



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaints No. 3/2019,4/2019,5/2020,170/2020,188/2020,
189/2020,199/2020,200/2020,203/2020,
212/2020,213/2020,227/2020,242/2020,
249/2020,2/2021,13/2021.

Dated- 08th November, 2021

Present: Sri. P H Kurian, Chairman.
Sri. M.P. Mathews, Member

Complainants

Dr. Ashad S.N, : Complaint No. 3/2019
Aradhana, NSS Karayogam,
Anayara, Thiruvananthapuram

Abdul Lathif MNR : Complaint No. 4/2019
& Nile Abdul Lathif,
Villa #1, Lavender Gardens,
Mukkolakkal, TVpm- 695 043

Dr. P.J Koshy : Complaint No. 5/2020
& Annie Koshy,
Vakayar Estate,
Pathanamthitta , PIN- 689 698

Varghese Thomas, : Complaint No. 170/2020
Purathummuriyil, Gloria Mount,
S.V Gardens, Mannanthala P.O,
Thiruvananthapuram- 695 015

Misty Jacob, : Complaint No. 188/2020
CD 606, Arcon Retreat,
Patia, Nandankannan Road,
Bhubaneshwar, Orissa-751024



Dr. Venu Velayudhan : Complaint No. 189/2020
& Anitha Venu
Tc 8/2056(1), Mantra, BN-275,
Pongumoodu, Bapooji Nagar,
Mahilasamajam Road, Medical College P.O,
Thiruvananthapuram- 695 011

Bhanu John, : Complaint No. 199/2020
Mattamala Santhosh Bhavan,
Kaviyoor, Thiruvalla
Pathanamthitta

Leelamma Philipose, : Complaint No. 200/2020
SU Villa, Near Arya Central School,
Thiruvananthapuram- 695 004

Daisy Varghese, : Complaint No. 203/2020
62- Santhosh Nagar, Muttada
Thiruvananthapuram- 695 025

Priya P. Mathew, : Complaint No. 212/2020
Kalloor House,
Pushpagiri Road,
Thiruvalla P.O, Pathanamthitta-689 101

George Roy, : Complaint No. 213/2020
Kalluvilayathil Estate,
Maruthamala P.O, Vithura Village,
Nedumangadu
Thiruvananthapuram- 695 551

Jithin John Varghese : Complaint No. 227/2020
& John K Varghese
Chiramel Mulamoottil,
N.V Nagar, No.35, Peroorkada P.O,
Thiruvananthapuram- 695 005

T. Varghese Samuel, : Complaint No. 242/2020
Mummys Colony, Kowdiar
Thiruvananthapuram- 695 003

John T. Varghese, : Complaint No. 249/2020
Tc 4/2016,
Mummys Colony, Kowdiar
Thiruvananthapuram- 695 003.



Mathews Babu Abraham,
Kizhakedathu Anil Bhavan,
Makkamkunnu P O,
Pathanamthitta 68964545

: Complaint No. 2/2021

Reji Joy Varghese
Nanthavanam,
CPT Junction, Nettayam,
Thiruvananthapuram

: Complaint No. 13/2021

Respondents

M/s.P.T.C Builders,
S.S Covil Road,Thampanoor,
Thiruvananthapuram- 695 004

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

The above cases are taken for virtual hearing on 30/09/2021. Advocate V.Philip Mathews, the Counsel appearing for the Complainants, and the Advocate Ajakumar, the Counsel for the Respondent attended. Argument notes were also submitted by the Counsels.

ORDER

1. As the above 16 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 Complaint No:3/2019 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, the Respondents published an attractive brochure and advertisements stating that they propose to construct a



multi storied luxury apartment complex by Name AQUA VISTA at Aakkulam, Thiruvananthapuram. According to them the building was designed by Architecture from Singapore with swimming pool, boating facility, jogging track and conveniences store/super market, club house for residents, 3 phase electric supply and various other facilities. They submitted the brochure and elevated pictures. On pursuance from the Respondents, Complainant agreed to purchase an apartment. The Complainant entered into an agreement with the respondents to purchase an apartment with number 1 GB having approximately 1811 Sq. feet build area with 0.98 % undivided share apartment in 35 Ares and 6 Sq. meters (86.5 Cents) in Re-Survey No. 166/3-1 (Old Survey No. 2246/2-1) in Cheruvakkal Village, Thiruvananthapuram Taluk, Thiruvananthapuram District.

