



**REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 153/2021**

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

Dated 6<sup>th</sup> Day of July 2022

**Complainant**

Sri. D Gopalan and S. Sumitha Thankachy  
Makairam, JNTS Street, Kottamom,  
Arayoor P O, Thiruvananthapuram

**Respondents**

1. M/s Ajay Dwellings(P) Ltd  
T C 9/2041-1, Opposite Alakapuri Auditorium,  
Kochar Road, Sasthamangalam P O,  
Thiruvananthapuram-695010
2. Mr. Sreejith Krishna  
M/s Ajay Dwellings(P) Ltd,  
Sreemangalam, Peraikonam,  
Vazhichal P O, Thiruvananthapuram –  
[Adv. K S Abhilash]



The above Complaint came up for virtual hearing on 07/02/2022. The Complainant and counsel for the Respondent attended the hearing.

### ORDER

1. The Complainant is a retired Air India Employee settled in his home Town Trivandrum. The 1<sup>st</sup> Respondent is a Private Limited Company engaged in the business of construction and sale of apartments. The 2<sup>nd</sup> Respondent is the Director of the 1<sup>st</sup> Respondent Company. The 3<sup>rd</sup> Respondent is the manager of the said Company. The plot of land Scheduled here is absolutely owned by Mr. Viswambharan Bhaskaran & Smt. Sheela Viswambharan (Land Owners). The 1<sup>st</sup> Respondent/Builder had constructed a two-storied residential building with 12 flats with common areas, stair case, free car parking facilities, and 95% of the works were completed. The Complainant booked a 2 bedroom apartment numbered as 1 B named Vishwam apartment, Netteknam, Kazhakuttom, Thiruvananthapuram at a cost of Rs. 38,00,000/- for which they have entered in a Sale & Construction Agreement. At the time of the agreement, the Respondent totally said that the flats are ready to be handed over to the purchaser and there are some interior works pending which will be completed within two months. The 2<sup>nd</sup> Respondent is also having two flats in the same apartment. The Complainant submitted that he had paid all the payments part by part for which receipts have been issued by the respondent's office. The



Respondent had committed a breach of the said agreement and failed to complete or hand over the flat within the stipulated time. The Sale Deed had been made by the landowners (sellers) Mr. Viswambharan & Sheela Viswambharan on 20/09/2019 at Sub Registrar Office, Kazhakootam, Thiruvananthapuram in the presence of 2<sup>nd</sup> & 3<sup>rd</sup> Respondents. Thereafter, when the Complainant approached the Respondents for the original deeds, the Respondents demanded an additional amount of Rs. 2,37,000/- and was assured to return it back once the other flats are sold. The Complainant received the original sale deed after paying the said amount. It is submitted that the 2<sup>nd</sup> Respondent handed over one set of flat keys in which there were no electrical fittings done and the same was fitted from the Complainant's own pocket. There was no regular power supply and no pipeline provided. The Complainant submitted that the apartment work was not completed and no completion certificate has been issued by the Respondent. Due to the inordinate and unexplained delays on the part of the Respondent. The Complainant has been put to several inconveniences and more financial difficulties. The relief sought by the Complaint is to i) Direct the Respondents to complete the pending works of the apartment at the earliest. ii) Direct the Respondents to pay back the amount of Rs. 2,37,000, which they agreed to pay back to the complainant. iii) Direct the Respondent to pay the relief as per the authority rules. iv) Direct the Respondent to provide separate electricity bills and water bills. The documents submitted by the Complainant has been marked as Exhibit A1 to A4.



2. The Respondents filed a written statement and submitted that the Complaint is not maintainable either in facts or on law and there exists no cause of action for filing this complaint and relief claimed in the petition are not sustainable before this Hon'ble Forum. Also, the present complaint is barred for non-joinder of necessary parties as owners of property are not arrayed as parties to this complaint. The First Respondent company along with landowners completed the said Project. The landowner obtained a building permit bearing no. BP 65/15-16 and thereafter the work was completed within one year. Even before entering into an agreement between the Respondent and Complainant the entire work had been completed and obtained building number T C 1/4878(5) from Thiruvananthapuram Corporation. As per the joint venture agreement between Respondents and the Landowners, the respondent completed the said apartment Project in time in the Complaint schedule property. The Respondent along with land owners completed the said Project for their own purpose and only some of them were offered for sale. Before entering into the agreement, the Complainants had inspected the said flat no. 1 B several times and on satisfaction only they were ready to purchase the said flat. Thus, the Complainant and respondent entered into an agreement dated 01.08.2019. As per the agreement the sale consideration of said flat alone is Rs. 38,00,000/- and other expenses like local taxes, GST, etc were to be paid by the Complainant. As



per Respondents, the said other expenses are not paid by the Complainant and the Respondents were constrained to pay the same which included corporation taxes also. As per the terms of the agreement, the Respondents have the absolute right to get the amount reimbursed from the Complainant. The payments made by the Complainant were irregular as per the agreed payment schedule for the flat. Also, it is pertinent to note that even though there is a clause in the agreement for charging interest for irregular payments, the respondent had not charged any interest till date. The Complainant was so particular on payment that he will pay the full consideration only after the due inspection of all works including amenities and facilities. The Respondent handed over physical possession of the said flat to the complainant even before the date of registration. The Respondents submitted that they obtained the completion certificate and T C Number from the corporation a long back. Before the sale deed registration entire work including electrical works, waters supply works, common amenities and facilities have been completed and he expressed his full satisfaction and paid the entire sale consideration.

