



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaint No: 135/2021

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

Dated- 8th March, 2021

Complainants

Shamy Aleyas
Kochupurackal House,
Kannamkulam Road,
Kothamangalam-686691.

Respondents

1. M/s. Business India Builders & Developers Ltd.
Door No.32/1380, B-3,
Abode Enclave Building,
Pipeline Road, Palarivattom P.O-682025.
(Represented by Mr.Aswin Laxman Patel)
2. M/s Greencity Heritage Pvt.Ltd.
Represented by its Managing Director
Aswin Laxman Patel,
Door No.48/863A of Kochi Corporation,
Mamangalam-Pottakuzhy Road,
Elamakkara P.O, Ernakulam-682026.
3. Aswin Laxman Patel,
Flat No.1401, Lnad Mark CHS,
Plot No.D2, Sector-12, Kharghar,
Navi Mumbai-410210.



4. Nishant B Shanthu Bhai Patel,
Represented by Power of Attorney Holder,
Shanthubhai Ravijibhai Patel,
Flat No.B-803, Shree Balaji CHS,
Plot No.19A, Sector-20, Kharghar,
Navi Mumbai-410210.

The above Complaint came up for final hearing on 21/02/2021. The authorized representative of the Complainant Mr. Issac Varghese and Counsel for the Respondents Adv. D. Kishore attended the hearing.

ORDER

1. The case of the Complainant is as follows:-
Based on an advertisement for sale of ready to occupy flats, the Complainant approached the Respondents with an intention to purchase a residential flat. The Respondents informed that the project 'GREENCITY ORCHID' located at Edapally Village, Kanayannur Taluk,, Ernakulam District is a residential apartment complex with three towers having 233 residential flats. The construction of tower B, piling works of tower A are completed and the entire project will be completed within 2-3 years. They handed over the site plan and brochure of the project. As per the brochure, in addition to the basic amenities such as electricity and water supply, amenities such as swimming pool, kids pool, spa centre, indoor games, children's play area, jogging track, yoga meditation



room, sewage treatment plant, three lifts in each building, centralized gas supply, car wash area, ample car parking, drivers resting area, rain water harvesting garden etc. will also be provided. Believing the words of the builder, the Complainant executed an agreement with the Respondents on 19/12/2016 for purchasing of flat 602-B. The date of completion as per the agreement was 31/03/2017. An amount of Rs.28 Lakhs was given to the 2nd Respondent. But the Respondents have not carried out the pending works and the corporation was not issuing the Occupancy Certificate. As the Occupancy Certificate was delayed, the Complainant requested the 3rd Respondent to refund the amount with interest. But he has not refunded the amount and during March 2018, he informed the Complainant that they have got occupancy certificate from the corporation and the balance works will be completed soon. As the Complainant had no other way to get the amount refunded, a fresh agreement was executed on 19/05/2018 and as per the clause 6 of the agreement, the Respondents have to give possession of the flat on or before 31/08/2018 with all the amenities except swimming pool. As per the agreement the swimming pool will be made available at the time of completion of other 2 towers. The total sale consideration of flat is Rs.49,50,000/-. During June 2018 the 3rd Respondent has refunded the amount of 28 Lakhs collected earlier and requested the Complainant to transfer the sale amount as per the agreement 16/05/2018 to the bank account of Green City Orchid. An amount



