



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 136 /2021

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

Dated 20th September 2022

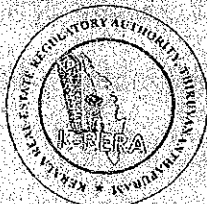
Complainant

Tritvam Apartments Owners Association
Represented by its secretary Sunil Kumar,
Flat No. T38D Tritvam Apartments,
Goshree Pachalam Link Road,
Kochi- 682018

Respondent

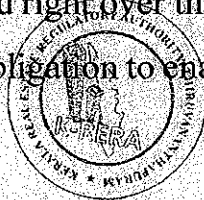
Tata Realty Infrastructure Ltd
Represented by its Manager,
Tata Realty Infrastructure Ltd.
Goshree Pachalam Link Road,
Marine Drive Kochi- 682018

The Counsel for the Complainant Adv. Johnson Gomez and
Counsel for the Respondent Adv. Abraham Markos attended the final
hearing.



ORDER

1. The Complainant is an association of owners of apartments in the real estate project "The Tritvam" Project at Ernakulam District. The Respondent had entered into an agreement for sale with individual apartment owners and entered into a Registered Apartment Buyers Agreement with all the allottees. According to the Complainants, the Respondents have assured the allottees that the allottees association shall be formed under the Kerala Apartment Ownership Act 1983. Clause No. 25 of the apartment buyers Agreement dated 12.03.2015 executed by the Respondents in favor of one Mr. Vishnu K, relates to the formation of the allottees Association under the Kerala apartment ownership Act 1983. A true copy of the Apartment Buyers agreement entered into between the Respondents in favor of allottee Mr. Vishnu K, dated 12.03.2015 is produced by the Complainant. The terms of the agreements were reduced into writing and signed by the representatives of the Respondent company as well as the individual owners and Clause 25 and 26 refers to the Kerala Apartment Ownership Act, to be followed for the purpose of formation and incorporation of an apartment owner's association within the Tritvam Project. It was agreed that an association will be formed by the Respondent company for the management of the common areas of the building complex and the company will make a declaration as required under section 11 of the Kerala Apartment Ownership Act. According to the Complainant, the Respondent without making the declaration and registering the same before the local sub registrar's office, proceeded to execute sale deeds in favour of individual apartment owners, whereby the Respondent transferred the individual apartment to the allottees along with the proportionate undivided right over the common areas. As per the RERA Act, the promoter has an obligation to enable the formation of an association



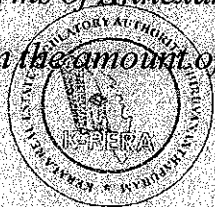
of allottees under section 11 (4) (e) of the RERA Act. In this case, the Respondent ought to have registered a declaration and submitted the property to the provisions of the Kerala Apartment Ownership Act in accordance with Section (2) of the Kerala Apartment Ownership Act before the project itself was completed, and the individual apartments were handed over to the apartment owners. The other option that was available to the promoter under the RERA Act is to transfer the individual apartment to the allottee and to transfer the title of the undivided common areas to a legally constituted association of allottees. The Respondent has not adopted any of the above course, on the other hand, their attempt was to constitute a charitable association under the Travancore Cochin Literary Scientific and Charitable Societies Act. Moreover, the declaration under the Kerala Apartment Ownership Act, has to be accompanied by floor plans and the byelaw of the association, before the execution of the sale deeds to the individual apartment owners, and submit the project to the provisions of the above Act. At the time of execution of the sale deed of the individual apartment owners the deed of Apartment under form B of the Kerala Rules ought to have been executed. However, the Respondent has not complied with any such statutory or legal obligations. On the other hand, the attempt of the Respondent company was to form an association under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 without transferring the common areas to such society which is again a violation of the RERA Act and the agreements for sale entered into between the apartment owners in the Tritvam Project and the Respondent company. The request of apartment owners to form the association under the provisions of the Kerala Apartment Ownership Act, was rejected by the Respondents.



2. The Complainant further submits that the attempt of the Respondent was to avoid the transfer of the undivided proportionate title in the common areas in the Tritvam project and not to hand over the physical possession of the same to the allottees association. The situation was made complicated since the Respondent had failed to make a declaration under the Kerala Apartment Ownership Act. The Respondent due to the continued persuasion of the Complainant for the formation of the association finally registered the declaration and deed of apartments with respect to 10 apartment owners. Evidently, this exercise of executing the declaration and deed of apartments under the Kerala Apartment Ownership Act was registered with respect to 10 apartments, when the Respondent had already sold over 250 apartments. Such sale of the apartments was obviously in violation of the agreement for sale and the promoters' obligations contained in section 11 of the RERA Act. Based on the registration of the declaration by 10 individual apartment owners the Authority refused to issue the registration certificate to the Complainant association. The Complainant association had a contractual obligation under the different agreements of sale to take over the common area management with effect from 01.04.2021. Before such registration, the association had to open a bank account and to obtain GST and PAN. Hence, the unregistered association had to approach the Hon'ble High court of Kerala to issue directions to the competent Authority to issue a registration certificate under the Kerala Apartment Ownership Act. The allottees and the unregistered association of allottees were put to such a plight, when the Respondent had a legal and contractual obligation to form the association in accordance with the provisions contained in section 17 of the RERA Act. The Hon'ble High Court of Kerala had directed the competent Authority to issue the registration certificate to the Complainant, as per interim order dated 25.01.2021 which was as