3. It is further submitted in the Complaint that Respondent executed a Sale Deed No. 3687/12 dated 12.10.2012 in favour of the complainants by a consideration as Rs. 19,81,000/- (Rupees Nineteen Lakhs Eighty One Thousand only). Respondents also collected Rs.60 Lakhs from the Complainant for the apartment. Respondents had agreed deliver by December 2012 and that has not been done. Respondents have not so far completed the construction, an incomplete structure has been made and that is not fit for occupation. The facilities offered as per the brochure are not provided. The constructions are made in total violation of Kerala Municipal Building Rules,1999, Aircraft Act 1934 and other laws. The Thiruvananthapuram Corporation issued stop memo No. ZU3/826/07 dated 16.03.2013 to the Respondents directing them to stop constructions as they have not obtained height clearance from the Air Port Authority of India. The Airport Authority of India has directed the respondents to demolish a portion of structure as it was constructed without necessary permissions. On the ground of the stability of the building, Thiruvananthapuram Corporation refused to issue occupancy certificate to the building. The apartment project was not completed on the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Since it was an ongoing project,



Respondents are bound to apply and obtain registration from the RERA as per Section 3 of the Real Estate (Regulation and Development) Act, 2016 and that has not been done so far. Respondents approached before the Hon'ble High Court of Kerala vide W.P.(c) No.7236/17 for issuing occupancy certificate from Thiruvananthapuram Corporation. The Corporation issued occupancy certificate relying on the interim order passed by the Hon'ble High Court of Kerala. However since occupancy certificate was not issued when the Real Estate (Regulation and Development) Act, 2016 came into force and since construction is not completed this authority has to power to entertain the complaint. Some customers who had no other place to reside but were trapped by the respondents were forced to occupy their apartments even though the constructions are not fully over. The occupation of some apartments by a few customers would not relieve the respondents from their responsibility of the constructions and completion. The Respondents have not so far completed the construction of the apartments. An incomplete structure has been made by the Respondents which is not fit for occupation. There is no sewage mechanism. Kitchen cabin is not provided as per the agreement. Toilets are not completed. Car parking is not provided as agreed. Inferior quality materials have been used for the construction after collecting money for superior quality articles. There is no space for a fire engine to go around the building. It is impossible to extinguish fire or to control its damage if it out breaks. There is no provision to evacuate the inmates from the building in the event of a fire. Firefighting crew cannot enter the building for effective rescue operations. The facilities offered in Annexure A1 are not provided. The constructions so far made are not in accordance with the advertisements or prospectus made by the Respondents. The constructions are also against the sanctioned plan, layout plan and specification approved by the competent authorities. Constructions are made in total violation of the Kerala Municipality Building Rules 1999, Aircraft Act 1934 and other laws. The Thiruvananthapuram Corporation issued stop memo No. ZU3/826/07 dated 16-



03-2013 to the Respondents directing them to stop constructions as they have not obtained height clearance from the Airport Authority of India.

4. In these circumstances the Complainants sought for the reliefs to complete the construction of the apartments as shown in the brochure within a time limit and in case of failure to do so direct respondents to return the sum with 10% interest from 01.12. 2012 till date of return and to take necessary steps to register apartment project before RERA.

5. The Respondent entered and filed written statement. It is stated that the case is not maintainable as the apartment complex P.T.C Aqua Vista apartments was completely constructed in 2013 and date of completion was 11.01.2013 as accepted by the local body and occupancy certificate was issued to the entire apartment No.1.G B vide No.U.E2/3916/14 . Respondent pointed out that the Real Estate (Regulation and Development) Act,2016 came in to force respectively on 01.05.2016 and 01.05.2017 and the scheme of the above said Act only encompass real estate projects which are not completed and the completion certificate and occupancy were not granted by the concerned local body. The provisional occupancy certificate was issued as per the Hon'ble High Court vide W.P (C) No. 7236/2017 and that is still pending. As the matter is sub-judice before the Hon'ble High Court, this Authority cannot adjudicate on the same. Respondent submitted that, offered apartments are completed and handed over on getting completion and occupancy certificate from the concerned local body no provision to entertain under the provision of the Real Estate Regulation and Development) Act 2016.

