



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 123/2022

Present: Dr. Asha Thomas, Chairperson
Dr. B. Sandhya, Member.

Dated 2nd August 2025

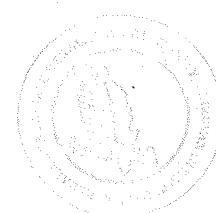
Complainant

Sivakumar, S/o Shivathanu
Flat no. 302, Pradhemesh Pradhumdham,
Near Adithya Birla Hospital, Chinju ward, Pune.
[By Adv Suhas Balachandran]

Respondents

1. M/s Grandtech Builders and Developers Pvt Ltd.
Rep by its Managing Director,
Gulmohar, TC 3/3603/1
Kesavadasapuram, Pattom, Thiruvananthapuram,
Now at Ashirwad Building
Opp. Milma Bhavan, Pattom P.O. Thiruvananthapuram.

2. Salim Mohammed Kabeer,
Director, M/s Grandtech Builders and Developers Pvt Ltd.,
Motor Plaza, Sreekaryam P.O.
Pangappara Village,
Thiruvananthapuram.



3. Nousha A.,
S/o Abdul Sattar,
Kuzhaikkattu Muri,
Perumkulam,
Poovachal, Thiruvananthapuram.

[By Adv. Gireesh kumar]

The above Complaint came up for final hearing before this Authority on 06.05.2025, in the presence of Adv Suhas Balachandran, the Counsel for the Complainant and Adv. Aravind representing the Counsel for the Respondents. After careful examination of the Complaint, counter statement, the order of the Hon'ble Kerala Real Estate Appellate Tribunal remanding the Complaint for fresh enquiry and consideration, and the documents produced by both the sides, this Authority passes the following order:

ORDER

1. The factual matrix of the Complaint is as follows: The Complainant is an allottee and the Respondents are promoters of the project “Grandtech Green City” at Vilappil Village, Neyyattinkara Taluk, Thiruvananthapuram District. The 1st Respondent is the promoter company and the 2nd and 3rd Respondents are its Managing Director and Director respectively. The 2nd Respondent had led the Complainant to believe that he is the absolute owner of property measuring 8.24

Acres of land in survey No. 251/2 Vilappil Village and he is developing a Township scheme by name and style "Grandtech Green City" and assured him a budget villa with all amenities to be delivered within 18 months. Placing reliance upon the words of the 2nd Respondent, the Complainant entered into an agreement for sale and construction dated 11.06.2009 with the 1st Respondent represented by the 2nd Respondent, for a villa measuring 626.97 plus 201 sqft built up area with car parking for a total consideration of Rs. 13,50,000/-. The complainant paid Rs. 1 lakh on 11.06.2009 and Rs. 5 lakhs on 20.03.2010. Since the Complainant has specification for sanitary wares to be fitted in his villa, the same were purchased having value of Rs. 40,000/-and handed over to the employee of the 2nd Respondent. Up on the request of the Complainant for completion and complaints regarding delay, the respondent offered villa at a reduced rate of Rs. 9 lakhs. The Respondents did not fulfil the promise and have not handed over the villa. The Complainant issued a lawyer notice on 25.10.2021, to which the Respondents replied on 26.11.2021, denying the allegations and stated that the agreement had lapsed by passage of time and due to non-performance on the part of the Complainant, the Respondents had suffered immense loss and the issue had been settled way back in 2015. Therefore, the Complainant filed this Complaint on 13.04.2022. The copies of payment receipts, acknowledgement of sanitary wares from an employee, legal



notice and its reply were produced. The reliefs sought for by the Complainant are: -

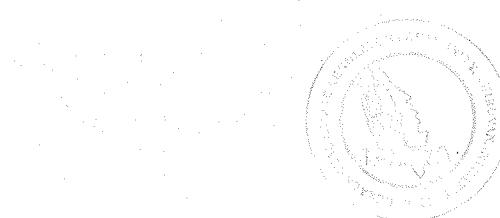
1. To direct the Respondents to refund Rs 6 lakhs, which is the entire amount received from the complainant, along with the value of sanitary wares worth Rs.40,000/- with 18% interest from the date of last payment till date of realization.
2. To direct the Respondent to pay interest for delay in handing over possession.
3. To initiate prosecution proceedings u/s 59, 60, 61 and 62 of the Act, 2016 against the Respondents.
4. To allow Rs 1,00,000/- as compensation for mental agony and Rs. 50,000/- towards costs.

