maintainable before the Authority and the IA dismissed. The Respondents challenged the orders before the Kerala Real Estate Appellate Tribunal, Ernakulam through REFA Numbers 46 & 47/2021. The appeals were later “dismissed as not pressed, without prejudice to the right of the appellant to file appropriately against the final order” by common order dated 30.11.2021. The Authority vide order dated 08.11.2021 disposed of the 16 complaints finally holding that “therefore, it is to be presumed that the construction of the Apartment was completed to the satisfaction of the Corporation”. This Authority directed Respondents to handover common amenities to the Association and the Respondents did not hand over the common amenities to the satisfaction of the association as ordered, so far. Association has issued an e-mail to the allottees regarding the non-completion. Six among the allottees who were Complainants in Complaint Number



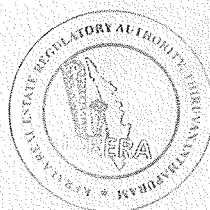
189/2020, 5/2020, 249/2020 and 242/2020 filed appeals against the order of this Authority dated 08.11.2021 before the Kerala Real Estate Appellate Tribunal, Ernakulam. The Appellate Tribunal vide common order dated 12.04.2023 allowed the appeals and remanded the Complaints to this Authority. The learned Counsel has requested to consider paragraphs 10 to 17 of the order of the Kerala Real Estate Appellate Tribunal. After remand, the Complainants produced the copy of statement of the Thiruvananthapuram Corporation presented before the Hon'ble High Court of Kerala in W.P.(C) No. 7236/2017. In paragraph 3 of that statement dated 24.04.2017 filed on 23.05.2017, it was stated that the occupancy certificate could not be issued to the Petitioner till then. The Respondents rely on the interim order in the said Writ Petition and the provisional occupancy certificate issued based on the said interim order of the Hon'ble High Court. The learned Counsel argued that the provisional occupancy certificate does not contain any date though as per the form prescribed as per Building Rules, the date of issuance of certificate is to be shown. According to the Counsel for the Complainants, the statement of the Corporation reveals that provisional occupancy certificate was not issued till 23.05.2017 and the completion certificate of the project is not produced by the Respondents so far. The Complainants' Counsel pointed out the necessity of registration regarding



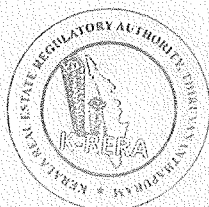
project referring to public notice issued by this Authority and decisions of the Hon'ble High Court of Kerala in Alfa Ventures Pvt. Ltd and the Graceland Foundations cases. The Counsel for the Complainants argued that the minutes of meeting of the Owners Association held on 31.07.2018 and the copy of notice dated 15.04.2019 by the residence association produced by the Respondents, clearly shows that STP was not commissioned till April 2019. He contended that in the Seven documents produced by Respondents on 25.07.2024, none of them would show that provisional occupancy certificate, occupancy certificate or completion certificate were issued before 01.05.2017. It was further submitted that the original work order regarding establishment of STP is not produced and the work order regarding establishment of STP appears to have been issued only on 15.11.2017. The documents regarding STP now produced were not placed before the Owner's Association till 15.04.2019. The Counsel for the Complainants also invited attention of this Authority to the counter affidavit dated 27.06.2017 filed by the Airport Director in WP(C) No. 7236/17 before the Hon'ble High court of Kerala, notification dated 05.01.1988, 3.06.2008 and 14.01.2010 of the Ministry of Civil Aviation limiting constructions, undertaking by the 2nd Respondent before the Aviation Director and the notice by Airport Authority directing respondents to apply for NOC.



