



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint Nos. 21/2021, 23/2021 & 273/2021

Dated 8th March 2022

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

Complainants

1. Bindhu Varghese, : Complaint No.21/2021.
Kuzhiparambil House,
Njakkunilam P.O.,
Vallicdu, Kottayam-689 656
Pathanamthitta District.

2. Joseph George, : Complaint No.23/2021.
Pandakasalayil Ansura Bhavan,
Attarikom, Omalloor,
Pathanamthitta District-689 647.

(By Adv.Thomas Mathew Edathil)

3. Fr. Koshy Philip, : Complaint No.273/2021.
Thengumtharayil House,
Plot No.37,
Sankaradasar Street,
Ramalinga Nagar,
Puzhuthivakkam, Chennai-600091.

(By Adv.V Philip Mathews)



Respondents

1. M/s.P.T.C Builders,
S.S Covil Road,Thampanoor,
Thiruvananthapuram- 695 004
2. Biju Jacob
Managing Partner
M/s.P.T.C Builders,
S.S Kovil Road,Thampanoor
Thiruvananthapuram- 695 004

[By Adv.V.Ajakumar]

Addl.Respondent

3. Jacob Mathew,
Mulakkilethu House,
Makkamkunnu,
Pathanamthitta P.O
Pathanamthitta.

(Addl. 3rd Respondent Impleaded as per Order in IA Nos.268/2021 & 269/2021).

The above Complaint came up for virtual hearing on 3/02/2022. The Counsels for the Complainants, Respondents and Land owners attended the hearing

ORDER

1. As the above 3 Complaints are related to the same project named 'PTC-Western Ghat' developed by the Respondent/Promoter located at Makkamkunnu, Pathanamthitta, 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 Complaint No:21/2021 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Case of the Complainant is as follows:
Being attracted by the advertisement of the Respondent / builder and believing the promise given by the Respondent / builder that 'the apartments will be completed and handed over in an occupiable condition as detailed in the brochures by July 2016', the Complainant had booked an apartment No.2C measuring a super built up area of 1250 sq.ft. on the second floor along with a car parking space on the basement / Ground floor marked as 2C and entered into an agreement for sale & consideration with the Respondents on 12/11/2014 and they promised to complete the construction and handover possession by July 2016. The total consideration for the same is fixed at Rs.45,01,268/-. Out of the said total consideration, a sum of Rs.6,25,000/- is towards land value and Rs.38,76,268/- is towards cost of Apartment including VAT, Service tax and cess and also covered car parking. Though the cost of Apartment was very high at a place at Pathanamthitta, the Complainant agreed to pay the higher price believing the promise of the class of facilities and quality of materials to be used and specifically the promised time of completion in July 2016, with a grace period of 6 months.



3. Subsequently the Complainant requested to change her booking of Flat 2 C to a vacant flat on the 6th Floor ie.6G. Therefore supplementary agreement was added on 04/05/2016 to the earlier original agreement dated 12/11/2014. The supplementary agreement postulated that the conditions in the original agreement stands valid as such, but the amount payable is only Rs.41,03,750/-. An additional amount of Rs.1,38,129/- was added on VAT, service tax and CESS to make the total to Rs.42,41,880/-. The new apartment was smaller in size ie, only 1225 sq.ft. The Complainant had paid a total sum of Rs.33,20,532/- vide different receipts. The balance amount payable is only Rs.9,21,348/-. The Complainant had paid the last payment of Rs.6 Lakhs on 05/05/2016. But when the Complainant visited the apartment site, there was no progress in the work and doubted the assurances of the Respondents. So, she stopped further payments after 05/05/2016. The Respondents made catching and luring advertisements regarding ready to occupy and ready for house warming of PTC Western Ghats without completing the constructions and preparations for hand over. The Respondents published further brochures towards the end of 2020 to lure more customers. The copy of the said brochure is also produced. The said brochure claims that the project is RERA registered/ Occupancy Certificate No.BA/199/13-14. The Complainant filed an application under Right to information before the Authority to get a clarification regarding the registration of the said project and the Authority issued a reply