6. It is further stated that the Complainant along with some others who have enmity towards the Respondents have filed various false and vexatious litigations against the project. The PTC Aqua Vista Apartments was constructed by the 1st Respondent and it contained all amenities as promised. Respondent agreed to sell apartment for a total value of Rs.41,00,000 (Forty Lakhs Rupees) along with connection charges and statutory payments etc. There is a detailed



agreement for land and construction executed, detailing the terms of contract, amenities promised, additional charges payable for car shed, cabling association charges, taxes, etc. Respondents never approached the complainant and persuaded him to purchase the apartment. The complainant has approached the respondents proposing to purchase the apartment No.1 GB and considered and has agreed to sell for a total value of Rs. 41,00,000/- (Forty One lakh rupees only) along with other connection charges and statutory payments etc. There is a detailed agreement for land and construction executed by the Complainant with Respondent detailing the terms of the contract, amenities promised, additional charges, taxes, etc. The terms of the contract inclusive of the amenities promised by the Respondents are reduced in to such written contract, the Complainant cannot file this complaint alleging oral promises without producing the written contract under law.

7. It is also submitted by the Respondent that the sale deed has got executed by the Complainant in respect of his apartment's No. 1 GB showing sale consideration of Rupees 19, 81,000/- only which is a gross under valuation to evade substantial stamp duty and registration charges. Towards contract value; car parking, cabling charges, taxes, etc the complainant owe Rs.45,61,519/- (Rupees Forty-Five Lakhs Sixty-One Thousand Five Hundred and Nineteen only) and has paid only Rs 41,00,000/- (Rupee Forty-One Lakhs only) out of the same. Though he has promised that immediately on getting sale deed registered in his name he will raise loan by pledging the same and pay the balance amount to the Respondents, but he has not paid the same till date. The statement showing the amount collected from the complainant and balance due is produced herewith.

8. The Respondent further submits that, in between the difficult situations, the project was completed on 11.01.2013 as certified by the local authority and issued occupancy certificate. The apartments were assessed for tax from 2012-2013 second half and the demand notice dated 23.05.2017 is produced. The apartment complex was completed as per the approved plan and



permit and all promised amenities were provided. All statutory requirements were provided. The authorities of Fire and Safety Department and Corporation of Thiruvanthapuram have inspected the building complex and verified all statutory requirements before issuing of completion certificate and occupancy certificate. The Corporation issued stop memo dated 16.03.2013 after the completion of the building complex in all respects on the basis of a circular of 2013 issued by the Airport authority of India stating that before issue of permit by the Corporation NOC from the Airport Authority of India should have been obtained. It is to be noted that the permit in this case was on 4.10.2007 and the building was constructed completely before 11.01.2013 only when the Respondent has applied for issue of completion certificate and occupancy certificate, the stop memo dated 16.03.2013 was issued and that was challenged by the Respondents before the Hon'ble High Court of Kerala by filing W.P (C) No. 7236/2017. The Corporation has admitted before the Hon'ble High Court that the building was completed as per the permit and plan at lesser height than what is permitted and at the time of issue of permit in 2007 no NOC from Air Port Authority of India was sought for as there was no requirement for the same in 2007. The Corporation itself wrote to Government that without obtaining NOC from Air Port Authority of India about 12 permits were issued near Aakkulam Lake during the period 2006 to 2012 and that period was not insisted for as the same is not necessary as per Rules. The Corporation further requested to Government to issue occupancy for those high raised apartments which were constructed as per the plan and permit and that letter is produced. Respondents raised that there was nothing done in the statutory violation, complex was fully constructed as per the permit, High Court of Kerala after hearing including the Air Port Authority of India has directed to issue occupancy certificates to the apartments subject to the final decision in the above said Writ Petition.

