



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

**Complaint Nos.156/2021,157/2021, 158/2021, 159/2021, 160/2021,
161/2021,162/2021& 181/2021**

Dated 11th November, 2021

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

Complainants

1. Prathibha A.P : Complaint No.156/2021
Kakkat House, Kadalundi,
Kozhicode-673302.
2. Zuhara Kottiyadan : Complaint No.157/2021
Liya Dale, Padikkapurath,
Olavanna P.O,
Kozhicode-673025.
3. Febina M : Complaint No.158/2021
Mattummathodi House,
Fire station Road,
Perinthalmanna,
Malappuram-679322
4. Noushad N.C, : Complaint No.159/2021
Navas Manzil,
Kolathara, Cheruvannur,
Kozhicode-673655.
5. Abin Palattummal & : Complaint No.160/2021
Nimisha Valsan
Palattummal, Chathamangalam,
Kozhicode-673601.



6. Ajesh M.D : Complaint No.161/2021
Nandanam, Menon Parambil,
Palakottu Vayal,
Kottamparambu P.O,
Calicut, Med.College,
Kozhicode-673008.
7. Lavanya Lakshman & : Complaint No.162/2021
Rahul Pookatu,
Karuthedath, Painkottupuram P.O,
Kozhicode-673571.
8. Shafeeque T : Complaint No. 181/2021
Risha Mahal, Chelambra P.O,
Padinhattinpadi, Malappuram-673637

Respondents

1. M/S TC-ONE Properties &
Projects Pvt Ltd.
Commercial building,
TC One Tower, Near Metro Cardiac
Hospital, Palazhi, Kozhicode-673014.
2. Ahmed Thazhe Chalikal
Chairman & Director,
TC One Properties & Projects Pvt.Ltd.,
Villa No.1, Leslie Villas, Karaparamba P.O,
Kozhicode-673014.

The above complaints came up for final hearing today. The Counsel appearing for the Complainants in all the cases Adv. B. Rajasekharan Nair along with some of the Complainants and the 2nd Respondent along with his counsel Adv. Noushad Kallada attended the hearing.



ORDER

1. As the above eight 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:156/2021 has been taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

The facts of the Complaint No. 156/2021 are as follows: - The Complainant is an Allottee of an apartment in Tower 2 of project named 'TC-One Skywalk', located at Olavanna village, Kozhikode Taluk, developed by the Respondent which is registered under section 3 of the Act. The Complainant have booked an apartment No.1E in the said project having a built-up area off 687 sq.ft. at a total cost of Rs.21,000,00/- and an agreement was executed between the Complainant and Respondent on 03/03/2017 in which it was promised to complete the project in all respects on or before 31/08/2019. As per the terms, total amount has been paid by the Complainant. But contrary to the terms of agreement, construction was not completed on time and likely to be further delayed indefinitely because of the negligence on the part of the Respondents. The progress in the construction of the apartment is not in a logical manner nor in compliance with the undertakings and intimations furnished by the Respondents. It is alleged that there is major deviation from approved plan and layout of the project, which are against the interest of Allottees and in contravention of section 14 of the Act. The Respondents have been compromising with the quality of materials used to complete the project. Cheaper and



substandard quality of materials is being used. Such a drastic deviation from original specification was done without obtaining any consent from Allottees. A commercial business complex was included in the project intended for exclusive use of Skywalk project Allottees, as per brochures. Now it is found that the commercial complex is converted to be a separate unit for other business plans of the Respondents. In another deviation, the swimming pool is found relocated to the space near the children's play area which is likely to affect the safety of children. The aforesaid deviations and alterations were done without intimation or consent of the Allottees. The Reliefs sought by the Complainant are (1) to direct the Respondent to supply copy of all documents related to the Apartment, sanctioned plan specifications of construction, list of amenities to the Complainants (2) to furnish details about deviations or alteration, if any from apartments marketing brochure as regards plan, layout, construction materials specifications or any other matter (3) furnish intimation on periodical stage wise completion of the apartment and project (4) direct the Respondent to pay interest, for delayed completion and handing over of flat, at the rate of 18% per annum, as per the provision in the Act. Copy of the agreement dated 03/03/2017, copies of brochure, Copy of building permit dated 16/09/2008, Copy of plan showing the total land area of 196 cents, Copy of drawing showing the car parking slots of Complainants, Copy of Engineer's Certificate dated 11/08/2021 are produced from the part of the Complainants.