informing that PTC Western Ghat is not registered in K-RERA till 09/10/2020. The Complainant has every reason to suspect that the Occupancy Certificate has been obtained fraudulently as the project has not been completed yet with the external development works & internal development works as envisaged in the Act of 2016. While so, the Complainant had received a lawyer's notice dated 24/08/2020 making various claims and allegations as committing default in payments. The notice claimed that the Pathanamthitta Municipality has already granted Occupancy Certificate for the project Ghats on 30/07/2020 and further alleged that the Complainant is liable to pay balance amount of Rs.13,27,251 and a sum of Rs.7,88,037/- towards interest for delayed payment of instalments as on 31/05/2020 and further demanded a sum of Rs.6,63,117/- on account of connection and other charges as detailed in part b of the statement of accounts annexed with the notice. So, it demanded the total amount due from the Complainant is Rs.27,78,504/-. The said statement of account attached with the lawyer's notice is a farcical statement and mockery of facts and figures. The Complainants has issued a reply notice on 08/10/2020. On 09/10/2020 the 2nd Respondent issued notice through WhatsApp making some amendments for the lawyer's notice dated 24/08/2020. The copy of the said notice issued by the 2nd Respondent is also produced. The Complainant is not liable to pay the said amount. The Complainant visited the Apartment complex during November 2020 and she found that the surroundings, common areas and parking areas are kept filthy. The amenities promised are not done and parking



area was seen flooded with water due to leakage, seepage and rains. Many areas of the wall had cracks, leaks and fungus. Foul smell was emanating from the control room of power, water and sewage treatment areas. Shocked by the same, the Complainant filed applications under RTI Act before the KSEB & KWA to find out whether connections have been obtained by the Respondent. The replies received from the KSEB & KWA exposed the claims of the Respondent regarding the apartment complex's occupiable condition. After occasioning or wilful or negligent delay of 53 months, as of now, from the promised date of completion, July 2016- the demands made by the Respondent are against principles of contract, equity and natural justice. The Complainant had filed a Complaint as CC No.69/2019 before the Kerala State Consumer Redressal Commission, Vazhuthacaud, Thiruvananthapuram. The same was withdrawn on application reserving the liberty to approach appropriate forum vide order in IA.No.460/2020 dated 10/11/2020. Copy of brochure published at the launch of the project by the Respondents, copy of agreement for sale & construction dated 12/11/2014, copy of supplementary agreement dated 04/05/2016 added to the agreement dated 12/11/2014, copy of payment receipts, copy of brochure titled 'LIVE IN STYLE' published by the 1st Respondent, copy of brochure titled 'INVEST TODAY' published by the 1st Respondent, copy of letter dated 23/10/2020 issued by the office of the Authority, copy of lawyer's notice dated 24/08/2020, copy of reply notice dated 08/10/2020, copy of letter dated 09/10/2020



issued through WhatsApp by the 2nd Respondent, Copy of application dated 23/11/2020 filed by the Complainant before the KSEB and reply, copy of application dated 23/11/2020 filed before the KWA and reply.

4. The reliefs sought by the Complainant are (1) to direct the Respondent to complete the Construction of the project as per the promised quality and class offered in the agreement, and handover the Apartment complex in an occupiable condition within 2 months or within a reasonable time specified by the Authority. (2) directs the Respondents to execute sale deed, as per the agreement in favour of the Complainants and (3) direct the Respondents to pay interest at the rate of 18% per annum for the amount paid by the Complainants with future interests till handing over of the Apartment.