of Rs.29.5 Lakhs was transferred to bank account of Green City Orchid in the month of June itself. As per the agreement dated 19/05/2018, the balance amount is to be given in 2 instalments and the last instalment of Rs.10 Lakhs is to be given at the time of possession only. The Respondents informed the Complainant that they will give possession in time after completing all the works and requested to release full balance amount. Believing the words of the Respondent, the Complainant availed a loan of Rs.20 Lakhs from HDFC Ltd and transferred full amount to the bank account of Green City Orchid on 17/07/2018. The Respondents executed a sale deed on 17/07/2018 itself before completing the balance works. But the Respondents delayed the balance works and they have not taken any interest to provide the basic needs such as electricity and water supply. According to the Respondents they got occupancy certificate during March 2018 and there was enough time for the Respondents to avail the electric supply before the agreement period. The water connection from the Kerala Water Authority is still pending. Since the Respondents are delaying the project, the Complainant requested the Respondents to handover the key of the flat and took possession of the flat on 01/06/2020 without waiting for completion of the project. The Respondent have not provided any other amenities till date. The Respondents have constructed temporary car parking shelters at the places marked for garden and play area. Copy of sale agreement dated 19/05/2018, acknowledgement of payment for Rs.29.5 Lakhs,



Certificate for transfer of Rs.20 Lakhs, Copy of site plan and brochure, copy of ground floor plan are the documents produced from the part of the Complainants.

2. The reliefs sought by the Complainants are (1) direct the Respondents to submit a revised scheme for the completion of the project and a time limit be fixed for providing all the amenities as given in the brochure (2) Direct the Respondents to give compensation to the Complainant as per the provisions of the Act.

3. The Respondents 1 to 4 have filed counter statement and denied the contentions of the Complainant and submitted that the Complaint is not maintainable before the Authority since the Occupancy Certificate with respect to the condominium was issued on 09/03/2018. It was further submitted that the Corporation of Cochin has issued building permit on 31/01/2006 to construct a multi storied building and the validity of the permit was from 06/12/2005 to 05/12/2008. During the validity of the said permit, a development agreement was entered into between BIBD and the 2nd Respondent on 30/10/2007. The essence of the said agreement is that the 2nd Respondent can appropriate 70 % of the super built up area and the BIBD can appropriate the remaining 30% of the super built up area. When the construction reached half way level, the Complainants came to know that several civil suits were filed by the creditors of the BIBD Company before various courts within the State and attachment orders were passed by the civil courts over



the properties of the BBID Company, including the property where the project is being implemented. Accordingly, the construction works was compelled to be stopped. the validity of the building permit was expired on 25/02/2009 and it was renewed for a further period of 3 years from 06/12/2008 to 05/12/2011. Though the permit was renewed the construction activities could not be started as the attachment over the project property continued. In the mean while some of the creditors of the project property filed a company petition before the Hon'ble High court as C P No.41/2009, seeking to wind up the BIBD Company. In the said petition M/s Green City Heritage Pvt. Ltd. submitted a scheme as contemplated under section 391 of the Companies Act, with a compromise whereby all the creditors as well as the directors and shareholders of the BIBD Company as well as the other two companies have agreed to receive the BIBD Company by permitting M/s Green City Heritage Pvt. Ltd. to complete the project and to handover 30% of the super built up area of the condominium to satisfy the debt to the creditors. The high court approved the said scheme as per judgment dated 21/11/2013. It was further submitted that on 05/12/2011, the validity of the building permit was expired. On 01/04/2014, the validity of the building permit was extended from 04/12/2011 to 03/12/2014. On 04/11/2014, the building permit was revised by removing a part of the project property and incorporating additional properties purchased by the 2nd Respondent. The Hon'ble High Court as per order dated 16/06/2015 directed the Corporation of