9. The Respondents also submits that, these facts are well known to all apartment owners including the complainant. The complainant never opted to



cancel the sale deed of repudiated contract but continued occupation of the apartment on the basis of the High Court order. According to the Respondents, there is no violation of Kerala Municipal Building Rule, 1999, Aircraft Act 1934 or any other laws in the construction of the Apartment Complex PTC AQUA Vista. The Airport Authority has not ordered to demolish any portion of the apartment. The corporation has refused to issue occupancy certificate only because of the illegal circular of Airport Authority of India regarding prior NOC and not for any other reasons. The complainant who has never opted to cancel the sale deed has ridiculously filed this Complaint while comfortably enjoying his apartment No. 1 GB. At the same time he is contending that the respondents are not entitled to get occupancy. The PTC Aqua Vista project was completed in January 2013, i.e, well before the commencement of Real Estate (Regulation and Development) Act, 2016. Section 3 of the Act has come into force only on 01.05.2017 and as the project was issued with completion certificate by the corporation with effect from 11.03.2013 i.e, well before the said date no registration is required for the Project and the Authority has no jurisdiction to entertain this Complaint and the project needs no registration with the Authority. It is also submitted that the Hon'ble High Court of Kerala has passed an Interim Order in W.P (C) No. 7236/2017 to issue occupancy provisionally subject to the final decision in the said W.P (C) 7236/2017 on the basis of the admission made by the Corporation of Thiruvananthapuram that the building complex was completed as per the permit and plan on 11/03/2013 and the occupancy is not issued due to the objection as to prior NOC raised by the AAI. So, the contention that the apartment complex was not completed and the occupancy was issued only based on the High Court order are not correct and the Complainant is trying to mislead the Authority. The maintenance of the common amenities and common services were run by the 1st Respondent till it was handed over to the officially formed apartment owners association M/s. P.T.C Aqua Vista Residents/ Owners Association on 26/06/2017. The grounds stated under the Complaint are



unsustainable. The Respondents have not violated Sections 12, 13 and 14 of the Act as alleged and in fact the Act itself is not applicable to P.T.C Aqua Vista Apartments as explained above. The construction was made in strict compliance of the permit and plan ad-hearing to the provision of Kerala Municipality Building Rules 1999. There was no violation of Rules 32,33,34,40 A, 42,43,44 and 48 of KMBR 1999. Sections 32,34,35 and 38 of the RERA Act are not applicable as against the Respondents and the Complainant has not read those provisions in the proper perspective. It is also submitted that the Complaint is not entitled to get any of the reliefs prayed for and the Interim Order prayed for is meaningless and unsustainable, there are also various litigations pending before various courts filed by the Complainant and those litigations were purposely suppressed in the Complaint to mislead this Forum. Hence the Respondent submitted to dismiss the Complaint with compensatory costs to the Respondents.

10. The Respondent has filed an I.A 10/20 for hearing the maintainability of the Complaint as preliminary issue, in which the Complainants has filed Objection and a detailed Order disposing of the above I.A was passed on 24-03-2021. It is also observed that as per the direction of the Authority dated 06-01-2021, the Respondent has conveyed meeting of allottees in the presence of both Counsels and an officer appointed by Authority on 30-01-2021. In the meeting the participants unanimously decided to form a single association, after dissolving the two associations which existed earlier. The Counsel for the Complainant has filed memo also regarding the same. Both parties have filed their argument notes in the main Complaints and the Respondent has filed some documents also along with argument notes in which the Complainant has filed Objection too.

11. The Issues that arise for consideration are:-

1) Has the construction of apartment been completed as per agreement executed between Complainants and the Respondents?



2) Whether the complaint is entitled to other reliefs in the complaint?

The Exhibits A1 to A4 were marked on the side of the complainants and Exhibits B1 to B13 were marked on the side of the respondents. Exhibit X1 and X2, the Site Inspection report filed by Officers of K-RERA as per Common Order dated 09-09-2021 and 06-01-2021 were also marked. Heard the counsels for the Complainant and the Respondent, and pursued the documents submitted before the Authority.