5. The Respondents 1 and 2 have filed Written Statement in Complaint Nos.21/2021 & 23/2021 and submitted that the above Complaints are not maintainable either in law or on facts. The Complaint is filed in active collusion with the land owners and co-developer of the project Jacob Mathew who is the permit holder of the project and who is bound to execute the sale deed to the Complainant as per the land owner's agreement dated 09/06/2013(which was revised on 10/09/2013) executed in between Mr. Jacob Mathew & the Respondent / Builder. The Complaint is bad in law due to non-joinder of necessary parties. The 1st Respondent by



raising funds from the other sources has completed the construction of the apartment complex in spite of all obstructions made by the land owner and a group of Allottees colluded with him and obtained occupancy for the building complex, after a long legal battle with the land owner. Realising that the Allottees are bound to take possession of their apartments by paying the balance amount and interest due to the builder/1st Respondent, the land owner and the Allottees entered into a conspiracy and filed Complaints before the K-RERA authorities to do illegal bargains with the Respondents and to harass them. The Respondents have provided all amenities promised in the brochures and agreement and the same was confirmed through experts by the land owner in the arbitration proceedings meticulously and the same was endorsed in the interim award of the Arbitrator in AR No.65/2019. Only on getting confirmation of the above, the land owner has applied for occupancy and the officials of the Pathanamthitta municipality has issued occupancy to the apartments. It was issued to the project after due verification whether the construction was completed as per the approved plan and all promised amenities are provided therein. If there is any objection as to the issue of Occupancy, the Complainant is expected to file proper appeal before the Appellate Authority under KMBR. So far, no such appeal is filed before the Tribunal for Local Self Institutions and the Occupancy certificate issued by the Municipality has become final in all respects. The expected date of completion is subject to other conditions in the said agreement. The issue of Occupancy was



intimated to the Complainant and it is further requested the Complainant to make balance payments due to the Respondents and to take possession of his apartment.

6. The Respondent further submitted that there were many force majeure situations in the constructions which hampered the progress of the construction. The site was found to be rocky on excavation for construction of basement and the permit holder has to obtain permit for blasting the rocks and removal of ricks from the concerned authorities. The complainant has delayed the payment of instalments and the same has also further delayed the progress in the constructions. The price of the apartment was fair and reasonable and the non-payment of agreed instalment is caused heavy loss to the Respondent towards payment of interest, cost escalation of labour, material costs etc. realising the force majeure situations the complainant has novated the agreement on 4/52016 and made the last part payment only in May 2016. The total amount pending towards balance of contract value comes to Rs.13,27,251/- and the interest for the delayed / defaulted payment of instalments as on 31/05/2020 came to Rs.7,88,077/-. In addition to the same the Complainant is bound to pay Rs.6,63,117/- to the Respondents towards connection charges etc. the details were notified to the Complainant. On getting occupancy a notice was issued to the Complainant to pay the balance amount due. The Respondents never published any brochure that the building was ready for occupation or house warming before the issue of occupancy



and registration with RERA. It was further submitted that the KSEB Domestic connection & KWA connection could be obtained only on getting occupancy and the same has to be obtained at the cost of the Allottees. The Respondents have already made deposits for KWA water connection and HT connection to the project. since the land owner who is a co-owner has refused to register the project with K-RERA on commencement of the Act, 2016, the 1st Respondent being the builder has decided to register the project with K-RERA. Accordingly, the project was registered. The finishing works ie, final polishing of floors in the Apartment No.6G could be completed within hours if the Complainant makes the balance payment.

7. The Complainant has filed additional statement and submitted that she is not responsible for the delay caused in completing the project as it is the contractual responsibility of the builder. Though the builder promised to handover possession by July 2016, with a grace period of 6 months, the project was not even nearing completion even by the said period. The Complainant is not a chronic defaulter as alleged. The balance outstanding as payable towards sale consideration is only Rs.9,21,348/- and the Complainant is willing to pay the said mount and also willing to pay the 1/64th shares for power and water supply and other incidental like registration charges etc.



