



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

## Complaint No.100/2021

Dated 5<sup>th</sup> November , 2021

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

### Complainants

Favourite Homes Pine County Apartments  
Owners Association,  
Represented by its President K.K.Philip,  
Kamal Nagar, Nalanchira,  
Kudappanakunnu Village,  
Thiruvananthapuram-695015.

### Respondents

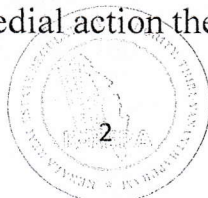
1. M/s Favourite Constructions Pvt.Ltd.  
(Represented by its Managing Director),  
Statue-Gen Hospital Road,  
Thiruvananthapuram.
2. Martin Thomas,  
M/s Favourite Constructions Pvt.Ltd.  
Statue-Gen Hospital Road,  
Thiruvananthapuram.

The above Complaint came up for virtual hearing today. The Counsel for the Complainant Adv. Mukesh Kumar Gandhi & Counsel for the Respondent Adv.Sajad Karim attended the hearing.



## ORDER

1. The facts of the Complaint is as follows:- The Complainant is the association of 75 Apartment owners of the Favourite Homes Pine County Apartments constructed by the Respondents. All the owners are the victims of the defective improper construction of basement car parking in the said project. The Respondents have completed the construction of the basement car parking without providing adequate measures for arresting water seepage. The Respondents has miserably failed to execute proper and required civil works for the disposal of excess water egress and prevent basement flooding. The Respondents never addressed water seepage during construction. Instead they provided a temporary pipe line for pumping rain water discharge to main road at the time of construction and couple of sumps for water percolation which is not sufficient. Later the local people strongly objected water discharge through temporary pipeline and subsequently it was closed by them. It was informed that water can be reused to flushes and gardening, where no garden was provided for such discharge. The association is pumping water back to the flushes, but the quality of STP Plant installed by the Respondents does not have ultra filtration and will stink when pumped to the flushes. The Respondents used poor and substandard quality materials for the construction of the basement area and without proper study of water table and that is sole reason for water ingress and egress on all area which is contrary to the agreement for construction to all buyers. The dysfunctional STP accompanied by rain water ingress is a never ending headache for the inhabitants. The Respondents transferred the aforesaid building to the Association during 2013-14. On 03/02/2014 itself the Association has pointed out the problem of water ingress in the basement area. Thereafter the association has contacted the Respondents on several times to fix the problem but instead of taking any remedial action they always insisted the Association



for the maintenance of STP. The reliefs sought by the Complainant are (1) to correct the improper construction of basement car parking area and to provide adequate measures to correct the water seepage and stagnation in the Apartment (2) to take immediate an adequate measures to provide for excess water discharge (both rain water and STP water) in the project (3) to provide for ultra filtration system of STP output water (4) to provide for garden land for discharge of the both rain water and STP water. Copy of audited accounts, photos of basement parking water seepage and clogging, copy of certificate confirming water seepage from beginning, copy of notice issued under the Act are the documents produced from the part of the Complainants.

2. The Respondents have filed objection and submitted that the Complainant has earlier filed C.C.P.No.94/2020 before the Adjudicating Officer for the same reliefs sought for in the above Complaint and the same is dismissed on 01/10/2021. The project named 'Favourite Homes Pine County Apartment' was handed over to the Complainant as early as in the year 2013-2014. The building permit for the said project was obtained on 12/11/2009 from the Corporation of Thiruvananthapuram and the project was fully completed and obtained Occupancy Certificate dated 28/09/2012 from the Corporation and the copy of the same is produced. The property taxes for the apartments were assessed on 15/11/2012. The owners association viz, the Complainant was formed on 15/11/2012. Hence the said Project was not required to be registered under the Kerala Real Estate Regulatory Authority It is also submitted that the Complainant has deliberately suppressed the material facts regarding receipt of a sum of Rs.5,73,000/- from the Respondents for settling the issues related to STP once and for all. The Apartments were handed over to the respective owners on 27/12/2012 and at the relevant time the STP was functioning without any issues whatsoever. But later for want of its maintenance by the owners association by executing timely annual



maintenance contract with the agency concerned has resulted to its malfunctioning. Later the owners association sent a letter dated 15/07/2013 to the Respondent intimating that they have consulted with an expert, M/s Niksha water Engineering (P) Ltd. And it is informed by the expert that all the issues related to the STP can be resolved if it is revamped and presented their quotation bearing an amount of Rs.6 Lakhs as cost of work. The Complainant has clearly undertaken in the said letter that if the Respondent pay the said amount of Rs.6 Lakhs all the issues related to STP can be resolved once and for all. Based on the said undertaking Respondent issued a reply dated 18/07/2013 agreeing to pay the said amount with the specific understanding that no further claims shall be raised in future. Copies of the said letters are produced. Later vide endorsement dated 16/12/2013 by the secretary of the Complainant, they have specifically acknowledged the Completion of STP revamping and receipt of balance payment from the respondent. A copy of the said letters are produced. It was further submitted that the prayer for rectification of the alleged structural defect as per section 14(3) of the RERA Act is also not maintainable since it is raised after 5years from the admitted year of handing over ie, in the year 2013-2014. Copy of order in CCP No.94/2020, copy of occupancy certificate dated 28/09/2012, copy of letters dated 15/07/2013 & 18/07/2013 and copy of letter dated 05/12/2013 are the documents produced from the part of the Respondents.

3. After hearing both parties in detail and on perusal of documents produced, the Authority is convinced that the above project named 'Favourite Homes Pine County Apartment' was handed over to the Complainant as early as in the year 2013-2014. The building permit for the said project was obtained on 12/11/2009 from the Corporation of Thiruvananthapuram and the project was fully completed and obtained Occupancy Certificate dated 28/09/2012, and is marked as Exbt.B1, and the Complainant Association was formed on



15/11/2012. Since the Occupancy Certificate is obtained on 28/09/2012, the Authority has no jurisdiction to entertain the above matter. Hence the above Complaint is not maintainable before the Authority. Moreover, As per section 14(3) of the Act, *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.* But in the above case, the year of handing over of possession is 2013-2014 as admitted by the Complainant. so the question of rectification of defect beyond the period of 5 years from the date of handing over of possession does not fall within the premise of 14(3).

In view of the above, the Complaint is dismissed, as not maintainable.


No Order as to costs.

Sd/-  
Smt. Preetha P Menon  
Member

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 Respondents

Exbt.BI : Occupancy Certificate dated 28/09/2012.