Cochin to renew the building permit. Pursuant to the direction, the Corporation of Cochin renewed the building permit on 23/07/2015 for a period from 16/06/2015 to 15/12/2015. Before the expiry of the period stipulated in the building permit, on 25/11/2015, the 2nd Respondent have completed the construction of Tower B of the project and have submitted the completion certificate as contemplated under Rule 22 of the Kerala Municipality Building Rules, 1999. The scheme sanctioned by the Hon'ble High Court contemplates 3 towers. The permit was issued originally in the year 2006. Accordingly, the other two Towers A and C are also entitled to be issued with permits on the basis of the parameters which had existed at the time of issuance of the original permit. Moreover, M/s Green city have started the work of Tower A and the same has reached the ground level by completing the piling works on the basis of the original building permit issued for Towers A & B. With respect to the issuance of building permit for Towers A and C, WP(C).4475/2016 is pending before the Hon'ble High Court of Kerala. It is further submitted that the project undertaken by the Respondents are excluded from getting registered as per the provisions of the Act and Rules and accordingly it is not amenable to the jurisdiction of the Authority. Section 3(2)(b) and Section 34(a) of the Act, would reveal that if the promoter has received completion certificate for a real estate project prior to the commencement of the Act, registration under the Act is not mandatory. Since the completion certificate was submitted before



the Corporation of Cochin on 25/11/2015 and since the Occupancy Certificate was received for the building on 09/03/2018, a Complaint is not maintainable before the Authority. As per clause 22 of the agreement dated 19/12/2016, the Respondents are duty bound to provide the common amenities only after the completion of all the 3 Towers of the project. Since the construction of Tower B is completed and the construction of Tower A and C are still pending, there is no merit in the contention of the Complainant that he has not been given the common amenities as promised by the Respondents. It was further submitted that the sale deed with respect to Apartment No.602B in favour of the Complainant was executed by these Respondents on 17/07/2018. The Ownership certificate was obtained in the name of the Complainant from Kochi Municipal Corporation on 27/12/2019. The registry of the Apartments has been changed in the name of the Complainant as per her request with effect from 27/12/2019 by the Kochi Municipal Corporation. The permanent electricity connection to the building was obtained during February 2020 and the delay was due to shortage of feeder capacity at KSEB, Kaloor Sub Station. There is a fully loaded generator working in the condominium and there is no shortage of electricity at any point of time. It was also submitted that on 27/05/2020, the Complainant has leased out her apartment to one Muhammed Sali for a monthly rent of Rs. 20,000/- for a period of 11 months. Several customers of these Respondents have occupied Tower B of the project. The balance



apartments can be sold only by the chairman of the Core Committee appointed by the High Court as per the said judgment dated 21/11/2013. The entire work with respect to Tower B as well as the with respect to apartment No.602 B is completed. Every amenity as promised by the Respondents except the common amenities referred to clause 22 of the agreement dated 19/05/2018 are completed and handed over to the Complainant. The common amenities can be provided only after the completion of all their Towers. The delay in constructing Towers A and C is due to the non-issuance of permit by the Corporation of Cochin pointing out the deficiency in the width of the approach road leading to the project. The Respondents have already filed W.P.(C) 4475/2016 before the High Court with respect to the said issue and the same is pending consideration. In fact, the said Writ petition was allowed on 20/09/2017. These Respondents have completed piling works of Tower A of the project by expending crores of rupees. However, the chief Town Planning Officer and others filed Writ Appeal 1558/2018 and the Writ appeal was allowed directing the Regional Town Planner to reconsider the issue of grant of building permit. These Respondents filed Special Leave Petition Nos.7647-7648/2019 before the Hon'ble Supreme Court against the Judgment in Writ Appeal 1558/2018 and the hon'ble Supreme Court by order dated 15/03/2019 relegated the parties back to the Hon'ble High Court of Kerala and the matter is still pending consideration. True copy of judgment in CP.No.41/2009 dated 21/11/2013, copy of



Occupancy Certificate dated 09/03/2018, copy of Sale deed dated 17/07/2018, copy of Ownership Certificate No.EYR5-13205/2019 dated 27/12/2019, copy of memo issued by Revenue Officer Kochi Municipal Corporation, Copy of Lease agreement dated 27/05/2020, copy of order dated 15/03/2019 in SLP(C) 7647-7648/2019 of the Hon'ble Supreme Court are the documents filed from the part of the Respondents.

