



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Dated 15th Jul 2021

Present: Sri. P H Kurian, Chairman.

Smt. Preetha P Menon, Member

Complaint No's: 131/2020, 132/2020, 133/2020 and

Complaint No: 108/2021

Complainants

Sri. Raj Kumar, : Complaint No. 131/2020
D5, GRTL Gardenia,
Chennamkulangara Road
Edapally Road, Edapally P.O,
Ernakulam -682 024

Sri. V.P Manmadhan, : Complaint No. 132/2020
D4, GRTL Gardenia,
Near Chennankulangara Sreekrishna Temple
Chennankulangara Road,
Edapally P.O, Ernakulam

Sri. C.S Purushothaman, : Complaint No. 133/2020
E1, GRTL Gardenia,
Near Chennankulangara SreeKrishna Temple
Chennankulangara Road, Edapally P.O,
Ernakulam

Respondents

1. GRTL Infrastructure (p) Ltd
Represented by Sri. Sudhin Ben Cherian
Valamparambil House, Vennala P.O,
Ernakulam , Cochin-682 028

2. Sri. Raveendran Nair Kesavan Nair
Sayanthanam, Muttampalam,
Vaikom, Kottayam-686004
3. Sri. Maliakkal Lawrence Sudhil
Maliakkal House, Near U.C College
Aluva, Ernakulam- 683 102
4. Sri. Vackachan Nedumparambil Nibu
Nedumparambil House, sree Narayana Road,
Elamakkara, Ernakulam- 682 026
5. Sri. Aji Thomas
Parackal House, Shady Lane
Thottakattukara P.O, Aluva- 683101
6. Sri. Noby Nedumparambil Vakkachan
Nedumparambil House, Sree Narayana Road,
Elamakkara, Ernakulam- 682 026
7. Sri. Shanmugam Chidambaram Kuttalam Pillai
House No.105,Kairali Nagar,
KSHB Colony, Choondy, Aluva- 683 105
8. Sri. Rony Easie Muringampurath
Malapallipuram, Trichur-680732
9. Sri. Shaji Thomas
2/143, Parackal Aluva- 683105
10. Sudhin Ben Cherian
Valamparambil House, Vennala P.O
Ernakulam, Cochin- 682028
11. Sashikumar Menon
Sampritha, Amritha Lane
Eroor North P.O
Tripunithura, Ernakulam- 682306

The above Complaints have been taken up for virtual hearing today. The Complainants in all cases, Land owner and Respondents No. 10 attended the hearing.

COMMON ORDER

1. As the above 3 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: 131/2020 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 Complainants in the above cases have booked their respective apartments in the real estate project named "GRTL Gardenia" at Edapally, Cochin, developed and constructed by M/s. GRTL Infrastructure Pvt. Ltd represented by the 1st Respondent. All of them had entered into agreements for sale and construction with the Respondent. The Complainants have invested the amounts with the Respondent who assured them a peaceful life there. The Complainants submits that the Respondents promised to complete the Project before 30th May 2014 but have not completed so far. The Respondents persuaded the Complainants to purchase apartments proposed to be constructed by them with the common amenities shown in schedule 'F' of the sale agreement. But none of the common amenities have been provided by the Respondents. Structural defects like leaking from terrace and leaking in lobby area are some of the main issues faced by these Complainants. It is submitted that the Respondents have used low quality materials for construction, hence cracks in walls, roofs, etc. occurred. Inefficient and incomplete sewage mechanism was provided from the very beginning and hence Complainants were not able to operate it. Due to the Complaints from the neighborhood, the tenants had to invest a huge amount to make it function. There was no response from the Respondent even after communication through emails, phone calls and registered posts. The Complainants are facing issues during rainy seasons as the sunshades are not

provided in most of the windows in the flats and common areas. It is submitted that as per the agreement, four elevators were offered to be provided in which only two elevators provided with quality defects. Both the lifts are not functioning properly and maintenance costs are high. The statutory approvals for individual electricity connections, water connections, individual door number are not obtained by the Respondents and they have demolished the compound walls for fire approval and has not been constructed, because of which the residents especially ladies and kids are facing safety and privacy issues. The Complainants have made prompt payments, in spite of which the Respondents did not complete the project within specified time. Because of this, the Complainants had to stay in rented houses for 5 years and had to face additional financial difficulties along with interest burden by paying rent and paying the home loan at the same time. The Respondents promised the Complainant to complete the Project within 6 months of occupation. The Complainants were persuaded to occupy the apartment believing the assurance given by the Respondents. The reliefs sought by the Complainants are to give direction to the Respondents to complete the Project as agreed in the sale agreement within a time limit and for registration and handing over the property in the names of Complainants and for compensation for delay in handing over the Project.