2. The Respondent has filed statements of objection denying the contentions of the Complainants and submitting that the Complaint is not maintainable. It is stated by the Respondent that the actual completion date including grace period is 30/11/2019 and about 95% of the project work is already completed which can be seen in the certificate



issued by the Engineer. The Respondent further undertaken that he shall complete all the works on or before 11/11/2021, the date of completion as per the Certificate of registration under section 3 of the Act. The construction of the project is going very fast complying with all the undertakings and promises given to the Allottees. Only due to the pandemic situations and delayed payments of several Allottees some delay was happened but it was not willful or any other tactics of Respondents. The stage wise progress of the construction was informed to the Allottees and they have visited the site regularly. It is false that there are major deviations in demarcation of boundary and are in contravention of section 14 of the Act. No such deviations as alleged and the Respondents are complying the same construction as per the approved plan, it was also submitted to K-RERA website. The Complainant and several Allottees delayed their payments and without making full payment the Allottees are not entitled to get handed over their Apartments. There is no drastic deviation from original specifications. A commercial complex is not included in the project. But a commercial building will be there and that facility can be used by the Complainants. The swimming pool was not relocated to space near the children's play area. The swimming pool is constructed as offered in the amenities list and well located in 1st basement of Tower 2 maintaining privacy of users. The Complainants are not entitled to get any interest as prayed. The delay which was happened only due to the natural calamities and pandemic situations. There is a total amount of 9 Crores rupees in arrears from the Allottees. Copy of agreement dated 03/03/2017, copy of Engineer's Certificate dated 11/08/2021, copy of list of materials, copy of area calculation, copies of updated photos of the



project site, copy of application submitted for Occupancy Certificate are the documents produced by the Respondent.

3. Heard both sides in detail and perused the documents produced. It was noticed, during the initial hearing, that there are 2 residential Towers in the Project and Association has been formed only in Tower 1 of the Project but the association of allottees has not been formed in Tower 2 where the apartments of Complainants are situated and the project has not been completed as promised to the Complainants/allottees so far by the Respondent. Hence the Authority, vide interim order dated 12.08.21, directed the Respondent to give notices, within 5 days, to all Allottees and convene a meeting to form an Association as per Section 11 (4) (e) of the Act, 2016 and to submit minutes of meeting before the next posting date after serving copy to the Complainants. He was also directed to submit an affidavit regarding completion along with work schedule. The Respondent filed an Affidavit in compliance of order dated 12/08/2021 regarding the completion, along with work schedule and produced minutes of the meeting held on 26/08/2021. But the Complainants submitted that, notice was not served to all the Allottees and the meeting was not successful. They alleged that documents pertaining to the project were not handed over to them despite frequent requests and raised apprehension that the amount received from them are not being deposited in the designated account given to the Authority at the time of registration. The Respondent's counsel repeatedly alleged that the Complainants are not paying the due amounts towards consideration and huge amounts are due from some of them. Hence, the Authority, vide interim order dated 17.09.21, issued directions as follows: - (1) The Respondent shall give notices within 5 days



to all Allottees of Tower 2 and convene a meeting on 25/09/2021 to form an Association as per Section 11 (4) (e) of the Act, 2016. Arrangement shall also be made for virtual attendance of Allottees who were not able to attend directly. The Respondent shall submit minutes of meeting before the next posting date after serving copy to the Complainants. (2) The Respondent shall serve copy of approved plan and other documents related to the Project to Mr. Sujab, directly, on behalf of all the Complaints within 2 days. (3) The Respondents shall make sure that all the amounts paid by the Allottees are deposited in and dealt through the designated account only, which is opened as per Sec 4 (2) (1) (d) of the Act at the time of registration of the Project u/s 3 of the Act. If any violation is noticed, the Respondent shall be liable to penalty as provided under the provisions of the Act. (3) The Complainants shall pay the instalments due from them in accordance with payment schedule shown in their respective agreements. In compliance of order dated 17/09/2021, the Respondent convened a meeting with Allottees on 25/09/2021 and filed minutes of the said meeting showing that the Association was formed. He also produced the acknowledgement of submission of documents to Allottees as directed by the Authority. The Respondent filed an affidavit dated 02/09/2021 also undertaking that he will complete the whole project by 11.11.2021 including statutory approvals, amenities and facilities promised to the Allottees in accordance with the attached work schedule. But on 08/11/2021, the Respondent has filed a fresh petition seeking extension of time for handing over of the project stating that the fire and rescue and PCB related works are already completed, the departmental inspection is finished, all civil works have been completed and application for occupancy certificate is also submitted to the competent authority. But the



continued pandemic situation had interrupted the work frequently. He submitted that delay occurred from the part of competent authorities for issuing statutory approvals and an extension till 31/03/2022 is needed for handing over the project in all respects along with all the statutory approvals and sanctions. The Respondent has also obtained extension of Registration u/s 3 of the Act till 31.03.2022 on account of Covid-19 pandemic. The complainants did not file any objection to the said petition.