8. During the hearing on 25.07.2024, the learned Counsel appeared for the Respondents raised arguments as follows: The issue before this Authority is whether PTC Aqua Vista, Aakulam, is an ongoing project as defined under Section 3 of the Real Estate Regulation and Development Act 2016 as on the date of commencement of Section 3 of the Act ie., 01.05.2017. As per the order of the Hon'ble High Court of Kerala occupancy certificate was issued to the project on 24.04.2017 which is well before the commencement of section 3 of the Act. The occupancy certificate clearly states that the project was completed on 11.01.2013 and it amounts to a completion certificate given by the competent authority that the project was completed as on 11.01.2013 as contemplated under Section 3. The Corporation has admitted before the Hon'ble High Court that the construction of building as well as the project was completed with all civic amenities long back in 2013 and the occupancy was not issued only due to objection raised by the Airport Authority of India (AAI). This issue is there in respect of buildings in the vicinity of Thiruvananthapuram and other Airports as well. It is a national issue and remedial measures are in progress. The Complainants have no case that the interim order dated 06.04.2017 of the Hon'ble High Court to issue occupancy within 3 weeks was not complied with by the Corporation. The occupancy was issued on 24.04.2017 certifying the date of



completion as on 11/01/2013. KMBR stipulates that if the application for occupancy is not rejected or considered within 15 days the occupancy is deemed to have been issued. The application for issue of occupancy was filed on 11.01.2013 along with all certificates required under the KMBR regarding completion of the project and the same was verified and approved by the competent authority under the Act. As the competent authority has certified that the project was completed as on 11.01.2013 the Act never applies to the project and the complaints are not maintainable. The interim order of the Hon'ble High Court dated 06.04.2017 is to issue occupancy certificate and what is issued is occupancy certificate. It was stated to be provisional as the occupancy issued was subject to the final order in the above case. That does not empower any Authority to ignore the occupancy issued by the competent authority and the date of completion certified by the competent authority. Even as per the Act, the competent authority to certify the completion of the project is the authority which is competent to issue the permit as per local laws and even if there are any complaints for anybody that the completion certificate or occupancy is wrongly issued the appeal in respect of the same has to be filed before the Tribunal created under the Municipality Act. K-RERA or any other Authority under the Real Estate (Regulation and Development) Act 2016 has no powers to sit in appeal over the



same. The first common order dismissing 16 complaints were passed by K-RERA holding that the project was not an ongoing project. Only four appeals were filed against the same. The earlier orders in respect of 12 complaints covering the common order have become final in all respects and the said common order operates as res judicata in respect of the remanded complaints. The K-RERA could entertain a Complaint only if the project is found registrable under the Act. According to the Counsel for Respondents, as the project is not registrable as found in the 12 other complaints and which were become final in all respects, these four complaints have also to be dismissed as not maintainable.

9. Heard both parties in detail and examined all the documents placed on record. As per the order of the Tribunal, the principal issue before this Authority to be decided now is whether the project in question was an ongoing project as on 01.05.2017, the date of commencement of Section 3 of the Real Estate (Regulation and Development) Act 2016 [herein after referred to as “the Act, 2016”] and whether it is liable to be registered as per Section 3 of the said Act or not? If the answer is in affirmative, then only the other issues would come for consideration.

10. Going by the mandate of the 1st proviso to Section 3 of the Act, 2016, in Kerala, the projects that are on going on the date of commencement of the Act and for which the



Occupancy certificate has not been issued, are bound to apply for registration before this Authority. The twin requirement of the 1st proviso to Section 3 of the Act, 2016 of having completed the project and having obtained the completion certificate prior to the commencement of the Act, 2016 are important. As far as the project in question is concerned, a provisional occupancy certificate was issued by the Competent Authority/ Corporation of Thiruvananthapuram, without writing the date of issuance of the said certificate. According to the report dated 18.10.2024 submitted by the Corporation before this Authority, it is mentioned that the occupancy certificate was issued for the project in question in the month of May 2017. Even in this report, the Corporation has mentioned only the month but kept silence as to the date of issuance of Occupancy certificate. Admittedly, the Corporation had issued a 'Provisional' occupancy certificate based on the direction of the Hon'ble High Court of Kerala dated 06.04.2017, wherein it was directed to issue occupancy certificate within three weeks.

