



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No: 252/2020, 253/2020 and 122/2021

Dated 01st November 2021

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

Complainants

1. Anil Kumar : Complaint No: 252/2020
Kalathil House, NH 47 Road
Thaikkattukara (P.O)
Aluva West Village, Aluva Taluk
Pincode- 683106
2. Rajan Gee Varghese : Complaint No: 253/2020
Olive Kalista, Astra-11 D
Edachira, Near Info Park
Thengode, Kakkanad- Pin-682030
3. V.S Baburaj & Mrs. Indulekha Baburaj : Complaint No: 122/2021
Nedungandan Residency,
Thrikkanarvattom Desom
Kanayoor Taluk, Enakulam North
Ernakulam, Pin- 682018

Respondents

1. M/s. Travancore Builders Pvt Ltd
Travancore House, Chakkaraparambu
Ernakulam, Kochi-32



2. Mr. Anas A.M
Flat No: 10 C, Tower-2
Orion Park, Railway Station Road
Edapally, Kochi- 682024

3. Dr. George V Thalody
Thalody House, Memmury P.O
Kottayam, Pincode- 686617

4. Dr. Lucyamma Thalody
Thalody House, Memmury P.O
Kottayam, Pincode- 686617

5. Thomas Thalody
Thalody House, Memmury P.O
Kottayam, Pincode- 686617

6. Joseph Thalody
Thalody House, Memmury P.O
Kottayam, Pincode- 686617

7. Robin Varghees Rajan
Olive Kalista, Astra-11 D
Edachira, Near Info Park
Thengode, Kakkanad- Pin-682030

The Counsel for the Complainants Adv Renjith S Kaimal and Adv Abhilash Bhaskar and the Counsel for the Respondent Tom Thomas and Adv. K.C Eldho appeared for Land Owner. Heard them in detail.

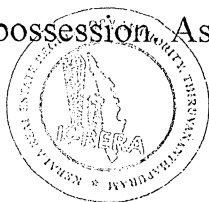
Common Order

1. As the above three 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



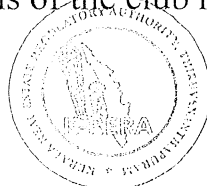
up together for joint hearing and Complaint No:252/2020 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Case of the Complainant is, the Complainant is an Allottee in real estate project by name "Travancore Swiss Garden Club Villas". The 1st Respondent is the promoter and 2nd Respondent is its Managing Director and Respondents 3 to 6 are the owners of the land over which the project is being constructed. During the year 2013 the Complainant came to know about this project on the basis of vide propagation and publicity. As per the propagation, it is propagated as a luxurious villa project with all sorts of amenities including a club house. The main highlight of the project is the Club House provided as part as parcel of the common areas and facilities. The Complainant entered into agreement for sale cum consideration with Respondent on 13-03-2021 to purchase the villa. In furtherance to the agreement, the 3rd Respondent executed sale deed bearing No. 1215/2013 dated 03/04/2013 of Edapally SRO in favour of the Complainant. As per the agreement, the Respondents agreed to sell 9 cents of immovable property along with right of user of all internal common roads having the width of 6 metres for ingress and egress vehicular traffic along with provisions for all amenities in common area. It is felt by the Complainant that the Respondents are trying to differentiate and divide the project area and clubhouse into two. It is further submitted as per the agreement, the Respondents has not completed the constructions of the villa in accordance with the specifications. The Respondents undertook and ensured that the construction shall be completed within 24 months from the date of agreement, i.e 13/03/2015. It is by believing said representations, the Complainant entered into agreement, but in the agreement the Respondents had cleverly incorporated clause numbers 20 and 22 with oblique motives. As per clause 20 of agreement, non-completion of common areas and facilities including power and water shall not stand in the way for the purpose of handing over of possession. As per clause 22, the Respondents again



incorporated a clause to the effect that the non-completion of common areas and facilities at the time of handing over of possession of the villa shall not be a hindering or deterring factor for taking possession and the builder shall not be liable for any damages or payment of interest. The Complainant had made the entire payments to the Respondents in full satisfaction. It is submitted the project is neither completed by the Respondents nor had obtained occupancy certificate till date. The inordinate delay so far occurred is because of the sole reason that the construction is being carried out by the Respondents in flagrant violation of the provisions of Real Estate (Regulation and Development) Act 2016 and the rules made thereunder. Furthermore the Respondents had misuse and diverted the funds they collected towards the project from the allottees including the Complainant. The Respondents had not properly maintained the accounts and had nor properly managed the funds in accordance with the law. Due to the delay, the Complainant sustains huge loss and Complainants right of enjoyment of the common areas and facilities are also being lost for the last more than 5 years. The reliefs sought by the Complainant is to direct the Respondents to complete and handover the real estate project along with all the common amenities and facilities appurtenant thereto as agreed and represented in Annexures A1 to A3, and to direct the formation of an Association of owners, to handover the common areas and facilities along with its right, title and possession in the name of the association so formed in accordance with the law.

