



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaints No. 127 /2020, 128/2020 & 130/2021

Dated- 13th December, 2021

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

Complainants

1. Shiju Thankachan, : Complaint No.127/2020
NIRA 61 AMBADI,
Nalanchira P.O,
Tivandrum-695 015.
2. Sruthi Susan, : Complaint No.128/2020
& Shyju Thankachan,
TC-4/2239(22), Kairali Nagar No.45
Kowdiar P.O, Trivandrum- 695 003.
3. Souparnika Shirdi : Complaint No.130/2021
Towers Phase2
Owners Association,



Represented by its Secretary,
Rupesh Kumar Sinha S/o
Nanda Kumar Sinha, Flat No.1L,
Shirdi Phase2, Souparnika,
Mukkolackal P.O, Thiruvananthapuram.

Respondents

1. Sowparnika Projects & Infrastructure Pvt Ltd,
Represented by Meenakshi Ramji,
A 26, Kowdiar Gardens,
Kowdiar P.O, Trivandrum.
2. Smt. Meenakshi Ramji,
Sowparnika Projects & Infrastructure (p) Ltd,
Vetticulam Arcade,
Opp. Mar Ivanios College Main gate,
Nalanchira(PO)-695 015,
Trivandrum.

Adv. Feby Jacob, the Counsel for the Complainant in
Complaint No.130/2021 and the Legal officer for the Respondent
Company Mr. Arun Nair attended the virtual hearing.



ORDER

1. As the above 3 Complaints are related to the same project developed by the Respondent/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:130/2021 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 as follows: The Complainant is the registered association of allottees of 126 apartments of Sowparnika Shirdhi Towers -Phase 2 constructed in 90 cents of property under the ownership of 2nd Respondent at Mukkolakal, Thiruvananthapuram. The Respondents made wide advertisements of the construction and sale of apartments under the name and style Shirdhi Towers Phase 2 under various specifications and types of flats together with undivided share over the land catering to the needs of the customers. The Respondent has also made offer of classic construction of the building with high quality materials providing various amenities such as children's play area, swimming pool, fitness center, club house, shuttle court, jogging track, 24/7 security, departmental stores, bank and ATM, etc. Lured by the promise and offer by the Respondents, the members of the Complainants association booked apartments according to their requirement and accordingly the construction and



sale agreement was executed by each member of the Association with the Respondents on different dates. The Respondents specifically agreed in the contract to complete the construction and handover possession within 30 months from the date of agreement with all the amenities as promised. Even though the Project was started as early in 2011, it is not yet completed in all its specifications even after 10 years in 2021. Now the building has been constructed, but there are various shortcomings, violations and defects, and the Respondents are legally bound to carry out its completion as per the terms of the agreement. Many of the common amenities were left out which is a gross violation of the obligation arisen out of the contract.

3. It is further submitted by the Complainants that the Respondents are legally bound to obtain the necessary occupancy certificate from the local bodies before handing over possession to the Allottees and execute sale deed. But the Respondents failed to obtain occupancy certificate and the buildings have not been assessed by the Corporation for variations and violations of the building rules and the approved plan. There are 126 apartment owners who are to be provided with 126 car parking facilities along with guest parking as per Kerala Municipality Building Rules. Against the same, there are only 95 car parking provided by the Respondents. Water connection are not effective, the members had to collect huge amount towards the expense for digging 2 borewells at a cost of Rs 7,14,500/- and regularization of 2 borewells have to be carried out and the Respondents have to



compensate the members and KWA water connection to be made effective. STP drainage water system to be managed properly as dirty water is getting collected in Basement 3 and this is posing health issues to the residents. The reliefs sought by the Complainants are 1) to direct the Respondent to obtain occupancy certificate and TC number for all the apartments and register document of sale, 2) to provide 31 more car parking facility for the apartment owners and guest parking as per Kerala Municipal Building Rules, 1999, 3) to direct Respondent to manage the STP drainage water system to avoid dirty water accumulated in basement no.3, 4) to install a new incinerator for waste management and to provide KWA water connection, and 5) to install firefighting equipment and to provide the common amenities within a time schedule such as shuttle court, jogging track, departmental store, bank and ATM, shopping center, landscape greenery, display boards in front of each flat and car parking etc. Exhibits A1 to A3 are the documents submitted by the Complainants.