4. The Complainant has filed reply to the Counter affidavit and submitted that 'Green city Orchid' is a project, comprising of 3 towers, the construction of Tower A and C not yet started and the Tower B is not in a completed stage. Hence the project is to be registered under the Act of 2016. The Respondents suppressed the real issues at the time of execution of the agreement. Without having valid permit for the construction of Towers A and C, the clause regarding the swimming pool and club house was clubbed with the above two towers and included in the agreement dated 19/12/2016. A project can be treated as completed only if all the works mentioned in the approved plan and in the brochure released by the builder are completed in all respects. Lot of works are still pending in the project. The delay of getting electricity connection to the building was due to the non-submission of application in time, delay in remitting the fees requested by KSEB and due to delay in completion of electrical substation in the Tower by the Respondents. The generator supply is only for emergency



light and fan and will get automatically cut off when the current exceeds the limit set in the circuit breaker. The Complainant took possession of the apartment only because the Complainant was repaying approximately Rs.25000/- per month for the housing loan availed from the HDFC. If the Respondents had completed the apartments with the agreed amenities the Complainant would have received a higher rent in that area and also the Apartment would have higher appreciation value. As per the lay out, the swimming pool is coming adjacent to Tower C. But it is not part of Tower C. It can be assessed from the first floor of Tower C and all the amenities can be provided without waiting for the decision of the Hon'ble High Court.

5. During the hearing on 02/09/2021, the representative of the Complainant submitted that that no common amenities were provided by the Respondent as promised. The Counsel for the Respondent submitted that issue of maintainability raised in the objection is not pressed. It was also submitted that they could not sell the remaining Flats due to the case pending before the High Court and only the core Committee, appointed by the Hon'ble High Court can sell the remaining units by auction. The Respondent also submitted that they are ready to file an Affidavit regarding the completion of common amenities promised to the Complainants. In view of the above, the Authority on the same day issued directions as follows: - (1) The Respondent shall file a detailed affidavit



regarding the list of works to be completed as per the terms of the agreement executed with the Complainant and time for completion of all the works showing specific date. (2) The Respondent shall also make sure that all the essential services such as electricity and water connection are provided to the Complainant and shall honour all the promises guaranteed to the Complainant.

6. In compliance of the said order dated 02/09/2021, the Respondents have filed an affidavit and submitted that in the case of Gymnasium, a gym room is ready and equipment will be installed and will be functional within 3 months as many customers are expected to occupy within 2 months. One security guard is appointed and will appoint more as per resident's requirements. A site supervisor is available for taking care of matters of Tower B Apartment. Separate care taker will be appointed within 3 months based on requirements. They already installed security camera and will be made properly functional within one month, part time electrician's service and plumbers service is available now, swimming pool, club house will be provided within 3 years from the date of plan approval of A & C Towers of project from the authority concerned. The Respondents are ready to form an association within one month from the date of first meeting of the occupants necessary to constitute such a body and electricity connection was already provided. An application for Kerala Water Connection was also submitted during February



2020, but connection not yet received and they have made available potable water bore well with water purification plant for the project.

7. The Complainant has filed reply to the affidavit filed by the Respondents and submitted that the affidavit is incomplete and specific dates are not mentioned as per the directions passed by the Authority. The relief sought by the Complainant is to direct the Respondent to submit a revised scheme for the completion of the project and to fix a time limit for providing all the common amenities as promised to the Complainant. The affidavit submitted by the Respondent as directed by the Authority did not mention any specific dates for the completion of the project.

8. The case was posted for final hearing on 21/02/2022. The documents produced from the part of the Complainant is marked as Exbt. A1 to A5 and the documents produced from the part of the Respondent is marked as Exbt.B1 to B7. From the Exbt. B2 document (copy of Occupancy Certificate dated 09/03/2018) produced by the Respondent, it is confirmed the fact that the Real Estate Project 'Green City Orchid' is to be registered as an ongoing project under section 3 of the Real Estate (Regulation & Development) Act, 2016.

