



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

**Complaint No: 162/2023
Dated 9th November, 2023**

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

Complainant

1. Mallika Raja, 54 years,
W/o Krishna Prasad Raja,
A8, Crown Hill Apartments,
(Opp. The New Indian Express),
East Hill Road, West Hill P.O,
Calicut, 673005;
2. Umadevi Raja, 84 years,
W/o the late PAKV Raja,
Sudharma, Nilambur Kovilakom,
Nilambur P.O, Malappuram - 679329

[Adv. Bhoj Raj S J]

Respondents

1. M/s Bhumi Integrated Property Management Services,
Represented by its Managing Partner. Rajeev A.K,
Satsang, Building No. 7/180,



Gotheeswaram Beach Gardens,
Old Military Road, Beypore,
Calicut - 673015

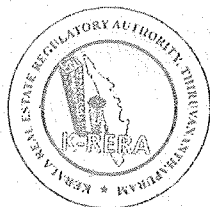
2. Rajeev A K, 46 years,
S/o Rajan A.K, Kanyadath House,
Karuvassery P.O,
Calicut - 673010
3. P Subhash Chandran, 72 years,
S/o the late Kuttikrishnan Nair,
Geeth, 1/4510, Near Devi Nagar Housing Colony,
Bilathikulam, Calicut
4. N P Brijesh, (PoA Holder of Mr. Premjith Nair),
S/o Padmanabhan Nair, Chaithanya,
Meppadi, Nadakkavu P.O,
Calicut – 673011
5. Dr. K R Sarathchandran, 76 years,
S/o late N Raghavan, Shreyas,
Beypore, Calicut-67015
6. Ms. Girija,
Personal Secretary/Chief Accountant to Dr. K R Sarathchandran,
R M Hospital, near KSEB,
Beypore, Calicut-673015
7. Ms. Saritha, D/o Dr. K R Sarathchandran,
76 years, S/o late N Raghavan,
Shreyas, Beypore,
Calicut-673015
8. N P Premjith Nair, S/o Padmanabhan Nair,
Chaithanya, Meppadi,
Nadakkavu P. O,
Calicut-673011



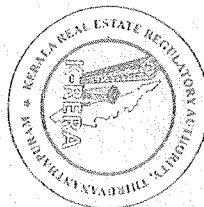
The above Complaint came up for Virtual hearing on 06-10-2023. The Counsel for the Complainants Adv. Bhoj Raj S J and the Counsel for Respondent No.1 Adv. Harris M attended the hearing.

ORDER

1. The Complainants are 'Allottees' of the project named 'SATSANG-PRIVILEGED COMMUNITY LIVING FOR THE ELDERLY' a residential project approved by Kozhikode Corporation under approval No. BZ/TP/5177/2014. According to the Complainants they had already paid the entire amounts, as per the Agreement with the 'Promoters', for the purchase of 2 apartment units. The 1st Respondent is a partnership concern engaged in the development of real estate properties and constructions therein; the 2nd Respondent is its Managing Partner. 3rd Respondent is another active partner; the fourth is the Power of Attorney Holder of Mr. Premjith Nair, one of the land owners. The 5th Respondent is the land owner, and the 6th Respondent, his personal Secretary/Chief Accountant who had dealt with him in accounting and other money transactions in the project concerned; the 7th Respondent is his daughter having a major role in the entire transaction. The 8th Respondent is also an owner of a lesser portion of the land having easement rights and he had given a Power of Attorney to his brother, the 4th Respondent herein. He was holding the common



area for which all allottees had paid and, thus, they had equal rights and access thereto. On 26.04.2012, four persons, viz., Krishna Prasad Raja, 2nd Respondent, 3rd Respondent, and Dinesh Varma formed the said concern, primarily intended to partake Consultancy Services related with real estate. The said Krishna Prasad Raja was the husband of the 1st Complainant and the son of the 2nd Complainant herein and due to his ebbing health, his participation in the partnership was restricted. Her younger daughter was a paraplegic and confined in her wheel chair with 100% disability. His advisory/supervisory role in the partnership continued till 30.03.2022, on which date he tendered his Resignation: one of the reasons was that the other partners were about to clandestinely deal/encumber with the project properties, particularly the common area of 15 cents of land with the existing building ear marked for the common use of all the allottees- of which, this common area was not supposed to be transferred to anyone – of the illegal enrichment of those partners detrimental to the interest of the 1st Respondent and others including the Complainants. This project had also been considered to be finished by 2019, but not completed as per the terms of the original agreements. The Managing Partner of Bhumi was Krishna Prasad Raja; he being the husband of the 1st Complainant, she, considering the social relevance of the project, decided to invest into this project by investing therein along with her aged father, and an Agreement had been executed on