3. The Respondent No: 2 has filed Objection on 11.09.2020 without disclosing his relation to the Respondent No.1 Company, alleging that the Complainants has no cause of action against the Respondents for filing such a complaint and submits that Complainants are allottees in the residential apartment which has already been completed and possession has already been handed over to the allottees in the year 2014 itself and the Complainant had taken possession of flats in ready to occupy condition and is residing there from November 2014 onwards. It is also submitted that the landowners are unreasonably delaying the execution of the sale deeds in favour of the Allottees in spite of the repeated

demands made by the developers and even after the order of the Consumer Disputes Redressal Forum for the execution of sale deeds in favour of the Allottees in consumer cases filed by the Allottees against the developers and landowners, the landowners did not execute the sale deeds. Since the construction of apartment complex has already been completed in time and Allottees were put in possession of their respective apartments, the only thing remains to be done is the execution of deed of conveyance in favour of the allottees by the landowners. The landowners are resorting dilatory tactics from the very beginning for extracting more money from the developers by attempting to press into service the penal clauses in the agreement with them and thereby causing huge loss to the developers who are forced to pay the electricity charges of 18 families already occupied in the flats allotted to them. Besides even after completion of the construction and obtaining fire and safety clearance from the fire force authority the local authority concerned namely Cochin Corporation had not yet provided separate building numbers to each apartment nor issued occupancy certificate to the flats. The allegations of structural defects, leakage in the terrace and cracks in roof walls and the use of low quality materials and poor workmanship are totally baseless and incorrect and hence denied by the Respondents. No such complaints has ever been raised by none of the Allottees earlier even after their occupation of flats from 2014 onwards. Effectively functioning waste water drainage facility and efficiently working sewage clearance mechanism were provided to each apartment. The delay in providing individual electricity and water connections were due to delay in getting individual door numbers by the local authority. The compound walls were already constructed but it is dismantled for getting fire approval and the same is to be constructed soon after the inspection of Corporation Authorities. It is also submitted that GRTL Gardenia is not an ongoing project as alleged by the Complainants. It is completed project and that is why it is not registered before Real Estate Regulatory Authority. Hence the Complaint is not maintainable before Real Estate Regulatory Authority and the

Complainants are not entitled to any of the reliefs as prayed for in the Complaint as the Project has already been completed and handed over in 2014. Therefore, it is submitted that there is no ground for entertaining the Complaint by Real Estate Regulatory Authority nor did it warrant the granting of any reliefs under the Real Estate Regulation and Development Act 2016 or the rules and regulations made thereunder and hence the Complaint may be disposed of accordingly. The Managing Director of the Promoter company has also filed a Counter Affidavit on behalf of all the Respondents on 01.03.2021 stating that no significant works are pending in the project and 22 families are happily occupying their apartments enjoying almost all the amenities promised to them. He claims that Association was formed long back and meetings have been suspended due to Covid 19 pandemic. Two elevators are installed in the project which are functioning round the clock and the Association agreed that other two elevators would be installed at the time of finishing the balance works. The allottees are liable to pay the due amount of Rs. 60 lakhs to the Respondents. They have no objection in handing over the original drawings of electrical and other documents to the association of allottees as and when requested properly and inviting by the association. The process of numbering and issuance of occupancy certificate is going on and they hope to get it completed without any delay and prays to grant 3 months' time to complete the process of getting the apartments numbered and occupancy certificate for the project.

4. During the hearing on 09.11.2020, it was disclosed by the Respondent that they have not yet obtained Occupancy Certificate for the project and some works are still pending there. The Association of allottees is not formed and sale deeds are not executed in favour of the allottees. As it was observed that the said project is an ongoing project registerable under section 3 of the Act it was decided to send separate Show Cause Notice to the Respondents for non-registration of the project. On that day, the Respondent was directed to file an affidavit with clear affirmation regarding the completion of the whole project in

all respects with all the statutory approvals, amenities and facilities as committed to the allottees, registration of common areas in favour of the association and handing over documents related to the project to the association and also showing stage wise work schedule with clear dates. But the Respondents miserably failed to submit the said affidavit even on the next hearing date on 04.01.2021. Short further time was allowed and also directed to form the association of Allottees and list out all the pending works and submit along with the Affidavit. Thereafter, an affidavit was submitted again by Respondent No. 2 one Ravindran Nair in his personal capacity without any authorization or mention as to his relation with the Respondent No.1/Promoter company. Apart from Respondent No. 2, none of the Respondents appeared or filed their counter statements and only after specific direction from this Authority, the Managing Director, Sudhin Cherian appeared and submitted that the execution of sale deeds is not possible due to non-co operation of the land owners with whom they executed a joint venture agreement. He also admitted that they have not obtained the occupancy certificate and not formed a formal association of allottees even after the specific direction given by the Authority. Then the Authority directed the Complainants to take steps to implead the land owners. Then the Complainants filed I. A. 19/2021, I A 20/2021 & 21/2021 which were allowed and the Land owners got impleaded in the complaints. The Land owners attended the hearing on 31.03.2021 and submitted that they are not only the land owners of the project but also the allottees of 5 apartments who are entitled to get covered car parking spaces and all common amenities in the project which were allotted to them in consideration as per the joint development agreement. They also submitted that only obligation of them under the said agreement is to execute the sale deeds on request of the Promoter. The Promoter was required to provide them formal intimation of the specific allottees to whom the sale deeds must be executed along with all relevant legal paper works, which he had not done till date. It is also specified in the said agreement that this is to be undertaken only after completion of all construction