9. As per the agreement dated 19/05/2018, which was marked as Exbt.A1 the allotment of designated car parking by the Respondents to the Complainants in the project property shall be



provisional and subject to the completion of Towers A and C of the project. The Complainant shall be given possession of temporary designated car parking area in the project premises until the completion of Towers A and C of the project and the Complainants can possess, occupy and enjoy the said designated car parking as his own and as a part of C schedule property on a provisional basis. As and when the construction of Towers A and C are completed, the second party shall be assigned with a permanent car parking in the project property. The Complainant is aware that the Club house and its facilities are part of the common area. The membership rights to use the facilities of the club house facility will always lie with the owner of the schedule C property and will get automatically transferred with the transfer of ownership of the Apartment. The Respondents will be providing the common amenities such as swimming pool, club house which includes multi-gymnasium, indoor games garden, landscaping etc. only after the completion of all the 3 Towers in the project.

10. The Authority had issued order dated 04/02/2022 under section 59(1) of the Act, directing the Respondent to register the project under section 3 of the Act within 30 days from the date of order without penalty. Hence it is confirmed that the project is registerable under sec 3 of the Act, 2016, and the Complaint is maintainable before the Authority. The sale agreement dated 19/05/2018, executed by the 1st respondent,



represented by its power of Attorney holder 2nd respondent, director of the 2nd respondent company, 3rd respondent, 4th respondent represented by its power of Attorney holder, and the complainant was produced by the complainant and marked as Exhibit A1.

11. On the basis of the above facts and findings and based on the assurances given by the Respondent / Builder and evaluating the progress of the works and by invoking Section 34(f) & 37 of the Act, this Authority hereby directs as follows: -

1. The Respondent/Promoter shall complete the entire works of the common amenities / facilities of the project, as offered to the Complainant on **or before 31/03/2022** without fail.
2. The Respondent / builder shall convene a meeting of all the Allottees with 15 days prior notice to all the Allottees and shall conduct meeting in the premises of the project form an association and arrange for its registration as provided under section 11(4)(e) of Real Estate (Regulation & Development) Act, 2016 **within one month**. Arrangements shall also be made for virtual attendance of Allottees who were not in position to attend directly. List of Allottees shall also sent to the Allottees in advance, before commencement of the meeting.



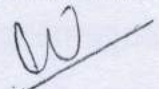
3. In the event of failure on the part the Respondent to complete the entire amenities/facilities of the project as stated above as per the agreement and promises made to the Complainant and the Respondents shall be liable to pay **Rs.5000/- per day** as penalty from 01/04/2022 till the date of completion, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.


This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority 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 8th day of March 2022

Sd/-
M.P Mathews
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/

Secretary (legal)



Exhibits

Exhibits marked from the Side of Complainants

- Ext.A1- Copy of sale agreement dated 19/05/2018.
Ext.A2- Copy of acknowledgement of payment for Rs.29.5 Lakhs.
Ext.A3- Certificate for transfer of Rs.20 Lakhs.
Ext.A4- Copy of site plan and brochure.
Ext.A5- Copy of ground floor plan.

Exhibits marked from the Side of Respondents

- Ext.B1- True copy of judgment in CP.No.41/2009 dated 21/11/2013.
Ext.B2- Copy of Occupancy Certificate dated 09/03/2018.
Ext.B3- Copy of Sale deed dated 17/07/2018.
Ext.B4- Copy of Ownership Certificate No.EYR5-13205/2019 dated 27/12/2019.
Ext.B5- Copy of memo issued by Revenue Officer Kochi Municipal Corporation.
Ext.B6- Copy of Lease agreement dated 27/05/2020.
Ext.B7- Copy of order dated 15/03/2019 in SLP(C) 7647-7648/2019 of the Hon'ble Supreme Court.
Ext.B8- Affidavit filed by the Respondent dated 13/10/2021.