28.10.2016 by them. Two unfinished units of apartments (1151 sq. ft, 575+576 sq. ft with 2/18th undivided share in the land) were sought without doing the interior works- the reason for that was to customize it by the allottees themselves desirable for the convenience and use of the paraplegic younger daughter – and payments had been affected duly to the promoters on different dates. It was pertinent that, the 1st Complainant and her husband were at Chennai, and the originals of the Agreement was with the Respondents 2 and 3, and, when they gave it to the Complainant it was tampered. While so, the 1st Complainant's father died on 14.03.2017; and, thereupon, as there became a necessity for the induction of a senior citizen, the 2nd Complainant had been inducted as an allottee. Even so, the payments continued and by 31.09.2019 the last remittance was tendered and, by then, an amount of Rs. 25,30,000/- plus taxes had been paid by the Complainants to the promoters. Thus, on 12.01.2018, sale deed for, only the 1/18th undivided share -not the 2/18th share as originally agreed and had been paid in full with taxes by the 1st Complainant and her father to the 5th Respondent, who had received the amount for the 2/18th share and access road with common facilities, was executed in their favour by the promoters on the part of the landowners as Sale Deed No. 96/1/2018 of the SRO, Meenchantha. The original of the document had been later received by the 2nd Respondent from the husband of the 1st Complainant for taking Electric connection



on 19.10.2019, and the same had not been returned. Thereafter, on 23.08.2018, an agreement of sale and construction was executed in favour of one Mr. Pushparaj by the Complainants on one part and Bhumi along with the landowners and he had moved into one of the units earmarked for the Complainants and his old aunt stayed therein in the adjacent apartment. During March 2019 the 1st Complainant came to know from her husband, the 2nd and 3rd Respondents had ditched the Satsang project and diversified on to a hotel business with all the cash and material stock from the Satsang site. The 1st Complainant's husband took hand loans and took care of Aunt and, also, the Pushparaj for the next 12 months and informed them to pay for common expenses which they were reluctant. However, if the 2nd Respondent demanded, they would readily pay him, who would misappropriate it for his personal needs. Finally, on March 9th 2020, the 1st Complainant's husband shifted Aunt to an Old Age Care Center at Trichur and requested Mr. Pushparaj too to move out as the 3rd and 5th Respondents were not coming forward for a compromise, but Pushparaj was adamant in not moving out. The 1st Complainant made to understand that Pushparaj had only paid a token advance of less than Rs. 5 lakhs and it was difficult to complete the interiors; therefore, she gave permission to her husband to pay Rs. 2 lakhs on 29.11.2019 and assured that Pushparaj would pay a monthly rent of Rs. 7,000/- till registration and full payment. But, he did not. It was pertinent



that only when the said Pushparaj's Complaint, Complaint No. 138/2023, before the K-RERA had come to her notice, she came to know about the huge amount the Respondents 2 and 3 had collected in her name as cash without her knowledge. A huge amount of Rs. 16 lakhs had been collected in cash by Respondents 2 and 3 which had never reached the Complainants. Following amounts had been expended/spent in this regard by her husband on behalf of Mr. Pushparaj during 2019 to March, 2022 and had not been received by the 1st Complainant from the said Pushparaj as assured by the 2nd Respondent: - (i) Initial setting up monthly Maintenance cost for 3 years: Rs. 50,000/- (ii) Rental arrears Rs. 7,000 per month for 48 months, totaling Rs. 3,36,000/- and (iii) Last unpaid KSEB bill for the year 2022 Rs. 4,000/-. The said Pushparaj vacated without prior notice too. The Complainant's husband too got aware of the financial irregularities only during Feb. 2019 when he started checking the accounts while verifying the stocks more closely. Therefore, the 1st Complainant did not owe any money to Mr. Pushparaj, and Bhumi alone had to settle his issue. The entire civil work pertaining to the bookings received was completed by January, 2019, and altogether 12 units were ready-to-use condition, with some minor finishing works. Application for building number was filed in August 2018 (BZTP114/6329/18), and Occupancy Certificate – as defined u/s 2 (zf), RERA, 2016 – was issued from the Kozhikode Corporation on 10-05-2019. However, by then,



three allottees had taken possession of their units. Now there were none residing. Thus, with the completion of the project and readiness to hand over possession on the part of the 1st Respondent, and with the issuance of the occupancy certificate the Complainants had been pressing for the transfer of title with respect to their units. As regards the registration charges an amount has already been set apart in the payments made. The said charges had been earmarked as per the calculations vogue in the year 2019. For any escalated charges if any, the Allottees were not responsible; it was the persons who were instrumental in causing the delay had to compensate it, for which the Owners and Builder (Promoters of the project) are liable.

