



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

## Complaint Nos. 88/2021 & 155/2021

Dated 10<sup>th</sup> August, 2021

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

### Complainants

1. Viju Jacob, : Complaint No. 88/2021  
Apartment No: 10 C,  
Promenade Square Apartment  
Anayara, Near KIMS Hospital  
Trivandrum- 695029
2. Arun C Mathew : Complaint No. 155/2021  
Apartment No: 5 B,  
Promenade Square Apartment  
Anayara, Near KIMS Hospital  
Trivandrum- 695029

### Respondents

1. Ramji Subramaniam  
Managing Director  
750, C Block, 1<sup>st</sup> Main Road  
Aecs Layout, Kundalahalli  
Banglore, Karnataka-560037
2. Meenakshi Ramji  
Director  
750, C Block, 1<sup>st</sup> Main Road  
Aecs Layout, Kundalahalli  
Banglore, Karnataka-560037

3. Sreenivasan Subramaniam  
Director  
750, C Block, 1<sup>st</sup> Main Road  
Aecs Layout, Kundalahalli  
Banglore, Karnataka-560037

4. Joji Joseph  
General Manager  
Vettakulam Arcade,  
Near Mar Ivanious College  
Nalanchira, Trivandrum- 695015

5. Ratheesh K.R  
Assistant Manager Operations  
Vettakulam Arcade,  
Near Mar Ivanious College  
Nalanchira, Trivandrum- 695015

### **COMMON ORDER**

1. As the above two Complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No: 88/2021 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Complainants in the above cases are owners of Apartment built by M/s. Sowparnika Projects and Infra structure Pvt. Ltd in the name "Sowparnika Promenade Square" located at Anayara, near KIMS Hospital, Thiruvananthapuram. The facts of the case in Complaint No: 88/2021 is the Complainant entered into an agreement with the builder in the year 2010, at the time of starting of the construction of the building. The builder has completed the

major portion of structural work by 2012. The Complainant received an email dated 02-11-2012 from the builder (marked as Exhibit A1) showing the car parking drawing (marked as Exhibit A2) asking Complainant to discuss his choice of car parking slot with Mr. Sanju Das, General Manager. The Complainants choice of car parking slot GF20 having permanent concrete roofing in the ground floor of the building was conveyed to the builder through email dated 06-11-2012 (marked as Exhibit A3). The builder has confirmed Complainants car parking slot GF20 by an email dated 07-11-2012 (marked as Exhibit A4) with car parking allotment letter Ref No. 0837/PS10C/CAR ALLOT/12 as attachment (marked as Exhibit A5). The Allotment letter reads as “ We are happy to inform you that Car Parking slot GF20 is allotted as per your request”. It is also submitted by the Complainant that before the execution of the sale deed in the year 2015 (marked as Exhibit A6), the Complainant has done site verification to assess the car parking slot GF20 which was allotted to the Complainant and confirmed that there is sufficient area for parking car as well as opening the doors. After verifying and satisfying the primary requirements, the sale deed was executed in March 2015. The Complainant started living in the Apartment since 2015. The construction of the retaining wall got delayed and completed in 2017. Occupancy certificate for the building was received on 28-09-2020 (marked as Exhibit A7) and apartment has got T.C No in November 2020 (Copy of ownership certificate is marked as Exhibit A8). However, the builder has not yet numbered the parking slots in the building and hence not given possession of Complainants allotted parking slot (GF20). In spite of having an allotted permanent parking slot, the Complainant left to hunt for a free parking space each time and have to park car in the open uncovered space many times which undoubtedly creates untold hardships. The reliefs sought by the Complainant is to allot possession of the car parking slot No: GF20 which had been allotted to Complainant in the year 2012.



