



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM
Complaint No. 2/2019

Dated 5th February, 2020

Present: Sri. P H Kurian, Chairman.

Smt. Preetha P Menon, Member

Sri.C.R Subash,aged 67 years : Complainant
S/o. Raghavan, Chirayil House,
Kottayam P.O
Panayakazhippu Kara,
Muttambalam village,
Kottayam Taluk , PIN-686001

1. C.J's Haritha Homes
Square Centre, Athirampuzha P.O,
Padinjattumbhagom Kara, Athirampuzha Village,
Kottayam Taluk- PIN- 686562
2. Kumar.D, s/o Dasan
Partner, M/s C.J's Haritha Homes, J Square centre
Athirampuzha P.O, Padinjattumbhagom kara,
Athirampuzha village, Kottayam -686 562
3. Smt. Sheeja S. Kumar,
W/o Kumar.D,
Partner M/s.C.J's Haritha Homes, J Square centre
Puthenvetil House, Athirampuzha P.o,
Padinjattumbhagom Kara,
Athirampuzha Village, Kottayam- 686 562

Respondents

Advocate Ajay Mathew John appeared for the Complainant.

Sri. Rahim Jazbi, authorised representative appeared for the 2nd respondent.

Upon hearing the arguments of both the parties the Authority passed the following order.

ORDER

The complainant's case is that he entered into an agreement for sale with the respondents on 23.07.2014 for purchasing apartment No. C-10 on the 10th floor having an area of 1167 sq. ft. (here in after referred to as the apartment) to be constructed by the respondents in the multi-storeyed apartment complex named "City Plaza" (here in after referred to as the project) and the proportionate share over the property in which said apartment situates for a total sale consideration of Rs. 51,74,300/- (Rupees Fifty-one lakhs Seventy-Four Thousand and Three Hundred only). On the date of agreement complainant paid Rs. 49,50,000/- (Rupees Forty-Nine Lakhs and Fifty Thousand Only). As per the terms of the contract between the complainant and respondents, the respondents shall complete the construction of the above said apartment together with all facilities on or before 31st day of December, 2016 and hand over possession to the complainant on receiving the balance amount of Rs. 2,24,300/- (Rupees Two lakh Twenty-Four Thousand Three Hundred Only) to be paid to the respondents. Though the complainant is ready to fulfil his part of contract the respondents does not complete the construction and hand over the apartment till date. Hence the complainant filed this complaint. The relief sought by the complainant are to direct the respondents to complete the construction of the apartment as per the agreement dated 23/07/2014 including the lift facility and car parking facility within one month and to execute the sale deed and handover the possession of the apartment to the complainant, after getting electricity and water connections, within 30 days on receiving the balance amount to be paid to the respondents. In the case of default allow complainant to realize an amount of Rs. 49,50,000/- with 12% interest from 23.07.2014 till realization from the respondent jointly and severally along with an amount of Rs. 10,00,000/- as damages from the respondents and to issue such

other orders deemed fit by the Authority. Annexure- 1 to 3 are the documents produced by the complainant.

The 2nd respondent filed reply for himself and on behalf of 1st and 3rd respondent. He stated that the complaint is not maintainable either in law or on fact. The cause of action accrued to the complainant on 23.07.2014. The Act in question, namely, the Real Estate (Regulation & Development) Act, 2016 (here in after referred to as the Act) came into force only with effect from 26.03.2016. The Authority itself was constituted only on 01.01.2020. The respondents further states that for the purpose of the project in question the 1st respondent's firm purchased a parcel of land having an extent of 2.93 Ares made up of 2.53 Ares in Re survey No.63 and 0.40 Ares in Resurvey no. 15/2 Block No. 109 of Muttambalam Village and an old dilapidated house therein of the complainant for a consideration of Rs.51,74,300/- and instead of taking the sale consideration in cash, the respondents allotted the said apartment in the project as per the request of the complainant. Accordingly, a sale deed was executed by the complainant in favour of the 2nd respondent as document no. 1963 dated 23.07. 2014. The agreement for sale entered into between the complainant and the 2nd respondents dated 23.07.2014 is not really an agreement for construction of an apartment. It is an agreement entered into for the purpose towards the sale consideration of the property purchased by the 2nd respondent. The building permit for the project was obtained by the respondents only on 4.11.2014. All the remaining agreements executed between the other allottees of the project are later from the date of the agreement for sale of the complainant. In this view of the matter, the complainant is not an allottee as defined under section 2(d) of the Act and as such he is not competent to maintain the instant complaint. The respondents also stated that the project in question is nearing completion by the end of June 2020 and it will be completed in all respects and all genuine allottees would be put in possession of the

completed apartment. Annexure- 4 to 7 are the documents produced by the respondent.