2. The Respondents/Promoters challenged the maintainability of the Complaint vide their Counter statement dated 14.10.2022, in which they have submitted that the project does not come within the ambit of section 3 of the Real Estate (Regulation and Development) Act, 2016 as the project received Completion certificate/Occupancy certificate during 2010-2011, much prior to the commencement of the Act, 2016. They also submitted that the project is not an ongoing project. According to them there are 111 independent residential buildings and occupancy certificates were received for all the buildings. A similar Complaint no. 236/2020 was earlier filed before this Authority, regarding the very same project and the Authority vide order dated 08.03.2020 has found that the project is not required to be registered before this Authority. The

Respondents further submitted that the villas in phase 1 of the project were completed before 10.10.2010 and the majority of villas were handed over to the allottees before 2016. There are some completed unsold villas for which occupancy certificate were received in the year 2010-2011. The Respondents also denied the allegations in the Complaint and submitted that the Complainant after making initial payment had not turned up to pay the remaining instalments, thereby totally failing to fulfil his part of the commitment. The construction was completed by using the funds of the company. As the Complainant failed to pay the balance amount, his agreement was revoked and the accounts were settled way back in 2015. As the Complainant did not pay the amount, the company finished the building not in terms of the agreement with the Complainant. The complainant is coming up with baseless allegations after the lapse of 12 years.

3. This Authority vide order dated 23.02.2023, after examining the agreement dated 11.06.2009 produced by the Complainant, the ownership certificates produced by the respondents and the report of the Secretary, Vilappil Grama Panchayath found that the project is registrable and the Respondents/promoters were directed to register the project u/s 3 of the Act, within 30 days of receipt of the order.

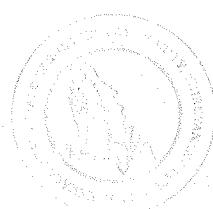
4. Aggrieved by this order dated 23.02.2023, the Respondents/promoters preferred an appeal before the Hon'ble Kerala Real Estate Appellate Tribunal, Ernakulam, [herein after



referred to as “the Appellate Tribunal”]. The Appellate Tribunal, vide Order dated 27.03.2024 in REFA No. 33/2023, observed that in an earlier occasion, two Members of K-RERA had found and ordered in Complaint No. 236/2020 that the project in question is a finished one and not an ongoing one and accordingly that Complaint was dismissed by the two Members of K-RERA. A legal infirmity was also noticed by the Hon’ble Appellate Tribunal that the order dated 23-02-2023 is not based on any definite legal material or documents and that such an order was issued without noticing the earlier order dated 08.03.2022 in Complaint No. 236/2020 that the project is not an ongoing one. It was also observed that the Single Member of K-RERA directed registration based on ownership certificates only, which are inadequate by itself to prove issues of registrability. The promoters claim that they had obtained occupancy certificate long back in 2011 and during the proceedings in the appeal it was submitted that the appellants are ready to produce material documents including occupancy certificate, but nothing of that sort was produced in the appeal. It was also observed that having decided earlier by two members that the project in question is not an ongoing one, the K-RERA (Single Member) later found that the project is registrable and this requires to be explained after serious examination by the full quorum of K-RERA. It was observed that the matter requires to be considered afresh on the basis of relevant and material

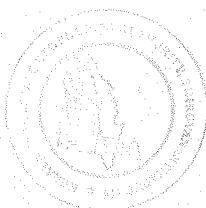
documents including occupancy certificate, completion certificate etc. and the earlier orders passed on the subject. After considering the relevant aspects the full quorum of RERA will have to come to a final legal finding u/s 3 of the Act, whether the project is registrable u/s 3 of the Act. With the above, the appeal was allowed and the order dated 23-02-2023 was set aside and the matter was remanded for proper enquiry, consideration and decision afresh.

