



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 141/2022

Dated 21st July 2022

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

Complainants

1. K.K Mathai
Memoria Garden,
Manjadi P.O, Kuttapuzha Village,
Thiruvalla, Pathanamthitta.
2. Sosamma Mathew,
Memoria Garden,
Manjadi P.O, Kuttapuzha Village,
Thiruvalla, Pathanamthitta.

Respondents

1. M/S AVS Builders
Rep: Managing Partner, Abraham Joseph
Deepa Tower, Thiruvalla P.O
Thiruvalla Village, Thiruvalla
2. Shini Varghese
Managing Partner, W/o Abraham Joseph
Vakyapallath House,
Kallunkal P.O, Thiruvalla.



The Counsel for the Complainant Adv. Shijimol M. Mathew was absent. The Respondent also remained absent as it is noticed that the notice sent to the Respondent No.1 was returned as “unknown” and the notice issued to R2 is not yet served.

ORDER

1. The facts of the complaint are as follows: In the 1 acre land owned by the complainants 50.1 cents of land was provided to the respondents for the construction of the apartment complex named “AVS serene Garden”. An agreement was also entered into between the petitioner and the Builder on 19.04.2008 and subsequently due to the change in the partnership a supplementary agreement was also executed. As per the agreement dated 19.04.2008 and the agreement dated 04.05.2015 the respondent initiated the work. The complainant submitted that the work was totally delayed due to various reasons and there is a violation of the terms in the agreement. The period of the agreement was 2 ½ years, but the work is not yet completed and somehow the respondent managed to arrange an occupancy certificate even without completing the work. It is also submitted that the occupation in the apartment were initiated from 2014 onwards by the respondents and whereas the occupancy certificate was secured only in the year 2016. The Reliefs sought by the complainants are to direct the respondents to pay labour welfare fund, building tax, luxury tax, etc of the building and produce a copy of the receipt of the same to the complainants as mentioned in the agreement, for which the total amount was received by the respondents from the allottee.



2. The agreement for development of land dated 19-04-2008 between the complainants and Abraham Joseph, Abraham V Thomas and A.V George in their individual capacity was produced and Marked as Exhibit A1. Another agreement for development of land dated 14.05.2015 executed between the complainant and Abraham Joseph and Shini Varghese was also produced is marked as Exhibit A2. Though another agreement dated 24.08.2016 executed between the complainants and Counter petitioners is referred to in the list of enclosures, there is nothing in the document to prove that it is an agreement. Similarly, another agreement dated 26-07-2018 between the complainants and Abraham Joseph is also referred in the list of enclosures, but there is nothing in the document to prove that it is an agreement as referred to in the list of enclosures. The other documents produced by the complainants are, copy of the assessment notice, copy of the notice issued by Thahasildar dated 28.02.2020 and 02.08.2021, and the copy of notice issued by the assessing authority. There is no document or agreement produced by the complainant to include the firm as respondent No.1, represented by the Managing Partner, and Respondent No.2, as Managing Partner.

3. Considering the fact that the occupancy certificate of the apartment was received in the year 2016 as admitted by the complainants in the complaint itself and during the hearing on 06/07/2022, this project "AVS Serene Garden" is not a real estate project that can be registered as an ongoing project under section 3 of the Real Estate (Regulation and Development) Act 2016. It is also observed that the reliefs sought by the



complainant will not come under the purview of the Real Estate (Regulation and Development) Act 2016. Hence the complaint is hereby dismissed, as not maintainable before the Authority.

Sd/-

Sri M.P Mathews
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



[Handwritten signature]

Secretary (Legal)

Jobin.



APPENDIX**Exhibits on the side of the Complainants**

Exhibit A1 : Agreement for development of land dated 19-04-2008

Exhibit A2 : Agreement for development of land dated 14.05.2015