Upon hearing and on perusal of the documents submitted by the complainants and respondents the following points were raised for consideration.

1. Whether the Authority has jurisdiction to entertain the complaint ?
2. If so whether the complainant is entitled to any relief as claimed ?

The Annexure -1 agreement for sale dated 23.07.2014 clearly shows that the complainant agrees to purchase the said apartment in the project of the respondent for a total consideration of Rs.51,74,300/- (Rupees Fifty One Lakh Seventy four thousand and three hundred only) and an amount of Rs. 49,50,000/- (Rupees Forty Nine Lakhs Fifty thousand only) paid on the date of agreement. As per this agreement the balance amount to be paid at the time of execution of sale deed is Rs.2,24,300/- (Two Lakhs Twenty Four Thousand Three Hundred Only). As per the Annexure- 1 the date of completion of the project is 31/12/2016 and possession be handed over within 90 days.

Annexure- 6(1) building permit shows that the respondents applied for building permit on 27.05.2014 ie. even before the date of Annexure- 1 sale agreement. Annexure- 6(2) shows that the building permit of the project extended up to 31.10.2020. The respondents at the time of hearing admits that Completion certificate of the project is not obtained till now. More over the respondents themselves in the reply statement admits that the project is nearing completion by the end on June 2020. Based on the above it is evidenced that the project in question is an ongoing project as per Section 3 of the Act and the complainant is an allottee of the project.

The respondent themselves admits that Annexure I, agreement for sale entered into between the complainant and respondent instead of receiving the sale

consideration of the sale deed dated 23.07.2014 (Annexure A4) by the complainant. Hence it evident that the complainant paid Rs.49,50,000/- (Rupees Forty Nine Lakhs Fifty Thousand only) on 23.07.2014, ie on the date of execution of Annexure-1 agreement for sale . As per Annexure- 1 the date of completion of the project was 31.12.2016 and possession be handed over within 90 days. But the project is not completed till now.

Based on the above findings the Authority passes the following Order.

1. The respondents shall register the project referred in the complaint as per provision of Section 3 of the Act within March 31st of 2020.
2. The respondent shall complete the project and take occupancy certificate within 30.06.2020 without fail and hand over possession of the apartment to the complainant after receiving the balance amount of Rs.2,24,300/- (Two Lakhs Twenty-Four Thousand Three Hundred Only) and any other amount due to the respondent as per their agreement dated 23rd July 2014.
3. The respondent shall pay interest at the rate of 15.2% (SBI bench mark prime lending rate + 2%) for the amount of Rs. Rs.49,50,000/- (Rupees Forty Nine Lakhs Fifty Thousand only) from 01.03.2017 ie, after 90 days from 31/12/2016, till the actual date of handing over the possession of the apartment as provided under Section. 18 of the Act read with Rule 18 of the Kerala Real Estate (Regulation & Development) Rules, 2018.
4. The complainant is also at liberty to approach the Adjudicating Officer for compensation if any, related to his greivence as per section 71 of the Act.

Sd/-

Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded/By order/



QJ
5/2/2020
Secretary (legal)

Annexures

Annexures of Complaint

1. Annexure 1- Copy of agreement for sale dated 23.07.2014
2. Annexure 2- Copy of the Receipt dated 23.07.2014 of Rs.27,25000/-
3. Annexure 3- Copy of the Receipt dated 23.07.2014 of Rs. 22,75000/-

Annexure of Respondent

1. Annexure 4- Copy of the sale deed No. 1963 dated 23.07.2014
2. Annexure-5- Copy of the agreement for sale dated 23.07.2014 (Same as Annexure 1)
3. Annexure 6(1)& (2)- Copy of the Building permit No. PW4/BA/74/14-15 dated 04.11.2014 of the Kottayam Municipality & Copy of the Proceedings No. PW4/BA/74/14-15 dated 08.02.2018 of the Secretary, Kottayam Municipality
4. Annexure-7- Copy of Agreement dated 02.01.2015 between the respondent and Mr. Joel Abraham