Issue No 1

Exhibit A3 and A4 produced by the Complainant were considered by the Authority in detail. As per the agreement the promoter is bound to deliver the Apartment described in "Schedule K" in a habitable condition to the Allottee by December, 2009 subject to the adherence to the payment schedule, except in circumstances which make the performance of the Agreement impossible (like any delay caused due to unexpected contingencies, injunction/ stay/court order etc. beyond the control of the builder and further specifications and common amenities were mentioned in Schedule G and H in the agreement. The sale deed was executed in the year 2012 and it states that the vendor is enjoying and possessing the said property, and apartment thereon with absolute and undisputed ownership with full powers of alienation. The Occupancy certificate produced by the Respondents which is marked as Exhibit B1 issued by Corporation of Thiruvananthapuram confirms the fact that the building was completed in 11-01-2013. Hence it is clear that the building was completed as per the permit issued and drawings approved by the Corporation. Therefore, it is to be presumed that the construction of the Apartment was completed to the satisfaction of the Corporation. Issue No 1 is decided accordingly.

Issue No 2

The Promoter/ Respondent is directed to handover the common amenities after inspection to the satisfaction of the Association formed as per the



earlier direction of the Authority within three months from the receipt of this Order failing which he shall be liable to a penalty of Rs 5000/ day during such default continues as per section 63 of the Act .

The Authority through Interim Order dated 06-01-2021 had directed the Secretary, Legal, Kerala Real Estate Regulatory Authority to visit the site and submit a report as to the genuineness of the Complaints and the same is marked as Exhibit X2. The Report has findings as regards the malfunctioning of the STP system which was seen leaking. The grounds raised by the Complaints as regards the violation of Kerala Municipality Building Rules 1999, needs to be taken up with the municipality who have issued the provisional Occupancy certificate as directed by the Hon'ble High Court. This Authority cannot grant any other relief sought for by the Complainant. However, the Complaint regarding quality of construction and the functioning of sewage treatment plant and defects in other amenities provided by the Promoter, the Complainant have a right to claim compensation by approaching the appropriate forum.

Dated this the 8th day of November, 2021.

Sd/-

Sri M.P Mathews

Member

Sd/-

Sri. P H Kurian

Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Brochure published by the Respondents about the Project
- Exhibit A2 : Copy of elevated picture of the proposed construction
- Exhibit A3 : Copy of agreement dated 10-06-2008
in Complaint No: 188/ 2020
- Exhibit A4 : Copy of Sale deed no. 3741/12 dated 17/10/2012
of Pattom SRO produced in Complaint No. 188/ 2020.

Exhibits on the side of the Respondents

- Exhibit B1 : True copy of Occupancy certificate
- Exhibit B2 : True copy of statements showing the accounts
- Exhibit B3 : True copy of demand notice dated 23/05/2017
- Exhibit B4 : True copy of letter issued by Secretary,
Corporation of Thiruvananthapuram
- Exhibit B5 : True copy of Order dated 6/4/2017 of Hon'ble
High Court of Kerala in W.P (C) No.7236/2017.
- Exhibit B6 : True copy of building permit
- Exhibit B7 : True copy of renewed permit dated 27/4/2012
- Exhibit B8 : True copy of completion certificate dated 3/11/2012
- Exhibit B9 : True copy of Order in W.A No. 903/2019 before
Hon'ble High Court of Kerala
- Exhibit B10 : True copy of NOC up to 17/6/2019.
- Exhibit B11 : Minutes of meeting dated 24/07/2021.
- Exhibit B12 : Memo regarding estimate for the annual maintenance.
- Exhibit B13 : True copy of letter issued by the President of
new Association.

Documents produced as per the direction of Authority

- Exhibit X1 : Site Inspection report filed by Officers of K-RERA as per



Common Order dated 09-09-2021.

Exhibit X2

: Report filed by Secretary, Legal as per the direction in the Interim Order dated 06-01-2021.