5. Based on the orders of the Hon'ble Appellate Tribunal, this Authority issued notices to the parties. The matter was initially heard on 16.05.2024 for which the Complainant was not present. When the Complaint came up on 28.06.2024, the parties were asked to produce documents to prove that the project was ongoing as on 01.05.2017 and the Secretary and the two Deputy Directors in the Technical Wing of K-RERA were directed to visit the project site and make a status report after a physical inspection. The Officers in the Technical wing submitted a report dated 01.08.2024 after visiting the site on 24.07.2024. At the time of the visit the representatives of the Complainant and the Promoters were present. It was reported that there are around 70 villas in the project site, of which 45 are occupied. A few villas were seen in unfinished condition and a few plots were lying vacant, and no construction activities appeared to have taken place there in the last few years. On enquiry with some of the occupants, it was observed that the villas had been occupied

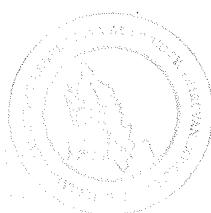


since 2012. There is a park and vast area lying vacant in the front side of the project and the promoter informed that the area was meant for phase 2 consisting of apartment and shopping complex but now they have dropped the phase 2 project. The promoter informed the technical officers that 80% of the plots have been sold and remaining plots are hypothecated to the bank and cannot be sold now. It was noted by the technical officers that the project site had been visited earlier on 26.02.2023 to check the registrability, in the context of Complaint No. 236/2020, with the conclusion that the project was not registrable. The report of the technical officers dated 01.08.2024 concludes with the observation that “most of the villas in the project are completed/occupied in 2012 itself, 805 of the plots are already sold and the remaining plots are hypothecated to the bank (which cannot be sold), the project is not seems to be registrable before the Authority”. When the matter came up for hearing on 14.08.2024, both the Counsels requested for adjournment as they were not ready to argue the matter. On 01.01.2025 also the Counsel for the Complainant sought adjournment for producing documents. On 25.03.2025 also the Counsel for the Complainant sought time for producing evidence and a final chance was granted and the case was posted for final hearing on 06.05.2025.

6. On 06.05.2025, the Authority heard both sides and examined the documents produced by the parties. The Counsel



for the Complainant submitted that he is producing details of sales of villas made after 01.05.2017 by the Respondents to prove that the project is an ongoing one. The Complainant has produced a certificate No 234/2023 dated 07.01.2023 issued from Sub Registrar Office Malayinkeezu to one B. S. Rajendran, showing the details of registered sale deeds executed by Salim M Kabeer (2nd Respondent) in respect of the land in question. This document is marked as Exhibit A1. Exhibit A1 shows that a total of 33 land transactions were seen made by the 2nd Respondent from 07.11.2008 to 10.01.2020 and all the transactions except one were made in the period between 07.11.2008 and 24.02.2015. The last transaction was made on 10.01.2020. The Counsel for the Complainant also produced a copy of an advertisement published during April, 2009 in a newsletter named “GRAND NEWS” by “GRANDTECH”. This document is marked as Exhibit A2. In this newsletter, the villas are seen advertised during 2009. The Respondents have produced copies of residential/ownership certificates for 87 villas, issued by the Secretary of the Vilappil Grama panchayath on various dates from 08.10.2010 to 22.01.2011, in the name of Salim M Kabeer, the 2nd Respondent. These documents are marked as Exhibit B1 series. From these documents it can be seen that separate building numbers had been assigned to these buildings during 2010-2011 itself, for the purpose of obtaining electricity connection from KSEB, Peyad, Thiruvananthapuram.