2. The reliefs sought by the Complainant are as follows:-

(i) Immediate directions as per S. 37 of the Real Estate (Regulation & Development) Act, 2016, be issued against the Respondents, especially the Respondents 5 and 8, to come forward at the earliest and participate in the registration of the Title Deed as per S.17 of the RE(R&D) Act, 2016, in favor of the Complainants, before the SRO concerned (Sub Registry Meenchanthai, Kozhikode) with their passport size photographs, Identity Cards, PAN Cards, Aadhaar Cards, etc. and all necessary documents and ascribe their thumb impressions, signatures in all papers necessary for registration of the Title Deed pertaining to the two unfinished units of apartments (1151 sq. ft, 575+576 sq.



ft) comprised in the 2/18th undivided share (10.20 Ares of land comprised in Sy No. 55/56; Re Sy No. 173-11, Block No. 002, Vendor's Thandaper No. 3042 of Naduvattom Desom, Beypore Village, Kozhikode Taluk, Meenchatha Sub-District) which had been more specifically scheduled in the sale deed No. 96/1/2018 of Undivided share dated 12-01-2018:

(ii) Adequate compensation as envisaged under S.18(3) of the RE(R&D) Act, 2016 be awarded to the Complainants from the Respondents, especially from the Respondents 5 & 8, as they had failed, jointly and severally, to discharge the lawful obligations imposed on them and, thereby, in causing pecuniary loss and mental injury to the Complainants/Allottees in not duly transferring the title to them i.e., within three months after the issuance of the Occupancy Certificate by the local body concerned as per S.17 of the RE(R&D) Act, 2016.

(iii) To pass any interim order u/S 36 of the RE(R&D) Act, 2016 that may be sought by the Complainants during the course of the litigation.

(iv) Costs of this litigation may be passed and that may be ordered to be recoverable from the said Respondents, in such manner as may be prescribed as arrears of land revenue and

(v) direct the Promoters, the Respondents, to register the present project u/S 4 of the Act, if they had not done so hitherto as this project was an 'ongoing/incomplete one' as no Completion Certificate u/S 2(q) had till date been obtained and,



further, no Section 17 compliance had been done post issuance of Occupancy/Use Certificate from the local body

(vi) such other reliefs that may be asked during the course of the litigation.

3. In the counter statement filed by the Respondents No. 1, 2, 3 and 8 on 06.10.2023, it was stated as follows: - All allegations raised by the 1st Complainant, W/o Krishna Prasad Raja, Ex Managing Partner of M/s Bhumi Integrated Property Management Services, against the present partners were false, baseless and framed with evil motive. The whole project was managed by Mr. Krishna Prasad Raja, the husband of the 1st Complainant, in his capacity as Managing Partner till his retirement. In fact, Complainant No 1, is the wife of Mr. Krishna Prasad Raja, Past Managing partner of Bhumi and that the 1st Complainant had not included the name Mr. Krishna Prasad Raja in the petition who was the Managing partner of M/s Bhumi with an interest to protect her husband. The Complainants of this case are not the actual allottees. The averment by the Complainants that two flats were allotted to her was baseless. In fact, it was just an arrangement made by the Managing partner who was her husband to bring in the cash collected by him from the buyers to the account of Bhumi. There was no legitimate sale had happened to the 1st Complainant. Mr. Pushparaj was a genuine buyer who approached Mr. Krishna Prasad Raja through other partners of Bhumi, Respondents 2 & 3, for the purchase of apartment No. 7



in the name of the 1st Complainant. An agreement dated 23.08.2018 to this effect was executed between Mr. Pushparaj and Mrs. Pushparaj and signed by the Managing partner of Bhumi Mr. Krishna Prasad Raja. The initial booking amount of Rs. 3 lakhs were paid to the 1st Complainant. Even though 1st Complainant tried to take another 9 lakhs from Mr. Pushparaj, the same was objected by other partners of Bhumi. Thereafter, the balance amounts (keeping a small amount pending) was paid by Mr. Pushparaj to Bhumi which clearly cements the fact that the 1st Complainant does not own the apartment and it was just an internal arrangement. Moreover, on payment of amount to Bhumi, the 1st Complainant gave possession of the property to Mr. Pushparaj. All amounts collected from Mr. Pushparaj was with the consent and knowledge of the Managing partner. The entire process was masterminded by the managing partner, who was the husband of 1st Complainant who still owes the initial amount of Rs. 3 lakhs to Bhumi. 15.88 cents of land and building in it was transferred to M/s Bhumi with the consent and knowledge of the Managing Partner Mr. Krishna Prasad Raja. The same was insisted upon by all the partners of Bhumi and it was done only to protect the interest of the owners who invested in Satsang project. M/s Bhumi had made it amply clear in the RERA meetings that it was ready to transfer the above land to the Owners association once it is formed. Mr. Krishna Prasad Raja was unnecessarily dragging the name of Mr. Premjith Nair who



