



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaints No. 111/2023

Present: Sri. P H Kurian, Chairman.

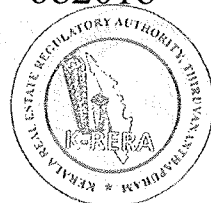
Dated 6th December, 2023

Complainants

T.N Devanandan & Sheeba Devanandan
16B Gret Orchard, Vidhya Nagar,
Kadavanthgara,
Ernakulam, Kerala 682020

Respondents

1. Sanjay Dutt
Managing Director
TATA Realty Infrastructure Limited,
E Block, Voltas Compound,
TB Kadam Marg, Chinchpokill,
Mumbai 400033
2. Manager – Customer Relations,
TATA Realty and Infrastructure Limited
Goshree Pachalam Link Road,
Marine Drive, Kochi – 682018



3. TATA Realty Infrastructure Limited,
E Block, Voltas Compound,
TB Kadam Marg, Chinchpokill,
Mumbai 400033

The above Complaint came up for hearing. The counsel for the Complainant and the counsel for the Respondent attended the hearing.

ORDER

1. The facts of the Complaint are as follows: -
The Complainants are the allottees in the Project named 'TRITVAM' at Marine Drive, Kochi developed by the Respondents. The Complainants booked a residential unit in Tower 5, 4D with 1310.30 sq ft carpet area. The booking amounts of Rs 10 Lakhs were paid to the Respondent on 31/12/2018. Upon payment of the booking amount by the allottees, the Respondent had allotted the residential unit to the then allottees. The allottees have entered into a Sale Agreement on 26/06/2019. The Respondent promised to adhere to all prevailing rules and regulations of the state as well as the country. On enquiring about the RERA Certificate of the project by the allottees, the Respondent revealed that they have not registered the project with the Authority. It was submitted that the Complainants already made a total payment of Rs 43,36,931 and they requested the



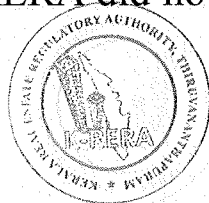
Respondent to register the project in K-RERA in view of the demolition of two buildings in Maradu, Cochin on 12th January 2020 due to non-compliance of CRZ rules of the country. The Respondent did not take any steps towards registration of its said project with K-RERA. Finally, the Complainants decided to cancel the booking and informed the Respondent. Respondent took almost one year time to give response to the cancellation request made by the allottees and refunded an amount of Rs 23,90,468/- on 24/09/2020, after forfeiting an amount of Rs 19,46,463/- Though there was a clause in the sale agreement regarding the forfeiture of 10% of the total sale consideration of the unit, the Respondent has violated the clause of adherence of rules and regulations of the country by not obtaining the registration for the project. The relief sought by the Complainants is to direct the Respondents to refund the balance amount of Rs 19,46,463.00/- paid by the Complainants to the Respondents with interest at 18% per annum.

2. The Respondents have filed Objection to the Complaint and submitted that the Complaint is a false, frivolous and speculative action and unsustainable both in law and on the facts and the same is liable to be dismissed. It was submitted that Section 18 of the Act contemplates return of the amount with interest only in the event of violation of terms of the Agreement for Sale or non-completion of the project within the date



specified; or in the event of discontinuance of the promoter's business. None of these circumstances are made out in the Complaint and the Application is hopelessly barred by limitation. The Apartment Buyer's Agreement is dated 27/06/2019 and the same was cancelled on 22/09/2020. In view of the Apartment Buyer's Agreement in itself being cancelled, the Complainants cannot arise any further claim with respect to the said transaction. This Complaint is bound to be dismissed in limine on this ground alone.