4. The Respondents has filed Objection on 13-12-2021 and submitted that the Complaint is not maintainable either under law or on facts and the Complainant association is not an association formed by giving notices to all the allottees at the instance of the Promoter and is only one of the rival associations in the apartment complex. Though as per the Order of this Authority a meeting of all allottees have been summoned by the Promoter the allottees refused to form any association as they intend to continue with their respective



associations. It is submitted that there are 126 apartments in this complex. All apartments were handed over to the allottees and sale deeds in respect of 86 apartments were already executed. The sale deeds of the balance apartments could be executed only on clearing the balance payment due from these allottees to the 1st Respondent. The apartment complex was constructed as per specifications with good quality materials and the apartments were handed over to the allottees at their request even before getting formal occupancy. It is submitted some of the allottees after taking over possession of the apartments, started doing all nefarious activities in the premises. They have dugged a bore well even without any sanction for which the water authority has initiated action against the Promoter. The Promoter/ Respondent has completed the Project in all respects and filed application for issuance of occupancy years back in 2018. Inspection was done by Corporation authorities and when the file for issuance of occupancy was pending consideration and it was about to be issued, a rival association filed certain mischievous complaints including unauthorized digging of the bore well and they threatened the corporation authorities and thus issuance of occupancy has not yet been done. Furthermore, all promised amenities were provided and the allottees took possession of their respective apartments after fully satisfied with the completion of construction and the amenities provided thereon.

5. It is further submitted by the Respondent that there is no shortage of car parking. The additional space available near



the site can be used for extra car parking which stands in the individual ownership of one of the directors. It is now being forcibly used by the allottees as children's play area. The allottees have no right to do so, as this land is not part of UDS of Shirdi Phase II. The alleged shortage of car parking is created at site only due to the illegal acts being done by some of the allottees at the leadership of certain allottees who are in rivalry with the Promoter as the Promoter has not given the concessions to them as per their demand. It is further submitted that as the premises have been in the possession of the allottees it becomes an impossibility for the Promoter to mark the car parking's. The allottees have even went to the extent of threatening the neighboring property owners not to sell any property to the Promoter to create car parking. All promised common amenities were provided and even if there is any shortage in the amenities or common amenities, the allottees could only claim compensation for the same as per Section 14(3) of the Act. The alleged association has not issued any written request to the Promoter pointing out any shortage of amenities as required under the Act and submitted that the above Complaints are highly premature. The common amenities like STP, KWA etc. were provided and the allottees are in maintenance of the same since 2017. If there are any malfunctions to the same due to defective maintenance the same must be rectified by the allottees who are using for last so many years. The Complainant is not entitled to get the reliefs claimed in the Complaint and the K-RERA has extended time for getting occupancy upto 30/06/2022 and prayed



that the Complaint may be dismissed with costs to the Respondents. Exhibits B1 to B3 are the documents submitted by the Respondents.

6. Both the parties were finally heard on 25-11-2021 and based on their arguments and after pursuing the documents submitted by them, the Authority has the following observations. The Project "Sowparnika Shridi II" is registered under Real Estate Regulatory Authority with registration number K-RERA/PRJ/164/2021. Documents produced by the Complainants are marked as Exhibit A1 to A3 and by the Respondents are marked as Exhibit B1 to B3. As per the agreement of sale dated 04-07-2013 executed between the Complainant and Respondent No.1 represented by Respondent No.2 as director of Respondent No.1 Company, it is agreed to sell, convey and assign the apartment with inclusive car parking facility in the building along with undivided share and interest over the land as detailed in Schedule B and Schedule A attached to the agreement. The common facilities are enumerated under Schedule C of the agreement for sale. During initial hearing as the Respondent raised allegation that the Complainant Association is not an association properly formed as per the law and there are 2 rival associations among the allottees, the Authority directed the Respondent to call a meeting of all the allottees and enable formation of association as prescribed under the law. The Respondent grievously failed to form the Association as directed and the Authority, vide interim order dated 20.02.2021, decided to appoint 2 officers of the Authority as Commissioners to



convene a meeting of all the allottees of the project and report the status of the project in detail. Consequently, the officers Mr. Sibin and Mr. Pradeep inspected the project site and submitted a report, which is marked as Exbt. X1. As per the said report, it is shown that there are only 111 car parks provided in the project whereas the number of units in total are 126 and even many of the existing car parks are arranged by closing the drive way. According to the Commissioners, the Promoter could give sufficient parking spaces only by purchasing the adjacent land. It also says that though completion certificate has been submitted in 2017, no occupancy certificate has been obtained for the project till date. Many of the promised amenities such as club house, shuttle court, jogging track, departmental store, shopping center, visitors' parking, etc. are not provided there by the promoter. Shortage of drinking water is a serious issue and drinking water is provided through a 20mm pipe which is not sufficient for all the apartments. There is a tube-well constructed by the flat owners which is not approved by the department concerned. No Final Fire NOC obtained for the project. The incinerator for disposal of solid waste is not functioning. It is also reported that the STP is not functioning due to which waste water is seeping through the basement floors. Photographs are also annexed with the said report showing the untidy condition of the basement floors. Without having final Fire clearance and PCB clearance, how the project is supposed to get Occupancy Certificate from the local authority? It is to be noted that the Respondent/Promoter has no right to raise contention that the complainant Association is not