3. The facts of the case in Complaint No: 155/2021 is the Complainant was approached by the representatives of Respondent and introduced their new Apartment Project consisted of 96 flats having Apartments with 2 and 3BHK options along with various common amenities like swimming pool, 4 lifts, club house, AC Gym, Children's Play Area etc. The Complainant has entered into an agreement for the purchase of Type B Apartment on the 5<sup>th</sup> floor. The total consideration was Rs 40,04,000 and an amount of Rs.10,00,000/- was paid as first instalment and all the balance amounts were paid on time as per the demand notice served by the builder. The Apartment was handed over in 2015. However, the reserved covered car parking as mentioned in the agreement has not been provided in the Apartment till now. The Complainant also alleged that only 3 out of 4 lifts and swimming pool as mentioned in the agreement have been installed in the Apartment. The reliefs sought by the Complainant is for allotment of the reserved car parking, installation of the 4<sup>th</sup> lift and for construction of swimming pool.

4. The Respondents 4 & 5 filed Written Statement in Complaint No.88/2021 and submitted that the Complaint is not maintainable before the Authority. The dispute raised in this Complaint is not a dispute coming under the Act,2016. The alleged dispute is a civil dispute to be adjudicated by the Civil Courts. The complaint is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties. The developer company was not made a party in the Complaint and the alleged association of the Apartment complex is also not made a party. Respondents 1 to 5 are totally unnecessary parties in this Complaint. The Authority has no jurisdiction to entertain these Complaints as the dispute is of a civil dispute. The substance of the Complaint is that the car park allotted is being used by other persons / Allottees. The alleged Association and its members are using the car parking allotted to the Complainant. The issue is an in-house dispute among the Allottees and the promoter is totally unconnected with the same. In

the agreement itself it is stated that the car parking allotted shall be enjoyed by the Allottees on first come first serve policy. Hence the Complainant cannot claim privilege over any particular car parking spot.

5. The 4<sup>th</sup> Respondent filed Written Statement in Complaint No.155/2021 and submitted that the Complaint is not maintainable before the Authority. The dispute raised in this Complaint is not a dispute coming under the Act,2016. The alleged dispute is a civil dispute to be adjudicated by the Civil Courts. Any short fall in common amenities is a matter coming under section 14(3) the Act for which only compensation is stipulated under the Act and for which application has to be filed before the Adjudicating Officer. The alleged Association and its members are using the car parking allotted to the Complainant. The issue is an in-house dispute among the Allottees and the promoter is totally unconnected with the same. The car parking was allotted on the basis of first come first served policy for parking the car. Hence the Complainant cannot claim a particular parking spot. Though 4 lifts are common facilities for which the Association only could raise claim for compensation. The Complainant who has accepted the occupation based on the completion plan is estopped from making claims now.

6. After hearing both sides and perusing the documents produced it is found that the Complainants are entitled to get separate covered car parking spaces in accordance with the promise made by the Respondent/Builder. If the unmarked car parks make any confusion or difficulty among the users, it shall be rectified by the Respondent/ Builder so as to arrange a comfortable living for the Allottees in the Project, hence the Authority hereby issues directions as follows:-

1. The Respondent / builder shall mark the car parking spaces of both the Complainants in Complaint No:88/2021 and 155/2021 by writing their apartment numbers in the respective car parks **within 15 days** from the date of receipt of this Order.
2. The Complainant in Complaint No: 155/2021 can approach the Authority with claim of compensation u/s 18 of the Act, 2016, if there is any deficiency of provision of common amenities as agreed as per the agreement.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)



## APPENDIX

### Exhibits on the side of the Complainants

- Exhibit A1 : Email dated 2/11/2012 from the builder for  
selecting the car park from the attached car park drawings
- Exhibit A2 : Drawing for ground floor car parking showing GF20 slot.
- Exhibit A3 : Email dated 6/11/2012 sent by Complainant to the builder
- Exhibit A4 : Email dated 7/11/2012 from builder informing  
car parking slot
- Exhibit A5 : Copy of car parking allotment letter dated 7/11/2012
- Exhibit A6 : Relevant pages of sale deed produced
- Exhibit A7 : Occupancy Certificate dated 28/09/2020
- Exhibit A8 : Ownership letter from Trivandrum Corporation  
dated 17/12/2020