11. On perusal of documents placed on record, it has come to the notice of the Authority that two Writ Petitions, WP(C) No. 7236/17 and WP(C) No. 28118/17 are still pending consideration before the Hon'ble High Court of Kerala with regard to the issuance of occupancy certificate to the project in question. The copy of counter affidavit dated 27.06.2017 filed



by the Airport Director in WP(C) No. 7236/17 is produced by the Complainants, in which the GOI notification dated 05.01.1988 and 30.06.2008 were enclosed as annexures before the Hon'ble High Court. According to the said affidavit, restrictions were in force even at the time of obtaining permit and promoter ought to have obtained NOC from AAI before commencement of the construction. It is also affirmed in the said affidavit that during emergency circumstances, the safety of the aircraft and the occupants of such high rise buildings which penetrate the OLS, will be at stake and the building of the Respondent/promoter is still posing as a grave threat to the aircraft operation from Thiruvananthapuram Airport and so the height of the building needs to be restricted to 49.45m AMSL as per the NOC issued by the AAI. The copies of letter dated 22.09.2008 from the Airport Authority to the Government of Kerala and the Secretary, Corporation of Thiruvananthapuram and letter dated 27.05.2011 to the 1st Respondent and copy of GOI notification dated 14.01.2010 limiting constructions issued by superseding the earlier notifications were also enclosed. In the copy of counter affidavit dated 14.03.2018 filed by the Airport Director in WP(C) No. 28118/17 also produced by the Complainant, it is seen stated that the building height above permissible elevation of 49.26m as constructed by the builder is unauthorised and the applicant had wilfully ignored the rules and regulations for his personal benefits, by



putting the safety of Aircraft in to danger. It is also seen affirming that the applicant had constructed a height of 90.50m without obtaining the NOC from AAI, which is a serious violation and after completion of building he sought for aeronautical survey which was rejected and the orders rejecting the appeal of the petitioner is valid and the existing building is protruding in to the Obstacle Limitation Surface associated with Trivandrum Airport by 41.24m and hence the safety of the aircraft, passengers and the occupants of the building is endangered and as a temporary mitigation measure, NOTAM (Notice to Airmen) action has been initiated by AAI which warns the flight crew about the presence of the said building as an obstacle. But the Respondent/promoter himself admitted before this Authority that all the apartments were sold and possession handed over before 2014-15 to the allottees and they are residing there in the building.

12. On perusal of the copy of the statement submitted by the Corporation of Thiruvananthapuram before the Hon'ble High Court of Kerala, it is seen stated that they issued a stop memo dated 16.03.2013 to the promoters for stopping further construction in the building. Since the promoter did not produce the NOC from the Airport Authority of India, a notice dated 30.01.2015 was also issued to the promoter under Rule 16 of the Kerala Municipality Building Rules to show why the permit already issued cannot be cancelled. It is stated further



that since the reply given by the Promoter was not satisfactory, the permit was not renewed and occupancy certificate was not issued to the Promoter.

13. It has been noticed that the Project in question had obtained only a "Provisional" Occupancy Certificate from the Corporation of Thiruvananthapuram in compliance of the direction of the Hon'ble High Court of Kerala vide its order dated 06.04.2017 in W.P.(C) No. 7236/2017. Thereafter, a division Bench of the Hon'ble High Court of Kerala vide its order in W.A. 903/2019 specifically clarified that the said Occupancy Certificate is only a "Provisional" occupancy certificate and it will not give any right for regularization. The Act, 2016 also does not envisage for a real estate project obtaining 'Provisional' Occupancy Certificate.

14. Considering all these facts we are of the opinion that it would be appropriate to pass orders in the above Complaints after the disposal of the above said Writ Petitions before the Hon'ble High Court of Kerala. Hence passing of orders in the above Complaints is deferred for the time being.

Sd/-
Preetha P. Menon
Member

Sd/-
P.H. Kurian
Chairman

True Copy/Forwarded By/Order/


Secretary (Legal)