follows: "There shall be a direction to the 2nd Respondent to issue a certificate to the petitioner indicating the reference number as required in Form B of the Kerala Apartment Ownership Rules, 1994, within a period of three days". The Complainant association, during the course of the litigation had to file a Review Petition as RP No. 69 of 2021 and also a contempt petition as COC No. 34 of 2020. The promoter had developed the land for construction of the apartment complex named Tritvam in two phases. Phase I was bifurcated into Phase 1A and B. There was a total number of 6 towers and the total number of apartments is 572. A single association under the Kerala Apartment Ownership Act was contemplated in the agreement for sale, entered into by the Respondent with the individual allottees. The completion certificate for the project was issued by the competent Authority after the RERA Act was notified. Hence this Authority has jurisdiction to entertain the complaint. There are just 10 members in the Complainant association, who have executed and registered the declaration and the deed of apartment. It is also submitted that the Respondent being the promoter was cast with the obligations for the formation of the association, however they have neglected to perform their obligation by joining all the allottees, and therefore they are liable for penal consequences under section 38 (1) of the RERA Act by imposition of penalty and interest. The reliefs sought by the Complainant in the original complaint are as follows "*(a) To direct the Respondent to ensure that the Respondent association to complete the formality of execution and registration of declaration, deed of apartment as required under the Kerala Apartment Ownership Act for the formation of the association of allottees, without any further delay and (b) To impose penalty on the Respondent company, at 5% of the project cost, for willfully disobeying the obligation cast on them as promoter under section 11(f) of the RERA Act and the terms of Annexure A1, agreement for sale, (c) To direct the Respondent to return the amount of Rs 90,000/- (Rupees ninety thousand*



only) expended by the Complainant association towards litigation charges for filing Writ Petition before the High Court of Kerala for obtaining Annexure A4 Certificate, under the Kerala Act, with interest as this Hon'ble Authority may consider appropriate. The copies of the Apartment Buyer's Agreement entered into between the Respondent company in favour of Mr. Vishnu K dated 12.03.2015, the letter dated 6th March 2020 issued by the Respondent company to the Complainant, the letter dated 13.05.2020 issued by the Respondent company to the Complainant, the judgment dated 10.03.2021 in WP(C) 24053/2020 passed by the Hon'ble High Court of Kerala. the Certificate No. 2068/2020/D4 dated 29/01/2021 issued by the deputy collector and competent Authority under the Kerala Apartment Ownership Act 1983 are produced by the Complainants.

3. The Respondent entered appearance and filed objection stating that the complaint is not maintainable in law or on facts and the cause of action claimed is false and imaginary, and the Authority has no jurisdiction to entertain the complaint. Though the RERA Act 2016 was notified in 2016 and various sections were made effective in 2016 and 2017, the Kerala RERA was constituted by the government of Kerala vide G.O dated 05.10.2019 and a public notice dated 26.12.2019 was issued in confirmation. The Tritvam Project comprises of six towers and the execution of each of which was commenced and completed on various dates and in pursuance thereof. Occupancy Certificates were also issued by the Kochi municipal Corporation on various dates such as 04-06-2016 for towers 1 to 4, on 31-10-2016 for Iconic tower and on 02-08-2016 for tower no.5. The Complainant has no locus standi to file this complaint. The Complainant is not the representative of all the apartment owners in Tritvam Project. The Complainant is formed by only ten members whereas the Tritvam Project admittedly has 572 apartments. It is submitted that a writ petition No. 20630



of 2021 has been filed in the Kerala High Court by some allottees of Tritvam Project challenging the grant of registration to the Complainant Association, and further contending that they have no legal sanctity or Authority to prefer any suit or such other action for and on behalf of the residents of the Tritvam Project. The Hon'ble High court of Kerala has admitted the said writ petition, and has issued notice to the Respondents, including the Complainant. Hence this Authority cannot entertain the complaint and clearly the Complainant is not maintainable. The Respondent submits that he has not violated any provisions of the RERA Act or such agreements. Since the Tritvam project is not registrable under the RERA Act, the Respondent is not a promoter as defined in sub section 2 (zk) of RERA Act. Clause 25 of the agreement only provides that the allottee shall be bound by the Kerala Apartment Ownership Act and declaration that may be filed thereunder including with respect to the undivided interest and common areas and facilities. The Respondent has not undertaken to form or register an allottee's association under the Kerala Apartment Ownership Act. Section 25 only specifies that if and when an association is so formed under the Kerala Apartment Ownership Act, the allottees, shall be bound by the same. The Respondents has not undertaken to form an association under the Kerala Apartment Ownership Act as alleged. The Respondent cannot register a declaration in accordance with rule 3 read with section 5(2) and section 11(1) of the Kerala Apartment Ownership Act. On the contrary the declaration is to be executed and registered by the apartment owners. As required by the provisions of the agreements executed by the Respondent with the apartment purchasers the Respondent has transferred ownership of the apartment to the respective owners along with proportionate undivided right over the land and common areas. This was strictly done in accordance with the provisions of the agreement and as required by law. The Kerala Apartment Ownership Act clearly provides that all the owners are to execute



and register the declaration for the purpose of making the act applicable to the Tritvam Project. The Kerala Apartment Ownership Act does not in any manner provide that the promoter has to execute and register any declaration as alleged and the averments to the contrary are denied. It is also submitted that the very scheme of the Kerala Apartment Ownership Act was designed in such a way that all the owners have to unanimously execute and file declarations under the Act.