4. But on the same day, the Complainants filed separate IAs No. 216/2021, 217/2021, 218/2021, 219/2021, 220/2021, 221/2021, 222/2021 and 223/2021 raising certain allegations regarding deviations and alterations made by the Respondent in the approved plan of construction of the above project and seeking remedial steps and penal actions against the Respondent for violating the approved plan. The Complainants state that the project originally consisted of two residential Towers along with a commercial building where most of the amenities of Tower 1 &2 such as association office, mini supermarket, Gym, Spa, play school, Mini Theater etc. were proposed to be constructed. Now, the said commercial building is not a part of their project and it is converted as the headquarters of the Promoter/Respondent and in consequence, the entrance area and the walkway are made common to the Respondent's office and their future projects which is contradictory to the original plan and promise to the complainants which also affects the safety and security of the residents. When the common amenities supposed to be in the commercial building shift to Tower 2, it may also cause issues and disputes between the residents of Tower 1 &2. As per the plan 32.35 cents of land will be common for both builders and the complainants/allottees which could be



utilized by the builders for their upcoming projects and changes have been made in the demarcation of boundary intending to combine the adjoining land for upcoming project of the Respondent. At the time of booking, the Builder presented clear picture of a gated community of 3 Towers in their catalogue and promotional videos. When the complainants raised such issues, the Respondent removed all the said promotional videos from their websites. The Respondents have changed number of apartments from 144 to 162 which affected the car parking spaces of residents and visitors. Swimming pool design and location are not as per the plan which is likely to affect the safety of children. Laterite stone used initially for construction was replaced with low quality cement block. The glass being fixed at an elevated high wall is not in conformity with the safety standards which is a big threat to the lives of children and inmates. The design of Sky-walk which is the major attraction of the project, was changed completely on top floor to reduce cost by covering the glass portion in the original plan with brick and steel handrails which spoiled the beauty of the whole project. There is also no demarcation, specified boundary or compound wall for the project. The Complainants allege that abovesaid deviations have been done by the Respondents without consent of the allottees which is in violation of Section 14 of the Real Estate (Regulation & Development) Act, 2016. It is also alleged that the payments from the allottees are not routed through the designated account violating Section 4 (2) (l) (D) of the Act. The designated account given to the Authority is with SBI whereas the Respondent managed to pull the amount through HDFC Bank. Copy of intimation given by the Respondent to the Complainant's Bank is produced by the Complainant in complaint No. 160/ 2021. There found to be a vigilance case against the Project which is known from the local body. The



Respondent applied for Occupancy Certificate based on a false Completion certificate given by an architect and actual completion is 75% now which is certified by the architect engaged by the Association of allottees. Copy of said report is also produced. The Respondents did not file any objections to the said petitions.

5. The Respondents, in his counter statement as well as directly at the time of hearing affirmed that no deviations/alterations were done by them from the original plan and promise given to the allottees, as alleged by the Complainants. It is worthwhile to note here that if an allottee sustained any loss or damage by reason of any incorrect information contained in the advertisement or prospectus or model apartments, the said affected person has even the right to withdraw from the project and to get refund of the amount paid by him and to get compensation from the Promoter concerned as per the law. Here the original brochures have been produced by the Complainants which contains the photographs of the project, list of common amenities and specifications of materials to be used in the construction, etc. in detail. **Section 12** of the Real Estate (Regulation & Development) Act, 2016 reads as follows:

“Where any person makes an advance or a deposit, on the basis of the information, contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”.



Hence undoubtedly, the Respondent/Promoter is responsible to honour all the promises given to his allottees as per all the said documents as well as the agreement executed with them.

6. The Project in question is registered before this Authority as per Section 3 of the Act and obviously all the documents related to the project are available at the website of this Authority for perusal of allottees or intending purchasers. The Complainants can very well scrutinize the said details including that of the designated account and verify from the bank whether 70% of the amounts paid by them is getting deposited in the said designated account itself. Certainly, the intention of the provision under Section 4 (2)(1)(D) of the Act is to check diversion of fund of a project by its Promoter. Here, there is no case raised by the Complainant that the total amount remitted by the allottees have not spent in the project by the Respondent/Promoter. At the same time, the Respondent frequently alleges that many of the allottees are defaulters in making payments as per the progress of work and huge sum of money is still payable by some of the Complainants herein. The Respondent also stated in the affidavit that more than 6 Crores of rupees is due from the allottees of the said project. Regarding the allegation with respect to the commercial building and swimming pool, the Respondent confirmed that the commercial building will be there in the project which can be used by the Complainants and the swimming pool was not relocated to space near the children's play area. The swimming pool is constructed as offered in the amenities list and well located in 1st basement of Tower 2, to protect the privacy of users. Similarly, the Respondent has no right to utilize any portion of the project land for any other purpose or for their upcoming projects. Moreover, clause 18 of the Exbt. A1 series Agreements for sale