properly formed and there are 2 rival associations in the project because it is his duty as per the law to enable formation of a single association and its registration for making the life of the inmates easy and comfortable. Until and unless the Promoter hands over possession of common areas including common amenities along with documents concerned to the Association of allottees, he will be liable to maintain the common areas/amenities in the project. The statement of the Respondent that "K-RERA has extended time for getting occupancy up to 30/06/2022" is totally disingenuous because it has made clear many times that for an ongoing project, the promised date of completion in the agreement executed with the allottee shall prevail and the Promoter has no right to extend the said date without the consent of the allottee. Moreover, at the time of registration of the Project u/s 3 of the Act, column 48 of Form A1 specifically asks the Promoter to show "the proposed date of completion of the Project, as committed to the allottees". So, from the abovesaid contention of the Respondent, it is revealed here that the Respondent/Promoter has given false information at the time of registration which itself amounts to an offence punishable under Section 60 of the Act 2016. While interpreting Section 18 of the Act, in **Imperia Structures Ltd. Vs. Anil Patni and Another**, the Hon'ble Supreme Court held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement. The



Apex Court in a recent judgement passed in *M/s Newtech Builders & Promoters Pvt Ltd. Vs State of UP & another* also found as follows:

“The legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified.”

7. After hearing, the Authority vide order dated 22-07-2021 directed the Respondent to file an affidavit along with clear work schedule with mile stones regarding the completion of the Project in all respects as per the promises given to the Allottees. The Respondent has filed an affidavit on 21-10-2021 as per the direction of the Authority, marked as Exhibit B1. As per the affidavit, it is submitted that the system and UV installed by Sowparnika has been dismantled by an external team assigned by Shridhi Phase II allottees without intimating to the concerned. At present plumbing lines to filters are dismantled by the allottees for their new filter installation and the builder has already approached the previous vendor to conduct the inspection. It is submitted that the water test report can be conducted only after installing the dismantled plumbing lines and filter. Furthermore, firefighting system to be rechecked and its functions to be ensured and issues regarding lift AMC and lift button, leakage of water in basement area, issues relating to floor number are resolved and paver tiles to the vehicle ramp area is completed. It is further submitted



by the Respondent in the affidavit that issues which are yet to be resolved like display board, display of flat number and details TC/OC, car parking will be addressed at the earliest and will complete the Project in all aspects on or before 30/06/2022. The Complainant association filed objection to the above affidavit stating that it does not address any of the reliefs sought by the Complainants. They submit that even though the project was agreed to be completed and handed over by December 2015, it is not yet completed in accordance with the agreements and specifications. The Corporation has not assessed the building and issued numbers for want of rectification of violations and the Respondents are keeping silence over the matter and winning time under one pretext or other. Non-functioning of STP is a burning issue for which Respondents have not taken any action. For installation of incinerator, the Respondents have paid only 50% of the cost.

8. In this context, it is significant to mention that the completion of a 'Real Estate Project' is not merely the completion of building/s or execution of sale deeds in favour of the allottees but completion of the whole project with all the common amenities and facilities as committed to the allottee as per the terms and conditions of the agreements executed between the Promoter and Allottee and handing over the whole common areas to the Association of allottees with all the documents pertaining to the project.



9. After hearing both parties and based on the undertaking by the Respondent as per the Exbt.B1 affidavit, invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions:

1) The Respondent shall complete the works related to essential services, issues related to car parks, rectification of STP and mutation of flats in the name of Complainants within Two months from the date of receipt of this order.

2) The Respondent shall complete and hand over, the whole project 'Shirdhi Phase II' in all respects along with all the amenities and facilities as agreed as per the agreements executed with them and with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 30.06.2022 without fail.

3) The Respondent shall complete the executions of all sale deeds, if any, related to apartments / common areas of the project within the said time frame.

4) In the event of any non-compliance of this order by the Respondent, a penalty of **Rs. 5,000/- per day** from 01.07.2022 till the date of completion of said works as per above direction as provided under Section 63 of the Act.



This order is issued without prejudice to the right of the Complainants to approach the Authority with claims for compensation in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Dated this the 13th December, 2021

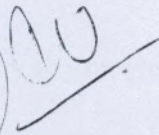
Sd/-
Smt. Preetha P Menon
Member

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 Complainants**

- Exhibit A1 : Copy of Agreement for Sale dated 04-07-2013
Exhibit A2 : Copy of brochures of the Apartment
Shirdhi Towers Phase II of Sowparnika Projects.
Exhibit A3 : Resolution dated 24-03-2021

Exhibits on the side of the Respondents

- Exhibit B1 : Affidavit dated 21-10-2021 filed by Respondents
Exhibit B2 : True copy of certificate from Pollution
Control Board
Exhibit B3 : True copy of existing STP AMAC

- Exhibit X1 : Site inspection report submitted by Officers of
Authority as per the Interim Order
dated 20-02-2021.