3. The Respondent No:1 has filed statement of Objection contending that the above complaint is not maintainable either in law or on facts. The Authority has no jurisdiction to entertain the issues as the Occupancy certificate is obtained on 22.03.2016 and therefore the provisions of the Act is not applicable to the subject matter. It is also submitted that the brochure produced by the Complainant from the 1st Respondent is a fabricated one. It is not the brochure given by 1st Respondent. It is a printout taken from some other real estate sites and it shows only the photographs of the club house promoted by Respondents 3



to 6 in their property which does not form part of Villa project. (The Respondent produced brochure which is marked as Exhibit B1). It is further submitted it is clearly mentioned in Schedule D in the agreement that the club house is being constructed in an adjoining property having an extent of 3 acres belonging to the owners namely Respondents 3 to 6. It is clear from the averments in schedule D of the agreement that the club itself is a separate entity named Millenium Club. Apart from that, the allottees does not have any ownership right over the club which is being constructed in a separate property as clearly mentioned in Clause 1 of the agreement. It is pertinent to submit that the agreement was executed in the year 2013 and the villa project was completed and handed over to the Complainant in the year 2016. The Complainant is residing in the Villa for the last 5 years without any Complaint whatsoever. (Photographs showing Villa Project is produced and marked as Exhibit B2). The Complainant has obtained Occupancy Certificate on 22-03-2016. (Copy of Occupancy certificate is produced and marked as Exhibit B3). The Complainant has not made full payment as alleged. As on date an amount of Rs.13,29,450/- is due and outstanding from the Complainant. The Respondents has not insisted for the balance payment in view of the fact that some of the amenities are not completed and it is in the final stages of completion as and when the entire amenities are complete, the Complainant is bound to pay the balance amount also. The Respondent also submitted they had taken immediate steps to complete the works in all respects within a period of 3 months. The Respondents submitted they have not violated any provisions of the Act 2016 and have not misused or diverted any funds from the Project as alleged and Respondent 1 is maintaining proper accounts in accordance with law.

4. The Respondents 3 to 6 has also filed their Counter statement along with documents. The above Respondents submitted the project started in the year 2011 after signing the agreement between landowners and builders on September 12, 2011, which forms the sole basis and foundation of the Project. According to



this document only 3.86 acres of the land of landowners are allotted for the project and is clearly demarcated and nothing more. As regards the agreement for construction, the Complainant claims to have signed with the builder, the Complainant has never seen or spoken over telephone to the 3rd Respondent or any of these Respondents before signing agreement. The Complainant paid the landowner the price for the land and the landowner registered the land in his name as per MOU of September 12, 2011 in due time. But the Complainant made the construction agreement with the builder and paid him directly and the builder shall be responsible for all the promises the builder might have made to the Complainant. It is further submitted the jurisdiction of the Authority shown in the Complaint is not correct as the agreement and sale deed executed is more than 3 years prior to the commencement of the Act. Hence the above Complaint is liable to be dismissed for want of jurisdiction. It is also submitted the Complainant is residing in the villa situated in the Project area having an extent of 3.86 acres and common facilities within the Project. The club house exclusively belongs to these Respondents and the Complainant cannot legally make any claim on the property of these Respondents which is not a part of the Project. It is also submitted the Act 2016 is not in existence and the Act and Rules have no retrospective effect beyond 2016. It is to be considered as preliminary issue and the reliefs sought by the Complainants are not maintainable as the villa project is already completed and there is no scope for any complaint.

5. Heard the parties in detail. The Respondent No:1 filed an affidavit dated 30-10-2021 stating the details of the progress of the completion of the pending works (which is marked as Exhibit B5). Ongoing through the Exhibit B5 affidavit, and submissions made by both parties, the Authority hereby direct the Respondents to complete all the common amenities as per the agreement executed by the Promoter with the Allottees including the Club House within one month from the date of this Order. The Respondents are hereby directed to give



membership to the Petitioners within the same period of one month from the date of this Order as per the conditions in the above agreement.

6. The Complainants already filed separate Interest Claims and the Respondents filed Objection to the Interest Claims. The prayer regarding the Interest claim will be considered separately after hearing both side in detail.

For hearing Interest Claim, Cases are posted to 22.12.2021 at 12:00 P.M

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 : True copy of Agreement for sale dated 13-03-2013
- Exhibit A3 : Copy of Sale deed bearing No. 1215/2013 dated 03-04-2013
- 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 : Brochure produced by Respondents
- Exhibit B2 : Photographs showing Villa Projects
- Exhibit B3 : True copy of Occupancy Certificate dated 22.03.2016
- Exhibit B4 : Photograph of the Club House
- Exhibit B5 : Affidavit filed by the Respondent dated 30-10-2021