4. The Respondent also submitted that he has taken all the steps necessary to enable the formation of an association, and the statements that the Respondent ought to have registered a declaration in accordance with section 2 of the Kerala Apartment Ownership Act before the project was completed and the individual apartments were handed over to the apartment owners is without any basis. The agreement executed with owners clearly provides that ownership of the apartment as well as a proportionate undivided interest in the land and the common areas and facilities will be transferred to individual apartment owners. It is also submitted that 251 such agreements were executed by the Respondent with allottees before 01-05-2016 when the RERA Act came into force and 282 such agreements were executed before 01-05-2017 when relevant sections were notified. In compliance with this commitment, sale deeds have also been duly executed and in fact 193 sale deeds were executed before 01-05-2017 when relevant sections notified. The further averment that the Respondent only attempted to constitute an association under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955 is denied by the Respondent. The Respondent had intended to enable the formation of the owner's association comprising of all the owners which necessarily meant after occupancy certificates for the towers were obtained and the owners identified. Till then the Respondent had also undertaken to carry out the maintenance of the



completed areas for which the individual owners had also given their consent. Even so, and taking into account the commitment of the Respondent to enable the formation of the association and knowing that the occupancy certificate for the last tower will be obtained in 2019, the Respondent as early as on 12.10.2018 commenced the process of calling for a general body of the owners who had already taken possession of the apartment. An email dated 12-10-2018 was sent to the allottees who had taken the possession of apartment till then to the effect that a general body meeting of the owners will be called on a convenient date to formulate the owner's association that could be registered under the Kerala Apartment Ownership Act. Further, a date for the general body meeting was fixed on 24-11-2018 and the date was intimated to the then apartment owners by email dated 05-11-2018 and the draft of the owner's association Bye-laws was also circulated. The meeting held on 24-11-2018 constituted an interim committee to discuss the bye-laws with members and get it approved. The registration of an association under the Kerala Apartment Ownership Act was completed on 08-09-2020 by filing a declaration with respect to 10 members. An AGM of the association was held on 26.09.2020 and new office bearers were elected to the association and the process of handing over title deeds, accounts, deposits, and other documents was also started. The association having been registered under the Kerala Apartment Ownership Act on 08.09.2020 the Respondent had nothing further to do and it was up to the remaining allottees to execute and register declaration. The averment that there was an attempt by the Respondent to form an association under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 without transferring common areas to the association is denied by the Respondent.



5. The Respondent further submitted that, the Complainant had no contractual obligation to take over common area management with effect from 01-04-2021 and the averment that unregistered association had to approach the Hon'ble High court of Kerala for directions is incorrect since the association was already registered. Failure to issue registration certificate is an entirely different matter. In any event the fact that the association itself filed the writ petition would clearly show that they were well aware that it was their obligation to arrange for registration and completion of other formalities. The averment that the Respondent had legal and contractual obligation to form association in accordance with the provisions contained in section 17 of the RERA Act is denied and the obligation of the Respondent under the agreement and under law is already explained above and the provisions of section 17 are clearly inapplicable. As already explained above, though RERA Act came into force in 2016 and the provisions were notified in 2016 and 2017 as confirmed by Kerala RERA, the provisions do not apply to the Respondent. All the phases of the Tritvam project were completed before the date notified in the public notice. As admitted by the Complainant a single association of owners was contemplated in the agreement of sale entered into with the allottees and accordingly it was possible to form and register an association only after completion of all the phases. Further, by the time the relevant provisions of Sections 11 and 17 of RERA Act was notified in 2017 a large number of sale deeds were already executed in compliance with the agreements executed prior to that. Therefore, provisions of the RERA Act cannot apply and Authority has no jurisdiction to entertain the complaint in view of the public notice clarifying that projects completed prior to notification does not require the registration under the RERA Act. The obligation of the Respondent was only to enable the formation of an association which the Respondent did immediately after the last occupancy certificate was



obtained. The Respondent also submits that the Complainant is not entitled to any interim relief and the interim relief claimed cannot be granted particularly when in fact the same has become infructuous as already explained. Hence the Respondent prayed to dismiss the complaint with costs. The copies the Government order G.O. (P) No.65/2019/LSGD dated 05.10.2019, the Public Notice dated 27.02.2019 issued by the Secretary (Legal) of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram, the Public Notice dated 22.02.2019 issued by the Chairman of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram, the Occupancy Certificates issued by the Corporation of Cochin, the email dated 12.10.2018 sent to all the allottees, the email dated 05.11.2018 sent to all the then apartment owners, the draft Bye-laws, the Minutes of the meeting dated 24.11.2018, the Minutes of the meeting dated 22.09.2019, signed copy of the Bye-laws of the association, the e-mail dated 11-12-2019 sent by the Respondent, the e-mail dated 05-03-2020 sent by the Respondent to the apartment owners, the e-mail dated 06-03-2020 sent by Mr. Sunil Kumar, Secretary of the apartment owners association, the e-mail dated 06-03-2020 sent by the Respondent to the apartment owners association, the e-mail dated 13-05-2020 sent by the Respondent to Mr. Sunil Kumar, Secretary of the apartment owners association, the e-mail dated 26-11-2020 sent by the Respondent, the First Agreement for sale executed on 07.01.2013, the first sale Deed executed on 31.12.2016, copy of W.P (C) No. 20630/2021 without Exhibits Filed by C.S Kumar and another before the Hon'ble Kerala High Court are produced from the part of the Respondents.