was a genuine owner who invested in Flats and Villas in this project. The same was being done deliberately in order to malign him, since Premjith Nair refused to comply to the demand of Krishna prasad Raja to transfer 15.88 cents to project land to his wife's name which the other partners of Bhumi also vehemently objected. This along with some financial irregularities committed by 1st Complainant in an earlier project resulted in serious differences in the partnership which resulted in Krishna prasad Raja quitting Bhumi. The 1st Complainant was not a genuine investor. She had filed this case at the behest of her scheming husband, the then Managing Partner of Bhumi, Mr. Krishna prasad Raja. The present Complaint was only an attempt to put a spanner in the works and to try and destroy any possible settlement between the parties, thereby hoping to earn something by muddying the waters and delaying the issue. The above case deserves to be thrown out in limine. She had no locus standi to file such a case against her husbands' partnerships for acts committed while he was the managing partner.

4. The Counsels for the Complainants and the Counsel for the 1st Respondent appeared and were heard on 06.10.2023. based on the submissions of the learned Counsels for the parties and on perusal of the documents produced the Authority decided to pass final orders in the Complaint. The application for registration of the real estate project as per Section 3 of the Act,

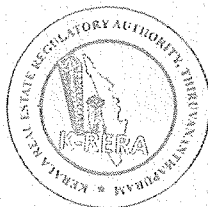


2016 has been submitted but the registration process is pending due to non-availability of relevant documents required.

5. Documents produced by the Complainants were marked as **Exhibits A1 to A12**. Copy of the agreement of sale and construction executed between the 1st Complainant and the 1st Respondent and one Krishna Prasad Raja, managing partner of the 1st Respondent firm, dated 28.10.2016 is marked as **Exhibit A1**. According to Exhibit A1 agreement, the 1st Respondent proposed to construct an Apartment Complex consisting of 18 Apartment units in the Plot 6 measuring an area of 25 cents as mentioned in Schedule B attached to the agreement. The 1st Complainant agreed to purchase 2 Apartment Units (Type B – Apt No. G6 & Type C – Apt No. G7) at Ground floor measuring $575 + 576 = 1151$ Sq. ft (Schedule C) along with $2/18^{\text{th}}$ undivided share of 25 cents of land with right to access as per the approved plan for a total consideration of Rs. 17,00,000/-. The 1st Respondent had undertaken to complete and handover possession of the constructed apartment to the Complainant within 20 months from the date of the agreement. Copy of the payment details for a period from 22.06.2014 to 12.05.2016 produced by the Complainant is marked as **Exhibit A2**. Copy of sale deed No. 96/1/2018 of the SRO, Meenchantha dated 12.01.2018 executed in favour of the Complainants by 5th and 8th Respondents, produced by the Complainant is marked as **Exhibit A3**. Exhibit A3 is executed by the 4th Respondent for and on behalf of the 8th



Respondent. Copy of the Occupancy Certificate dated 10.05.2019 issued by the Kozhikode Corporation in favour of the 5th and 8th Respondents is produced and marked as **Exhibit A4**. According to the Occupancy Certificate, the total plinth area is calculated as 1271.13 sq. m. Copy of the receipt dated 04.11.2019 for having paid the ownership change fees by the Complainants is produced and marked as **Exhibit A5**. The copy of the proceedings dated 04,11.2019 of the Secretary, Kozhikode Municipal Corporation for changing the ownership in the name of the Complainant is produced and marked as **Exhibit A6**. The copy of the land tax receipt dated 01.11.2019 issued by the Village Officer for having paid the tax for the 1/18 undivided share over 10.2 Ares of land in the property of Satsang Retirement Homes and others under Thandaper No. 3042/C6 is and marked as **Exhibit A7**. Copy of possession certificate dated 31.10.2019 issued by the Village Officer stating that the Complainants are in possession of the property covered by document No. 96/2018 in the 56.27 Sq. m land is produced and marked as **Exhibit A8**. Copy of the land tax receipt dated 15.06.2023 issued by the Village Officer for having paid the undivided share over 56.27 Sq. m of land under Thandaper No. 3042/C6 of Satsang Retirement Homes and others is produced and marked as **Exhibit A9**. Copy of the internet payment receipt dated 09.06.2023 issued by the Kozhikode Corporation for having paid the property tax by the Complainants in the Satsang Retired Privilege Homes is produced and marked