3. The allegation with respect to non-registration of Tower-5 of these Respondent's Project under the Act is also grossly misplaced. The said tower had obtained Occupancy Certificate on 04/06/2016 and It is pertinent to mention that Kerala Real Estate Regulatory Authority (K-RERA) had initially issued a Public Notice dated 21/12/2019 wherein it was stated that the Projects that have obtained Occupancy Certificate do not require registration under the Act with K-RERA. In this regard, it is pertinent to note that K-RERA itself was only formed vide Notification dated 05/10/2019, making registration prior to this date impossible. However, subsequently K-RERA in its wisdom chose to withdraw the Notification by a Public Notice dated 22/12/2021. It is subsequent thereto that Tower-5 of Tritvam Project was registered with K-RERA effective from 01/07/2022. The mere fact that K-RERA did not penalize these Respondents



in any manner shows that there has been no violation on the part of these Respondents as far as the Act or allied Rules are concerned. Therefore, in view of the above and in particular the fact that no case under Section 18 for return of any amount with interest is made out in the Complaint, this Complaint filed under Section 31 of the Act is only to be dismissed with exemplary cost to these Respondents and it is prayed accordingly.

4. The Complainants filed replication and submitted states that all the allegations and averments in the written statement filed by the Respondents are false and hence, denied. The allegation that provisions of the K-RERA Act with respect to compensation under Section 12,14,18 and 19 are not attracted is false. As per Sec 14(3) of the Act, it is categorically stated that, in case, any other obligations of the promoter as per the agreement for sale are not complied with and the same is informed to the promoter, the promoter shall rectify the same within 30 days failing which compensation shall be given. Furthermore, as per Sec 18(3), it is also affirmed that: "If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act". As per the agreement for sale, the Respondents have applied for registering the project



with RERA. This is notable in Page 8 of the agreement for sale wherein it is stated that “The promoter has applied for registration of the project under the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter referred to as Act)”. The Respondents have made a fraudulent representation forcing the applicants to enter into the agreement for sale. It is submitted that, up until the cancellation, the Respondents never registered the project with K-RERA. In addition to this, contrary to the representation and affirmation made in the agreement, the Respondents backtracked and stated that they need not register the project with K-RERA. The same is a fraudulent act on the part of the Respondents herein. The apartment was cancelled on 22/09/2020. The Respondents refunded the amount after illegal deductions on 22/09/2020 and three-year period has not elapsed thereafter. In addition to this, the applicants have been effectively making all representations before the authorities including mails which are already produced along with the applicants. There is no limitation bar whatsoever.

5. It was submitted that occupancy certificate is for the Towers 1,2,3,4 and Gr. Floor, 1st Floor & 2nd Floor of Tower 5 which was issued on 09/05/2016. Specifically, the occupancy certificate for Tower- 5 is issued only for ground, 1st and 2nd floors only. The Tower 5 is Ground + 30 Floors. The applicants booked their flat in the fourth floor as seen in the

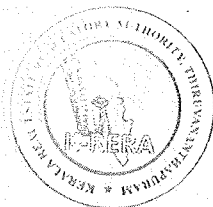


cancellation deed. Thus, there is no occupancy certificate for the said Tower 5 or the apartment of the applicants. The Respondents cheated the public and RERA by uploading the occupancy certificate of Tower 1,2,3,4 and part of (Ground, 1st & 2nd) Tower 5 as occupancy certificate of Tower 5. There is no Occupancy Certificate for the Tower 5 building from the 3rd Floor to the 30th Floor as per the Occupancy Certificate uploaded on the RERA website. That being the situation, the public notice is not applicable to the Respondents. In fact, as per the public notice issued on 26/12/2019 by K-RERA, on-going project should be registered with RERA within 3 months from 1st January, 2020 which was also not complied with. The registration certificate with respect to Tower 5 of the Respondents with K-RERA is liable to be cancelled as well considering the facts that there is no occupancy certificate as of this point in time. In addition to this, the Respondents have acted with a malafide intention and with utmost fraudulency as well. This is notable from the fact that the occupancy certificate was obtained on 09/05/2016 for a plinth area of 95,941.06 sq.mts and thereafter, the Respondents obtained building permit on 30/07/2016 for construction of Towers 1,2,3,4,5 and a premium tower, for a plinth area of 1,47,819.53 Sq.mtr. This was issued on 30/07/2016 for 3 years and the same expired on 30/07/2019 and remains non-renewed till date. Thus, clearly, an occupancy certificate was obtained fraudulently for Tower 1,2,3,4, and part of (Ground,1st & 2nd) Tower 5 and



thereafter, applied for permit for other floors of the Tower 5 over which they have now obtained permit. Thus, other floors of Tower 5 were constructed without even obtaining permit for construction. The acts of the Respondents are purely unjustifiable and ought to be dealt in terms of law.