6. Thereafter the Complainant filed IA No. 278/2021 to amend the complaint by incorporating additional pleadings and to substitute the relief(a) *with the relief seeking for* "direction to the Respondent to take



all necessary steps for execution and registration of declaration and deed of apartment, by all the apartment owners as required under the Kerala Apartment Ownership Act including the apartments currently owned by the Respondent which remain unsold, in order to provide exclusive ownership and possession over the apartments in Tritvam project." The Respondent filed objection against the amendment petitions and challenged its maintainability. It was stated by the Respondent in the affidavit in support of the petition for the amendment that, while averring that the certificate of registration is valid, despite the pendency of W.P(C) No. 20630/2021 before the Hon'ble High Court of Kerala, the Complainant now states that they are entitled to file the complaint representing all the apartment owners of Tritvam Project. The association so registered under the said certificate of registration has only 10 apartment owners as its members and therefore there cannot be any possibility of the said association, representing the cause of all the apartment owners who are clearly not its members. The Respondent further states that the formation of the association is independent of the filing of the declaration and deed of the apartment by individual apartment owners.

7. The above complaint was heard by the full bench of the Authority and on the basis of the pleadings and arguments by both the parties, as detailed above, the Authority unanimously came to the same conclusion and decided to pass a common verdict but through different views and findings of (1) the Chairman & Member- Sri. M P Mathews (2) and that of Member- Smt. Preetha P Menon, in the following manner:



(1) Views & findings of Chairman & Member- Sri. M P Mathews

1. After having heard the learned counsels for the parties and perusing the documents produced the following issues emerge for our consideration.

(i) **Whether the Respondent has fulfilled his obligations under Sec 11 (4) (e) of the Real Estate (Regulation and Development) Act, 2016.**

(ii) **Can any of the reliefs prayed by the Complainant be granted**

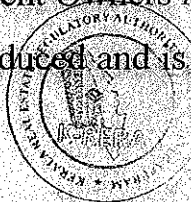
(iii) **Costs.**

2. Documents produced by the Complainant is marked as Exhibits A1 to A5 and those by the Respondents are marked as Exhibit B1 to B19. The Project has been registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 with Registration No. K-RERA/PRJ/ERN/109/2022. The Respondent also filed form 6 stating that the project was completed in all aspects as promised to the allottees. The Complainant has also not raised any relief as to the completion of the project. True copy of the email dated 05.03.2020 received by the Complainant and the reply dated 06.03.2020 to the above mail by the Complainant is produced by the Complainant and is marked as **Exhibit A2**. In the mail, it is stated that the executive committee of the owners association in its meeting held on 05.03.2020 has taken a decision that the services of the Respondent are not required for the registration of the association. It is further stated that the executive committee will take necessary steps for registration and the resultant cost incurred for the registration shall be recovered from the Respondents and the email may be treated as the final communication in this regard. True copy of the letter dated 13.05.2020 issued by the Respondent company to the Complainant is marked as **Exhibit A3**. In the letter, the Respondents explained the steps



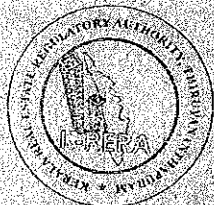
taken by them for registering the association under the Kerala Apartment Ownership Act 1983. According to the Respondent, the draft of the documents was submitted to the Sub-registrar, Ernakulam on 24.03.2020, but the lockdown delayed the process of registration. The Respondents further stated that the owners had not accepted registration under the Travancore Cochin Co-operative Societies Act, 1951 and the registration under Kerala Apartment Ownership Act 1983 is delayed as the registration department has not made provision for registration of the Association by-laws. **Exhibit A4** is the judgment dated 10.03.2021 in WP(C) 24053/2020 filed by the Complainant. The Hon'ble High Court had directed the deputy collector (Disaster Management) the 2nd Respondent in the petition on 25.01.2021 to issue a certificate to the petitioner indicating the Reference Number as required in form B of the Kerala Apartment Ownership Rules 1994. **Exhibit A5** is the certificate of registration issued based on the above order by the deputy collector (DM) and competent Authority under the Kerala Apartment Ownership Act, 1983. From **Exhibit A5** it is to be concluded that Tritvam apartment owners' association has been registered under the Kerala Apartment ownership Act 1983 and they have filed form A, form B, and declaration under Section 5(2) and Section 11(1) of the Act on 04.12.2020 the registration number is shown in the certificate of registration as 2068/2020/D4-1 and the same was issued on 29.01.2021.

3. **Exhibit B5** is the email sent on 12.10.2018 by the Respondent to all the 285 customers who have taken possession informing the proposed dates for convening the 1st general body meeting. **Exhibit B6** is the email sent on 05.11.2018 confirming that the 1st General body meeting shall be conducted on 24.11.2018. Minutes of the Annual General body meeting of 58 Apartment Owners Association held on 24.11.2018 at Club House, Tritvam is produced and is marked as **Exhibit B8**. It is clear



that the Annual general body meeting accepted the Bye-laws in the meeting and the final list of committee members is also part of the meeting. **Exhibit B10** is the memorandum of Tritvam Apartment owner's association and the details of the management committee of Tritvam owners Association for the year 2019 is detailed therein. Association was registered on 08.09.2020 and they decided to take over the management of the common areas and facilities with effect from 01.04.2021 and the funds and all documents, drawings, and other records were transferred to the complainant association by the respondent. The complainant association has been managing the affairs and maintaining the common areas since 01.04.2021.