8. The Respondents have filed an IA.268/2021 in Complaint No.268/2021 and filed IA.No.269/2021 in Complaint No.23/2021 to implead the land owner as additional 3rd Respondent and the same was allowed as he is a necessary party to the Complaint. But he has not filed any counter statement so far. No documents were produced from the part of the 3rd Respondent.

9. The Project in question is registered under Section 3 of the Act vide Registration No. K-RERA/PRJ/011/2021.

10. Heard both parties in detail and examined the documents. The documents produced from the Part of the Complainant are marked as Exhibits A1 to A12. The documents produced from the part of the Respondents are marked as Exhibits B1 & B2. During the hearing on 03/02/2022, the counsel for the 3rd Respondent/Land Owner submitted that, he is ready to execute the sale deed, once the project is completed and on payment of building tax by the Allottee. The counsel for the Respondents 1 & 2 submitted that the project is completed and occupancy has been obtained for the project. But the Complainants' Counsel objected and submitted that many of the works are still pending in the project and the Respondent/Promoter has failed to honour their promises as per the terms of the agreements executed with the Complainants.

11. After hearing both sides and perusal of documents produced, the Authority is convinced that the



Respondents have failed to complete the project 'PTC Western Ghat' with the amenities and facilities promised under the agreement for sale. Considering the Covid-19 pandemic situation during the last 2 years and also with the consent of the Complainants, the Authority decided to grant further time to the Respondents to complete the whole project along with all the amenities and facilities offered to the Complainants, as promised to them as per the terms of the agreements executed with them, before 31/05/2022.

12. Based on the above circumstances, this Authority, invoking Section 34(f) & 37 of the Act, hereby passes order as follows: -

1. The Respondent/Promoter shall complete the entire works of the project along with all the amenities and facilities as offered to the complainants and hand over it to them, as per the terms of the agreements, on **or before 31/05/2022**, without fail.
2. The 3rd Respondent land owner shall execute sale deed of the Apartments in favour of the Complainants on receipt of instruction from the promoters subject to the payment of balance amount due from the Complainants.



In the event of failure on the part the Respondent/Promoter to complete the whole project in all respects as promised as per the terms of agreement within the abovesaid period, the Respondent/Promoter shall be liable to pay **Rs.5000/- per day** as penalty from 01/06/2022 till the date of completion, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

The petitions received with claims of interest for delay in completion & handing over shall be heard and disposed after 01.06.2022.

This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

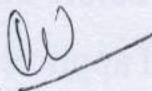
Dated this the 8th day of March 2022

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman



/True Copy/Forwarded By/Order


Secretary (legal)

Exhibits

Exhibits marked from the Side of Complainants

- Ext.A1- Copy of brochure published at the launch of the project by the Respondents.
- Ext.A2- Copy of agreement for sale & construction dated 12/11/2014.
- Ext.A3- Copy of supplementary agreement dated 04/05/2016 added to the agreement dated 12/11/2014.
- Ext.A4 series - Copy of payment receipts.
- Ext.A5- Copy of brochure titled 'LIVE IN STYLE' published by the 1st Respondent.
- Ext.A6 - copy of brochure titled 'INVEST TODAY' published by the 1st Respondent.
- Ext.A7 - copy of letter dated 23/10/2020 issued by the office of the Authority.
- Ext.A8 - copy of lawyer's notice dated 24/08/2020.
- Ext.A9 - copy of reply notice dated 08/10/2020.
- Ext.A10 - copy of letter dated 09/10/2020 issued through WhatsApp by the 2nd Respondent.
- Ext.A11 series- Copy of application dated 23/11/2020 filed by the Complainant before the KSEB and its reply.
- Ext.A12 series - copy of application dated 23/11/2020 filed before the KWA and its reply.



Exhibits marked from the Side of Respondents

Ext.B1 – Copy of Land Owners agreement dated 10/09/2013.

Ext.B2 – Copy of Occupancy Certificate dated 30/07/2020.