as **Exhibit A10**. Copy of the ownership certificate dated 12.06.2023 issued by the Kozhikode Corporation certifying that the building bearing No. 778/in ward49 (Old no. 180/C6 in ward 7) is owned by the Complainants in Satsang Retired Privilege Homes and produced and marked as **Exhibit A11**. Copy of the ownership certificate dated 04.08.2020 issued by the Kozhikode Corporation certifying that the building bearing No. 778/in Ward 49 (RW7/180/C6) is owned by the Complainants is produced and marked as **Exhibit A12**.

6. It is stated in the Complaint that on 23-08-2018 an agreement for sale and construction was executed in favour of one Mr. Pushparaj by the complainants on one part and 1st Respondent herein along with the Land owners. This Pushparaj had filed a Complaint No 138/2023 before this Authority in which the Complainants herein are the 8th and 9th Respondents. It is revealed from the agreement attached with the Complaint No 138/2023 that the proposed apartment was under construction in plot No 6 measuring an area of 1/18th share of 25.20 cents as mentioned in schedule B attached to the agreement and the Complainant in Complaint No. 138/2023 had agreed therein to pay the 1st Respondent and the Complainants herein total consideration of Rs 36 lakhs. Therefore only 1/18th undivided share could be transferred vide Exhibit A3 sale deed in favour of the Complainants herein.



7. It is evident from the documents produced by the Complainants that undivided share over an extent of 10.2 Ares (25.2 cents) of land has been transferred vide document No. 96/2018 in favour of the Complainants by the 5th and 8th Respondents and the ownership of the building bearing No. 778/49 is in the name of the Complainants. Hence, the 1st relief sought by the Complainants seeking direction to register the title deed as per Section 17 of the Act, 2016 in favour of the Complainants has no relevance. According to Section 17 of the Act, 2016, “the promoter shall execute the registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees, and the physical possession of the apartment to the allottees and the common areas to the association of the allottees. Here the registered conveyance deed in favour of the Complainants has already been executed and the ownership of the apartment has already been transferred to the Complainants. The undivided proportionate title in the common areas shall be transferred to the association of the allottees, if not already transferred to the individual allottees. The reliefs sought under Section 18(3) for compensation cannot be raised before this Authority and the Complainants have to approach the Adjudicating Officer appointed under Section 71 of the Act, 2016. As far as the relief sought by the Complainants with respect to the registration of the project under Section 3 of the Act is



concerned, the application under Section 4 of the Act has already been submitted by the Respondents and the same is under process by this Authority.

7. Hence the Complaint is dismissed as it is ex facie infructuous.

Sd/-

Preetha P. Menon
Member.

Sd/-

M.P. Mathews
Member

Sd/-

P. H. Kurian
Chairman

True Copy/ Forwarded By/Order



Secretary (Legal)

APPENDIX

Exhibits marked from the side of Complainants

- Exhibit A1: Copy of the agreement of sale and construction was executed between the 1st Complainant and the 1st Respondent dated 28.10.2016
- Exhibit A2: Copy of the payment details for a period from 22.06.2014 to 12.05.2016
- Exhibit A3: Copy of sale deed No. 96/1/2018 of the SRO, Meenchantha has seen executed in favour of the Complainants

- Exhibit A4: Copy of the Occupancy Certificate dated 10.05.2019 issued by the Kozhikode Corporation
- Exhibit A5: Copy of the receipt dated 04.11.2019 for having paid the ownership change fees by the Complainants
- Exhibit A6: Copy of the proceedings dated 04.11.2019 of the Secretary, Kozhikode Municipal Corporation
- Exhibit A7: Copy of the land tax receipt dated 01.11.2019 issued by the Village Officer
- Exhibit A8: Copy of possession certificate dated 31.10.2019 issued by the Village Officer
- Exhibit A9: Copy of the land tax receipt dated 15.06.2023 issued by the Village Officer
- Exhibit A10: Copy of the internet payment receipt dated 09.06.2023 issued by the Kozhikode Corporation
- Exhibit A11: Copy of the ownership certificate dated 12.06.2023 issued by the Kozhikode Corporation
- Exhibit A12: Copy of the ownership certificate dated 04.08.2020 issued by the Kozhikode Corporation

and/-