3. The Respondents submitted that at the time of registration, the Complainant requested the Respondent to make all arrangements for registration and pay stamp duty and incidental expenses including document writing fees and assured that, he will reimburse the amount paid by the Respondents for registration. The



Respondent on good terms made all the arrangements and spent the amount of Rs. 2,37,000/- for stamp duty purposes on behalf of the Complainant. It is pertinent to note that as per the said sale agreement and law all registration expenses including stamp duty, shall bear by the purchaser/ complainant. But even after several demands complainant was not turned up to reimburse the amount remitted by the respondent before the authorities. The Complainant filed this case only as counter-tactics in order to escape from the existing dues to respondents. The Complainant made a false and unsustainable allegation against the Respondent. The Respondents handed over physical possession of flats, on time. Please note that except the amount paid for the cost of flat Rs. 38,00,000/- and reimbursed registration fees of Rs. 2,37,000/-, Complainant has not spent even a single penny for other necessary expenses, charges, and fees payable to various Government departments, which he is bound to pay as per agreement and law. As there is no breach or latches from the respondent side, the Complainant came up with a cooked-up story that he fitted the electric switches and sockets. The Respondent provided all the equipment, amenities, service, and facilities as per the agreement. The Respondents also submitted that there are no complaints from any other customer except this complainant. The other customers already applied for ownership certificate and obtained from the corporation. The Complainant had made an illegal alteration by erecting a steel grill door in the front of the main door of his flat which is opening towards the entrance. Even



now, he is not ready to remove the said illegal alteration made by him. Moreover, the Complainant even fails to point out specifically what work is pending in the building. The complainant has separate electric connection in his flat. It was submitted that the Complainants are not entitled to get any relief claimed as well as compensation and refund of any amount from the Respondent. The Complaint is highly belated, and speculative filed with ulterior motive and as counter-tactics to get undue enrichment by misusing the new Act. Hence the Respondents, prayed to dismiss the Complaint with the cost of the Respondents. The copies of the Sale & Construction Agreement dt. 01/08/2019, the Sale Deed dt. 20/09/2019, the 1<sup>st</sup> Respondent showing the total payment of Rs. 38,00,000/- up to 25/10/2019, the receipts of the excess payment of Rs. 2,37,000 made to 1<sup>st</sup> Respondent dt 20/09/2019, has been produced by the Complainant which are marked as Exhibit A1 to A4.

4. Heard both parties in detail. It is found that Sale Deed has already been executed in favour of the Complainant. The counsel for the Respondent submitted that there are 12 flats in total out of which 6 have been given to the land owner towards his share as agreed to him. As it was observed from the submission of the Parties that the said Project was an ongoing Project at the time of commencement of the Act, 2016 and not yet registered u/s 3 of the Act, the Authority has decided to direct the Respondent to register the Project under



section 3 of the Act,2016. It is observed that the main issue according to the Complainant is with regard to changing of service connections in his name. On enquiry, the Respondent's counsel confirmed that no association has been formed so far.


5. On the basis of the above facts and findings, invoking Section 34(f) & 37 of the Act, this Authority hereby passes the following order:-

- a. The Respondent shall solve the issues related to change of service Connection [Water & Electricity] in the name of the Complainant **within 2 weeks** from the date of receipt of this order.
- b. The Respondent shall complete the project as promised to the Complainant as per the agreement **within one month from the date of receipt of this order.**
- c. The Respondent shall register the project named 'Vishwam Apartment' under sec 3 of the Real Estate (Regulation & Development) Act,2016 **within 30 days** from the date of receipt of this order.

Sd/-  
Sri P H Kurian  
Chairman

Sd/-  
Smt. Preetha P Menon  
Member

/True Copy/Forwarded By/Order/

  
Secretary (Legal)





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

- Exhibit A1 : True Copy of Sale & Construction Agreement dt. 01/08/2019.
- Exhibit A2 : True Copy of the Sale Deed dt. 20/09/2019
- Exhibit A3 : True copies of the 1<sup>st</sup> Respondent showing the total payment of Rs. 38,00,000/- up to 25/10/2019
- Exhibit A4 : True Copy of the receipts of the excess payment of Rs. 2,37,000 made to 1<sup>st</sup> Respondent dt 20/09/2019