4. From the above it is clear that the obligation of the Respondent to enable the formation of an association has been fulfilled. The Respondent had handed over the common areas and facilities and the Complainant association had taken control of the funds and all documents and records with respect to the real estate project. This was admitted by the Complainants. Issue No. 1 has been decided accordingly in favour of the Respondent. According to the respondents, 251 agreements were executed with the allottees before 01/05/2016 and 282 before 01/05/2017 before the Act came into force on and relevant sections were notified. 193 sale deeds were executed before 01/05/2017 and transferring the common areas to the association in compliance of Sec 11 (4) (f) is not possible. From Exhibit A2 mail dated 5-03-2020 received by the complainant and the reply dated 06-03-2020 to the above mail by the complainant. It is very clear that the executive committee of the owners Association had taken in its meeting held on 05-03-2020 that the services of the respondent is not required for the registration of the Association. Hence, no other relief can be granted by this authority.



5. As per the Kerala Apartment Ownership Act, 1983 Section 5(2),
"Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a deed of apartment relation to his apartment in the manner prescribed for the purpose".

Section 3 of the Kerala Apartment ownership rules, 1994 has prescribed the form and manner in which the declaration and deed of apartment referred to in section 5(2), 11 and 12 shall be submitted to the competent Authority and Form A and Form B are to be signed and verified by the Sole owner/ all the owners of the firm and form B has to be executed by the apartment owner who has purchased the apartment.

6. It is stated in Section 13(4) *"In all registration offices, a book called "Register of Declarations and Deeds of Apartments under the Kerala Apartment Ownership Act, 1983" and index relating thereto shall be kept"*

Section 13(5) *"The book and the index referred to in subsection (4) shall be kept in such form and shall contain such particulars as may prescribed"*.

Section 13 (6) *"It shall be the duty of every Secretary or Managing Committee to send to the Sub Registrar of the area in which the property containing the apartment is situate, or if there is no Sub Registrar for the area, to the Registrar of the District in which such property is situate, a certified copy of the declaration and deed of apartment made in respect of every apartment contained in the building forming part of the property together with a memorandum containing such particulars as may be prescribed"*.

Section 13 (7) *"The Sub Registrar or, as the case may be, the Registrar shall register the declaration along with floor plans of the*



building and the deed of apartment in the Register of Declarations and Deeds of Apartments under this Act shall also enter particulars in the index kept under sub-section (5)".

Section 13 (8) "*Any person acquiring any apartment of any apartment owner shall be deemed to have notice of the declaration and of the deed of apartment as from the date of its registration under sub-section (7)".*

7. The argument that the promoter ought to have registered a declaration in accordance with Rule 3 and Sec 5(2) and 11 (1) of the Kerala Act is disputed by the Respondent. According to the respondent, they cannot register a declaration in accordance with Rule 3 read with section 5(2) and Section 11 (1) of the Act. According to Section 5(2) of the Act, 1983 apartment owners should execute a declaration that "*Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a deed of apartment relation to his apartment in the manner prescribed for the purpose*". The sub-registrar accepted the process of registration of the Complainant association only after the intervention of the Hon'ble High Court. In this connection it is pertinent to note that there was a direction from the Hon'ble High Court in J.K Pearl Apartment Owners Association, Ekm v. State of Kerala and others (2015(2) KHC 482) directing the government to provide register to all Sub Registrars of the areas in which the Act is notified in the state for registering the association under the act. It was further stated in the order that if the government fails to provide any register within 3 months, the inspector general of registration shall direct all sub-registrars in the state of Kerala to file copy in Book 1. Even after the above directions of the Hon'ble High Court, no provisions were made to register the declarations, and all



amendments thereto, the deed of apartment in respect of each apartment and the floor plans of the building referred to in Section 13(2). During the hearing the counsel for the Respondents submitted that they shall file form A and Form B of the apartments owned by them and register the declarations/ deeds of the apartment and copies of Floor plans under section 13 of the Act. Other owners of the apartment are also having an obligation to execute a declaration under Section 5(2) of the Act submitting their apartment to the provisions of the Act.

8. In light of the above facts and findings, the Authority finds no reason to accept the contentions of the Complainant association and the complaint is therefore dismissed.