works and obtaining all necessary statutory approvals including door numbers. None of these conditions and obligations has been met with by the Promoter who is in complete default with the same. One of the Land owners also submitted that he has been living in rented premises since last many years due to the non-completion of the said Project by the Respondent/Promoter. The land owners also prayed for direction to the Respondent/Promoter to complete the project and hand over the apartments to them. The Land owner also pointed out that the Respondent/Promoters are refusing to hand over the keys of their apartments to them in spite of several demands.

5. After several directions from the Authority, on 15.07.2021, the Respondent filed an affidavit without any work schedule which was found not in the proper form/manner as directed by us and not capable of meeting the purpose. Similarly, without producing the minutes of meeting said to have been convened, only an agenda of meeting was produced which was also not taken on record. The Authority viewed very seriously, the negligent attitude and disrespect shown by the Respondents/Promoter towards the orders of this Authority. As the Respondent/Promoter had been ignoring deliberately, the directions passed by the Authority, invoking Section 63 of the Real Estate (Regulation & Development) Act 2016, a Show Cause Notice was sent to Respondent No. 1 &2 to appear in person to show cause for not initiating penal actions and also to submit sufficient explanation for disobeying the orders passed by this Authority. The Respondent/Promoter attended the direct hearing on the said show cause notice on 18.03.2021 on which day he submitted before the Authority, many of his financial issues and the delay occurred in getting the statutory clearances and the Managing Director of Respondent No.1/Promoter Company assured the Authority that he shall comply with the orders of the Authority within a short span of time. Accepting the submissions, further action was dropped then in the said proceedings. But it is most unfortunate that the Respondent/Promoter failed pathetically in complying with the directions of the Authority vide orders dated

09-11-2020, 04.01.2021, 25-01-2021, 24-02-2021 and 31-03-2021. The Authority have shown reluctance to invoke the penal provisions concerned or inflict any punishments so far on the said recalcitrant promoter only for protecting the interests of the Complainants, the unfortunate home buyers, running from pillar to post all these years, for getting the dream of a home realized at an earliest. But the contumacious attitude of such Promoters totally disentitles them of any indulgence under the provision of law. As observed by the Apex Court in BIKRAM CHATTERJI & ORS vs UNION OF INDIA & ORS. *"It is for the courts to do complete justice between the parties and to protect the investment so made and interests of home buyers and to ensure that they get the perfect title and the fruits of their hard-earned money and lifetime savings invested in the projects"*. The Apex Court further observes that *"The provisions of section 17 of the Registration Act no doubt provide that a document of title requires compulsory registration, no doubt registered document has to be executed that also has to be taken care of by the Court so as to protect the interest of home buyers."* It is the responsibility of the Respondent/Promoter to solve issues, if any, with the land owners and get executed the sale deeds in favour of the Complainants/ Allottees through the land owners and it is not for them to simply shift the burden to the shoulders of land owners on account of any dispute in connection with the Joint development agreement between them and the Land owners. This Authority is not impressed of the submissions of the Promoters raising lame excuses and blaming government departments and local bodies for delay in getting approvals, without producing any piece of evidence to show what steps have been taken by them in this regard?

On the basis of above facts and circumstances, the Authority has decided not to grant any further opportunity to the Respondent/promoter and pass the final directions as follows: -

1) The Respondents No. 1 & 2 shall complete and hand over, the project "GRTL Gardenia" to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities and mandatory sanctions / approvals required to be received from the Authorities concerned, **within 5(Five) months** from the date of receipt of this order, without fail. The registrations of Sale deeds in favour of the Complainants shall also be completed within the said period.

2) The formation of Association of allottees and its registration shall be completed **within One month** from the date of receipt of this order.

3) The Respondent shall submit before this Authority, the compliance report in the form of an affidavit on or before **17.01.2022**. In case of any default from the part of the Respondents, the Complainants can approach this Authority.

In case of non-compliance of this order, the Authority shall initiate severe penal actions against the Respondent in accordance with the provisions of the Act.

This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation, for the loss sustained to them, if any, in accordance with the provisions of the Act and Rules.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary(Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : True Copy of agreement for Sale and Construction dated 17/03/2014.
- Exhibit A2 : Receipt of Payments made by the Complainant.