6. It was further submitted that the Respondents have violated Sec 11(4)(b) of the Act wherein it is stated that “The promoter is responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be”. Thus, the applicants are entitled to compensation on that ground as well. This is due to the fact that the applicants have grossly violated the provisions of the Act. It was submitted that the applicants were forced to cancel the apartment owing to fallacies on the part of the Respondents and not due to any other issues or faults of the applicants. The Respondents also misled the applicants regarding the K-RERA registration and made the applicants take up an apartment with no occupancy certificate at all. Hence, the applicants pray for the refund of the entire amount with interest therein as affirmed in the Act.

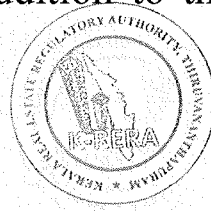


7. The Respondents filed additional objections and submitted that subsequent to the filing of the earlier objection, and receipt of the Petitioner's replication thereof, it was noticed that the Occupancy Certificate in relation to the said project was incomplete as far as Tower 5 was concerned. The oversight was totally inadvertent and unintentional. These additional objections are being preferred to cure this inadvertent oversight. The occupancy certificate in relation to the balance areas of Tower 5 dated 22/07/2019 is produced. From a perusal of the said Occupancy certificate, it is clear that the Petitioners' contention in the replication that Tower 5 lacks occupancy/completion, and 'Fraud' has been committed on them, along with the statement that the construction was sans building permit, is absolutely baseless, and averred with the intention of misleading the Authority.

8. The Complainants filed argument notes and submitted that the provisions of K-RERA are applicable in this case. As already affirmed in the replication, as per Sec 14(3) of the Act, it is categorically stated that, in case, any other obligations of the promoter as per the agreement for sale is not complied with and the same is informed to the promoter, the promoter shall rectify the same within 30 days failing which compensation shall be given. As per the agreement for sale, it is categorically stated that the Respondents have applied for



registering the project with RERA. The Respondents, in fact, made a fraudulent representation forcing the applicants to enter into the agreement for sale. It was submitted that, up until the cancellation, the Respondents never registered the project with K-RERA. In addition to this, contrary to the representations and affirmations made in the agreement, the respondents back tracked and stated that they need not register the project with K-RERA. The same is a fraudulent act on part of the Respondents herein. These aspects are already averred in the application. It is noteworthy that the obligation of registering with RERA which was already stated to be done was false. Thereafter, applicants asked to comply with it. The same was denied by them. This led to cancellation. Thus, a penalty ought to be imposed upon the Respondents herein and in furtherance thereof, the applicants are entitled to get the entire amount refunded from the Respondents herein with interest. It was further submitted that, even if it is observed that Sec 12,14,16 and 18 are to be addressed before the Adjudicating officer, the claims under Sec 11(4) and penalty therein under Sec 38 ought to be imposed upon the Respondents and the penalty ought to be the entire loss sustained by the applicants in terms of law. As the Authority is guided by the principles of natural justice as per Sec 38(2) of the Act, the Respondents ought to be directed to pay penalty which is equivalent to the amount forfeited by the Respondents including interest thereof. In addition to this, the Occupancy Certificate



which was been additionally produced has a permit reference number but the same is not the permit that is uploaded at the RERA website. Hence, it is understood that there is some sort of malafide act on part of the Respondents.