Sd/-
Sri. M P Mathews
 Member

Sd/-
Sri. P H Kurian
 Chairman

9. Views & findings of Member- Smt. Preetha P Menon

1. Heard both parties in detail and examined the documents produced by them. Even though the Respondent/Promoter had earlier taken a contention that the project in question will not come under the purview of the Real Estate (Regulation & Development) Act 2016(hereinafter referred to as the 'Act 2016') and the Authority had no jurisdiction to entertain the above complaint, later on they came forward and obtained registration under Section 3 of the Act, 2016. The case of the Complainant Association is that the Respondents/Promoter have failed to honour their promises as contemplated under Clauses 25 and 26 of the agreement, marked as **Exhibit A1** executed by the Respondent with the allottees which refers to "the Kerala Apartment Ownership Act, to be



followed for the purpose of formation and incorporation of an apartment owner's association within the Project" and the Respondent had attempted to form an association under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 without transferring the common areas to them which is again a violation of the RERA Act as well as clauses of the agreements entered into with the allottees. The learned counsel appeared for the Complainant Association argued that the request of apartment owners to form the association under the provisions of the Kerala Apartment Ownership Act, was rejected by the Respondents and the attempt of the Respondent was to avoid transfer of the undivided proportionate title in the common areas in the project and not to hand over possession of the same to the Complainant Association. The Complainant Association submitted that that due to their continued persuasion for the formation of association, the Respondent finally registered the declaration and deed of apartments with respect to 10 apartment owners, whereas they had sold 250 apartments at that time. The Complainant Association admitted that the competent authority refused to issue registration certificate based on the registration of the declaration by 10 apartment owners and they had to approach the Hon'ble High Court of Kerala for direction to the Competent Authority to issue certificate of registration to them. According to the learned counsel appeared for the Complainant Association, except for the issuance of a certificate as directed by the Hon'ble High Court of Kerala, they are unable to discharge any functions under the Kerala Apartment Ownership Act.

2. After hearing the case in detail, it is found that the Complainant Association consists of only 10(ten) members whereas the Project in question has 572 apartments in total. The learned counsel appeared for the Respondents strongly contended that they Respondents



have not undertaken to form an association under Kerala Apartment Ownership Act. The main contention taken by him was that the Complainant association so registered under **Exhibit A5** certificate of registration has only 10 apartment owners as its members and therefore the said association has no locus standi to represent all the apartment owners who are clearly not its members. The Respondent also pleaded that this Authority has no jurisdiction to look into the issues with respect to violation of Kerala Apartment Ownership Act. During the hearing, it was brought to the notice of this Authority by the Respondents' Counsel that a writ petition No.20630 of 2021 has been filed, in the Kerala High Court by some other allottees of the Project, challenging the grant of registration to the Complainant Association and contending that said Association have no legal sanctity or Authority to prefer any suit or such other action for and on behalf of all other residents of the Tritvam Project. It is also submitted that the Hon'ble High court of Kerala has admitted the said writ petition and issued notice to the Respondents, including the Complainant Association. The reliefs sought in the said writ petition is to issue a Writ of Certiorari or any other appropriate order quashing certificate of registration issued in favor of 4th Respondent, the Complainant herein, allegedly under Kerala Apartment Ownership Act, finding that it is not sustainable in law. The copy of the said writ petition is produced by the Respondents which is marked as **Exhibit B19**. According to the Respondents, the Complainant association having been registered under the Kerala Apartment Ownership Act on 08.09.2020, the Respondent had nothing further to do and it was up to the remaining allottees to execute and register declarations as per the provisions of the said Act. The learned counsel for the Respondent submitted that taking into account the commitment of the Respondent to enable the formation of the association and knowing that the occupancy certificate for the last tower will be obtained in 2019, the Respondent as



early as on 12.10.2018 commenced the process of calling for a general body of the owners who had already taken possession of the apartment and an email dated 12-10-2018 was sent to the allottees who had taken the possession of apartment till then to the effect that a general body meeting of the owners will be called on a convenient date to formulate the owner's association that could be registered under the Kerala Apartment Ownership Act. The meeting held on 24-11-2018 constituted an interim committee to discuss the bye-laws with members and get it approved and the registration of an association under the Kerala Apartment Ownership Act was completed on 08-09.2020 by filing declaration with respect to 10 members. An AGM of the association was held on 26.09.2020 and new office bearers were elected to the association and the process of handing over of title deeds, accounts, deposits and other documents were also started. True copies of e-mails dated 12.10.2018 & 05.11.2018 are produced by the Respondents which are marked as **Exhibit. B5 & Exhibit.B6**.

3. The relief sought by the Complainant Association is for "direction to the Respondent to take all necessary steps for execution and registration of declaration and deed of apartment, by all the apartment owners as required under the Kerala Apartment Ownership Act including the apartments currently owned by the Respondent which remain unsold, in order to provide exclusive ownership and possession over the apartments in Tritvam project". As the Respondents have mainly raised contention with regard to the locus standi of the Complainant Association to file such a complaint before this Authority, the preliminary issue to be adjudicated in this case is whether the Complainant Association can be treated as an Association as prescribed under the 'Explanation' given to Section 31 of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as "the Act 2016"], legally capable of approaching



this Authority with this Complaint or not. Section 31(1) of the Act 2016 provided that: *“Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.”*

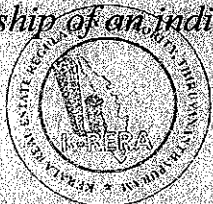
“Explanation. —For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.”