Even though the Respondents have not produced copies of Occupancy Certificates, it cannot be inferred thereby that the project is an ongoing one, as in Panchayath areas, the practice at that time (before 2019) was of issuing residential/ ownership certificates in respect of residential buildings. Mere production of a document showing execution of sale deed after the cut-off date on 01.05.2017 alone is not sufficient to prove that the project is an ongoing one. The Technical officers of this Authority, who visited the project site and enquired with some of the occupants, have reported that there are certain unsold villas and no construction activities for the last few years, and that some villas have been occupied since 2012. No documents or email showing communications with the promoter have been produced by the complainant, except a legal notice dated 25.10.2021 and it is not believable that someone who executed an agreement during 2009 and made payment of Rs 6 lakhs, had kept silent and quiescent for all these years up to 2021.

7. The 1st proviso of Section 3 of the Real estate (Regulation and Development) Act 2016 [herein after referred to as “the Act, 2016”] deals with mandatory registration of ongoing real estate projects which were not completed and have not obtained the completion certificate from the local authority as on the date of commencement of the Act 2016, i.e.; 01.05.2017. As per Section 3(2)(b) of the Act, 2016, “*no registration of the real estate project shall be required, where*

the promoter has received completion certificate for a real estate project prior to commencement of the Act. As per provisions of the Act 2016, this Authority has jurisdiction only to entertain complaints in respect of projects that are yet to be commenced or that are ongoing as on 01.05.2017. The said legal position has been well established by the Hon'ble Apex Court in its judgement dated 11.11.2021 in M/s Newtech Promoters and Developers Pvt. Ltd. in which it is held that “*Para 54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under section 3 to prospectively follow the mandate of the Act. 2016*”. Going by the mandate of the 1st proviso, Section 3 and Section 3(2)(b) of the Act, 2016, only those projects that are ongoing on the date of commencement of the Act, 2016 and for which the completion certificate has not been issued, are bound to apply for registration.

8. A two-Member Bench of this Authority, in a Complaint in No 236/2020 with respect to the same project had found and ordered that the project in question is a finished one and not an ongoing one and accordingly the Complaint was



dismissed. The observation of Hon'ble Appellate Tribunal was that after two Members had decided earlier that the project in question is not an ongoing one, a Single Member later found otherwise i.e, that the project is registrable, and this requires serious examination by the full quorum of K-RERA. Accordingly, this matter was seriously looked into by the full Bench Consisting of Chairperson and two Members and the matter was heard and taken for orders. But during the course of pronouncing the order, the term of office of one of the Members expired and the order is pronounced by the Chairperson and the other Member. The Chairperson and Member pronouncing this order were not a part when orders passed earlier in this matter. It was found that the Complaint No. 236/2020 was earmarked to a two Member Bench and the Complaint No 123/2022 was earmarked to a single Member who was not included in the earlier two-Member bench. The single Member issued the order according to his own findings and without noticing or being aware of the previous order issued on this behalf by a two Member Bench.

9. Hence, after analysing the facts and findings as aforementioned, it is found that the phase 1 of the project in question is not an ongoing project and the said project is not required to be registered as per Section 3 of the Act, 2016. In view of that, the Complaint is hereby dismissed. The

Complainant is at liberty to approach appropriate forums for getting the grievances redressed.

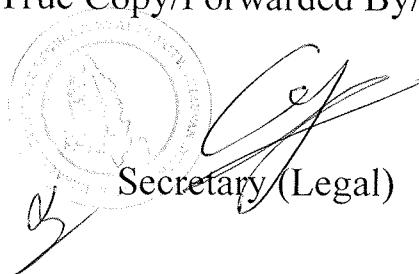
Sd/-

Dr. B. Sandhya
Member

Sd/-

Dr. Asha Thomas
Chairperson

True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits from the side of the Complainant

Exhibit A1- Copy of Certificate No. No 234/2023 dated 07.01.2023 issued from Sub Registrar Office Malayinkeezu to one B. S. Rajendran.

Exhibit A2 – The copy of Newsletter issued during April 2009 by Grandtech

Exhibits from the side of the Respondents

Exhibit B1 Series- The copies of residential/ownership certificates issued by Vilappil Grama Panchayath.