9. The Authority heard the learned counsels and gave careful consideration to their submissions and perused the material documents available on record. The documents produced from the part of the Complainants are marked as **Exhibit A1 to A11**. The documents produced from the part of the Respondents are marked as **Exhibit B1 to B6**. **Exhibit A1** is the copy of the RTI reply, **Exhibit A2** is the Request letter sent to the promoter, **Exhibit A3** is the Copy of the reply given by the advocate of the Promoter, **Exhibit A4** is the copy of the agreement for sale, **Exhibit A5** is the copy of the project plan, **Exhibit A6** is the copy of the allotment mail, **Exhibit A7** is the copy of the Payment schedule, **Exhibit A8** is the copy of the booking form, **Exhibit A9** is the copy of the booking amount receipt mail. **Exhibit B1** is the Registration Deed of Cancellation dated 22/09/2020 with respect to the Apartment in question. **Exhibit B2** is the Occupancy Certificate dated 04/06/2016 in respect of Tower-5 of Tritvam Project. **Exhibit B3** is the Public Notice dated 27/12/2019. **Exhibit B4** is the public notice dated 22/12/2021 **Exhibit B5** is the Registration Certificate issued by K-RERA with respect to



Tritvam Project. **Exhibit B6** is the occupancy certificate in relation to the balance areas of Tower 5 dated 22/07/2019.

10. The Complaint case is to direct the Respondents to refund the forfeited balance amount paid by the Complainants. Section 31 of the Real Estate (Regulation & Development) Act, 2016 entitles an aggrieved person to file a Complaint for any violation of the provision of the Act, Rules & Regulations made thereunder. The provisions of the Act 2016 are based only on the terms of the agreement for sale executed between the Promoter and allottees and prescribing penal actions against violations of such terms of the agreements for sale. But in this case, the allotment has been seen canceled mutually by both parties which is evident from Exhibit B1. On cancellation and obtaining the amount paid from the promoter, the Complainant ceases to be an allottee as defined under section 2(d). Section 2(d) stipulated that *"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.* The Authority makes it clear that upon cancellation and return of the consideration paid, the application form dated 31/12/2018 is no longer valid and the Complainant cannot be considered an allottee under the Act, 2016. Hence this Authority lacks jurisdiction to take cognizance of the above Complaint and as it is outside the ambit of this Authority, the Complaint is liable to be dismissed.



11. Moreover, the Complainant has produced the booking amount receipt of Rs. 10,00,000/- even though they have argued that they have paid around 43 lakhs. No other receipts are produced by the Complainants. The remedy under section 18 of the Act, 2016 is that- *“If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act-Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”* It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18 (1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till



handing over of possession. Here, the Complainant has cancelled the sale agreement mutually with the Respondents by executing the cancellation deed. Moreover, in the cancellation deed executed by both parties, it is specifically mentioned under clause 3 that neither the Company nor the allottee shall have any claim, right, or liability against each other in respect of the agreement or the said apartment or in respect of any amounts or expenses incurred prior to or after the cancellation deed. It is clear from the said clause that both the parties have settled their own claims and executed the deed dated 22/09/2020 which is marked as Exhibit B1 which clearly shows that the Complainant cannot be treated as an allottee.

12. In the above circumstances, it is found that the relief sought by the Complainants cannot be considered under the Kerala Real Estate (Regulations and Development) Act, 2016. Hence the Complaint is hereby dismissed without prejudice to the right of the Complainant to approach the appropriate forum to get the redressal of his grievance.

Sd/-
Sri. P H Kurian
Chairman

LJ4

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits produced by the Complainant

- Exhibit A1- Copy of the RTI reply.
- Exhibit A2- Request letter sent to the promoter.
- Exhibit A3- Copy of the reply given by the advocate of the Promoter.
- Exhibit A4- copy of the agreement for sale.
- Exhibit A5- copy of the project plan
- Exhibit A6- copy of the allotment mail
- Exhibit A7- copy of the Payment schedule
- Exhibit A8- copy of the booking form.
- Exhibit A9- copy of the booking amount receipt mail.

Exhibits produced by the Respondents

- Exhibit B1- copy of the Registration Deed of Cancellation dated 22/09/2020
- Exhibit B2- copy of the Occupancy Certificate dated 04/06/2016 in respect of Tower-5 of Tritvam Project.
- Exhibit B3- copy of the Public Notice dated 27/12/2019.
- Exhibit B4- copy of the public notice dated 22/12/2021
- Exhibit B5- copy of the Registration Certificate issued by K-RERA with respect to Tritvam Project.
- Exhibit B6- copy of the occupancy certificate in relation to the balance areas of Tower 5 dated 22/07/2019.