4. To my knowledge, the Complainant Association is the first Association in the State registered under the Kerala Apartment Ownership Act, 1983 and at present, the usual practice seen followed is that the associations of allottees in real estate projects situated in northern districts of Kerala are getting registered under the Societies Registration Act, 1860 and those in southern districts under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Section 1 of the Societies Registration Act, 1860 provides that *“Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, form themselves into a society under this Act”* and according to Section 20 of the said Act, *“The following societies may be registered under this Act:- Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, 1 [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public or public museums and galleries of*



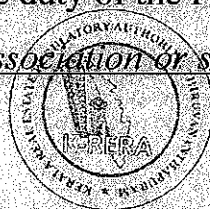
paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.” Likewise, Section 3 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 says as follows—*“Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 32 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves into a society under this Act”* and according to Section 32 of the said Act, *“the following societies may be registered under this Act:- Charitable societies, societies established for the promotion of science, literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.”* Hence, it can be found that under both of the above enactments, any 7 or more persons can obtain registration as a society for the specific purposes as stated in the provisions concerned as aforementioned. Surprisingly, the objectives envisaged for the formation of societies under the aforementioned enactments have no connection with the objectives for forming the association of allottees in a “real estate project” referred under the Act 2016.

5. As far as the Kerala Apartment Ownership Act, 1983 [hereinafter referred to as “the Act 1983”] is concerned, the objective of the enactment is *“to provide for the ownership of individual apartment in a building and to make such apartment heritable and transferable property”* and the Preamble is as follows: - *“WHEREAS it is expedient to provide for the ownership of an individual apartment in a building and to*



make such apartment heritable and transferable property, and to provide for matters connected with the purposes aforesaid." Section 2(d) of the said Act defines the Association as "Association of Apartment Owners means all of the apartment owners acting as a group in accordance with the bye-laws and the declaration". Section 2(q) says that "majority" or "Majority of apartment owners" means the apartment owners with fifty-one per cent or more of the votes in accordance with the percentages, assigned in the declaration to the apartments for voting purposes" Section 2(r) defines the "Managing Committee" as "the Managing Committee of the Association of Apartment Owners". According to Section 5(2) of the said Act, "Each apartment owner shall execute a declaration that he submits his apartment to the provisions of this Act and a deed of apartment relation to his apartment in the manner prescribed for the purpose" and Section 11 prescribes the contents of the 'declaration' mentioned in Section 5(2). From the above provisions, it is clear that each and every apartment owner shall have to execute and submit the declaration to the competent authority. As per Section 24(1) "All apartment owners, tenants of such owners, employees of such owners or tenants, or any other person who may in any manner use any property or any part thereof submitted to the provisions of this Act shall be subject to this Act and to the declaration and the bye-laws of the Association of Apartment Owners adopted pursuant to the provisions of this Act" and as per Section 24 (2) All agreements, decisions and determinations lawfully made by the Association of Apartment Owners in accordance with the voting percentages established under this Act."

6. Anyhow, Section 11 (4) (e) of the Real Estate (Regulation & Development) Act 2016 (hereinafter referred to as "the Act 2016") stipulates that it is the duty of the Promoter of a real estate project "to enable formation of an association or society or co-operative society,



of the allottees or a federation of the same under the laws applicable” and the Proviso mentions that “in the absence of local laws, the association of allottees, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building in the project.” The importance of an association of allottees in a real estate project in the eyes of law can be recognized from various provisions such as Sections 8, 16, 17, 19 of the Act 2016. Section 8 of the of the Act 2016 which provides that *“Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority. Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act. Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.”* Hence as per the Act,2016, in such crucial situations where the Promoter gets disabled or disqualified from proceeding with the construction works, the Association of allottees is having the first right of refusal and it can take over the project and complete it as determined by the Authority. Similarly, as per Section 17 of the Act 2016, *“after obtaining the Occupancy certificate and handing over physical possession of the apartments to the allottees, it shall be the responsibility of the Promoter to hand over the necessary documents and plans including common areas to the association of allottees or the competent authority, as the case may be, as per the local laws.”* Section 16 (4) of the Act, 2016 provides that *“on formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the*



association of the allottees.” According to Section 19(3) of the Act 2016, “*the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4*” and Section 19(9) stipulates that “*every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same*”. Hence it is explicit from the above provisions that the Association of allottees is having an indispensable role in a real estate project.

7. However, on a close scrutiny of the provisions of both the Kerala Apartment Ownership Act 1983 and the Real Estate (Regulation & Development) Act 2016, it can be seen that the Kerala Apartment Ownership Act 1983 refers only with the apartment/residential real estate projects in Kerala whereas the Real Estate (Regulation & Development) Act 2016 represents both commercial and residential projects in the State which can be identified from the definition of the term ‘Apartment’ as per Section 2(e) of the Act 2016. When Section 11(4) (e) of the Act 2016 prescribes it as the duty of the Promoter *to enable the formation of Association within three months of the majority of allottees having booked their apartment/plot/building*”, Section 2 of the Kerala Apartment Ownership Act 1983 lays down that “*this Act applies only to property, the sole owner or all of the owners of which submit the same to the provisions of this Act by duly executing and registering a declaration as hereinafter provided: Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used, or proposed to be used, for residential purposes*”. As per the Act 1983, the Association of allottees is defined as “*all of the apartment owners acting as a group in accordance with the bye-laws and the declaration*”. From the above, it can be found