& construction executed between the complainant and the Respondent itself stipulates that "The Promoter undertakes that it has no right to make additions or to put up additional structures anywhere in the project after the building plan has been approved by the competent authorities except for as provided in the Act". So, there is no room for an apprehension in that regard. Furthermore, the Respondent admitted the delay occurred in completion of the whole project as promised to the Complainants and as per Section 18 of the Act so the Complainants are bestowed with the right to seek interest for delay in getting handed over their apartments. At the same time, we have also taken note of the frequent allegations from the part of the Respondent that huge amounts are still pending due from the allottees including some of the Complainants. It must be noted that it is the responsibility of the Allottees to make payments in the manner and within the time specified in the agreement for sale failing which the defaulting allottee shall have to pay interest for the delayed payment. Section 19 (6) & (7) of the Act reads as follows:

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any. (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

7. Regarding the allegation of the Complainants as to deviation/alteration done by the Respondent from the approved plan, it is to be noted that the Promoter is not supposed to make any additions or alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings, and amenities, without the previous consent of the allottee or previous consent of at least two-thirds of the allottees, as provided under Section 14 of the Act. It also specifies that in case of any



structural defect, quality, defect in workmanship or provision of services, or any other obligations as per the agreement within a period of 5 years from the date of handing over possession, the allottee will be eligible to get compensated, if it is not rectified by the Promoter. **Section 14** of the Act, 2016 reads as follows:

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(i) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.
Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name, or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

8. With respect to the allegations related to the deviation of approved plan, the project is yet to obtain Occupancy Certificate and it will be issued by the local authority only after ensuring



that the construction is completed in accordance with the approved plan. Hence, our interference in that aspect not necessary at this point of time especially when the project is at the verge of obtaining Occupancy Certificate. The documents produced from the part of the Complainants are marked as Exbts.A1 to A6 and the documents produced from the part of the Respondents are marked as Exbts.B1 to B10. After hearing both parties in detail and examining the documents produced, the Authority is convinced of the delay occurred in completion of works in the project including common amenities offered to the Allottees even after a long period and that the Respondents have pathetically failed to honour the promises given to the Complainant. Nevertheless, the Respondent has admitted the delay occurred in the completion of the project and has filed an affidavit with petition seeking extension of the date of completion to 31/03/2022 and undertaking to complete the whole project with all the amenities and facilities offered to the Allottees and with all the mandatory sanctions and approvals. The Complainants also agreed that they are ready to wait till 31.03.2022 subject to consideration of the aforesaid apprehensions raised by them.

9. In view of the above facts and findings, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows: -

1. The Respondent/Promoter shall complete the entire works of the project "TC-One Skywalk Tower 2" with all the mandatory sanctions/approvals and common amenities/ facilities as promised to the Complainants and hand over possession of the apartments to the



Complainants in accordance with the terms of the agreement executed with them on or before 31/03/2022 without fail.

2. In the event of failure on the part the Respondent to complete the entire works of the project as stated above 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.

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 on the side of the Complainants

- Exhibit A1 series : Copy of the agreement dated.
- Exhibit A2 : Copy of brochure.
- Exhibit A3 : Copy of building permit dated 16/09/2008.
- Exhibit A4 : Copy of plan showing the total land area of 196 cents.
- Exhibit A5 : Copy of drawing showing the car parking slots of Complainants.
- Exhibit A6 : Copy of Engineer's Certificate dated 11/08/2021

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of agreement dated 03/03/2017.
- Exhibit B2 : Copy of Engineer's Certificate dated 11/08/2021.
- Exhibit B3 : Copy of materials list.
- Exhibit B4 : Copy of area calculation.
- Exhibit B5 : Copy of site update photo.
- Exhibit B6 : Copy of application submitted for Occupancy Certificate.
- Exhibit B7 : Submission Report of Fire & Rescue NOC.
- Exhibit B8 : Copy of application for consent for PCB.
- Exhibit B9 : Copy of status list of amenities and facilities.
- Exhibit B10 : Affidavit dated 09/11/2021 filed by the Respondent.