that while the Act 1983 indicates association of owners, the Act 2016 refers it as association of allottees. In the Act 1983, nothing has been specified in detail as to process of formation of an association and issuance of a certificate of registration to such an association. In the Act 2016 it does not prescribe under what law the Association is to be registered but only mentions that the Association can be formed "under the laws applicable". Even though clashes are apparent among the provisions of both these Acts as aforementioned, both the Acts indicate that the Association shall be formed with participation of majority of the allottees in the project. After hearing several complaints in the past 3 years received by this Authority, I felt that that the Association of allottees in such a real estate project plays a significant role, especially after taking over the project from the Promoter, in providing the allottees a smooth and comfortable living and maintaining the project properties and common areas in the proper manner. Hence the process of enabling formation of association of allottees in such projects shall be done by the Promoters with utmost responsibility and diligence by making sure that each and every one of the existing allottees of the project has obtained opportunity of participation in the formation of association and the office bearers have been elected purely in a democratic manner. Similarly, the promoters shall handover the Association of Allottees formed and registered, the common areas and documents pertaining to the whole Project including title deeds of the Project land, drawings and sanction and approvals obtained for the Project in a meticulous manner. This Authority received complaints from ~~some~~ residential projects where the issues arose mainly due to the existence of multiple associations formed by rival groups of allottees and it is so unfortunate that in such cases, the whole property made up of the hard-earned savings of the allottees themselves is getting damaged day by day for the lack of proper maintenance of the common properties in the project.



Hence, I am of the view that only a single Association shall be permitted to be formed and existed in such Projects representing all the allottees so as to protect the project properties and thereby the interest of the allottees therein and the participation/membership in the association and remittance of maintenance charges shall also be made mandatory in the case of each and every allottee of a project irrespective of their occupancy status there. However, the Kerala Apartment Ownership Act, 1983 needs to be amended urgently to make it in harmony with the provisions of the Real Estate (Regulation & Development) Act 2016 through which only the abovementioned issues could be resolved. On the basis of the above discussions, it can be safely held that the Association of allottees in a real estate project should have participation of majority of allottees of the project. As far as the Complainant association in the above complaint is concerned, it is obvious that majority of allottees of the project have no participation and the certificate of registration obtained by them has been challenged by some other allottees of the project and the Writ Petition is pending consideration of the Hon'ble High Court of Kerala. In view of the above, I hold that the Complainant Association consisting of only 10 members out of a total 572 allottees in the project, cannot be considered as an association of allottees as envisioned under the Act 2016, capable of approaching this Authority as per Section 31 of the Act 2016 and hence the above Complaint is liable to be dismissed.

Sd/-

Smt. Preetha P Menon
Member



ORDER OF THE AUTHORITY

In view of the aforementioned facts and findings, it is unanimously found by the Authority that the contentions of the Complainant Association cannot be accepted and hence the above complaint is hereby dismissed. Both parties shall bear their respective costs.

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 produced by the Complainant

1. Exhibit A1- True Copy of the Apartment Buyer's Agreement entered into between the Respondent company in favour of Mr. Vishnu K dated 12.03.2015.
2. Exhibit A2- True Copy of the letter dated 6th March 2020 issued by the Respondent company to the Complainant.
3. Exhibit A3- True copy of the letter dated 13.05.2020 issued by the Respondent company to the Complainant.
4. Exhibit A4 Series- True copy of the judgment dated 10.03.2021 in WP(C) 24053/2020 passed by the Hon'ble High Court of Kerala.
5. Exhibit A5- Copy of the Certificate No. 2068/2020/D4 dated 29/01/2021 issued by the deputy collector and competent Authority under the Kerala Apartment Ownership Act 1983.

Exhibits produced by the Respondent

1. Exhibit B1- True copy of the Government order G.O. (P) No.65/2019/LSGD dated 05.10.2019.
2. Exhibit B2- True Copy of the Public Notice dated 27.02.2019 issued by the Secretary (Legal) of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram.
3. Exhibit B3- True Copy of the Public Notice dated 22.02.2019 issued by the Chairman of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram Exhibit A4- True copy of the web portal published by the Respondents.
4. Exhibit B4- Copies of Occupancy Certificates issued by the Corporation of Cochin.



5. Exhibit B5- True Copy of the email dated 12.10.2018 sent to all the allottees.
6. Exhibit B6- True Copy of the email dated 05.11.2018 sent to all the then apartment owners
7. Exhibit B7- True copy of the draft Bye-laws
8. Exhibit B8- True Copy of the Minutes of the meeting dated 24.11.2018
9. Exhibit B9- True copy of the Minutes of the meeting dated 22.09.2019
10. Exhibit B10- True copy of Signed copy of the Bye-laws of the association
11. Exhibit B11- True Copy of the e-mail dated 11-12-2019 sent by the Respondent
12. Exhibit B12- True copy of the e-mail dated 05-03-2020 sent by the Respondent to the apartment owners
13. Exhibit B13- True copy of the e-mail dated 06-03-2020 sent by Mr. Sunil Kumar, Secretary of the apartment owners association
14. Exhibit B14- True copy of the e-mail dated 06-03-2020 sent by the Respondent to the apartment owners association
15. Exhibit B15- True copy of the e-mail dated 13-05-2020 sent by the Respondent to Mr. Sunil Kumar, Secretary of the apartment owners association
16. Exhibit B16- True copy of the e-mail dated 26-11-2020 sent by the Respondent
17. Exhibit B17- True copy of the First Agreement for sale executed on 07.01.2013



18. Exhibit B18- True copy of the first sale Deed executed on 31.12.2016.

19. Exhibit B19- True copy of W.P (C) No. 20630/2021 without Exhibits
Filed by C.S Kumar and another before the Hon'ble Kerala High Court.