



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Complaints No. 152/2022 & 166/2022

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

Dated 23<sup>rd</sup> February 2023

**Complainants**

1. Harshita Vijayan  
T C 20/40(33), SNRA 10A,  
Sastha Nagar, Karamana P O,  
Thiruvananthapuram- 695 002  
Represented by Madhavan S  
Complaint No-152/2022
2. Sathish Babu M V  
C-10, SFS Pattom Square,  
Marappalam Road, Pattom,  
Thiruvananthapuram – 695 004  
Complaint No- 166/2022

**Respondents**

1. M/s Sowparnika Projects and Infrastructure Private Limited  
Registered office at No. 750, 'C' Block, 1<sup>st</sup> Main Road,  
AECS Layout, Kundalahalli,



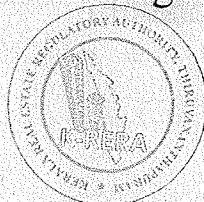
Bangalore- 560037  
Branch office at Vettakulam Arcade,  
Opposite Mar Ivanious College Main Gate,  
Nalanchira P O,  
Thiruvananthapuram- 695 015  
Represented by its Authorised Director S. Sreenivasan

2. Mrs. Meenakshi Ramji  
Director, M/s Sowparnika Projects and Infrastructure  
Private Limited, Flat No. 204, Sai Raghs, A Block,  
AECS Layout, Kundalahalli, Bangalore- 37.
3. S. Sreenivasan  
Authorised Director, M/s Sowparnika Projects and  
Infrastructure Private Limited, residing at Sowparnika Abode,  
Apartment PH2, 4<sup>th</sup> Floor, Vaikuntam Layout,  
Lakshminarayanapura, Near Apollo Pharmacy, Kundalahalli,  
Bangalore North, Bangalore, Karnataka- 560037.

The above Complaints are taken up for joint hearing as the project involved, the Respondents and the relief sought are same in both the complaints and the Complainant in Complaint No. 166/22, the counsel for the Respondent, Adv. Ravi Kumar and the President of the Association of allottees were present at the time of hearing.

## **ORDER**

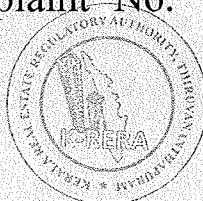
1. The Complainants in the above 2 complaints are the allottees in Project 'City Crown' developed by the Respondents. The reliefs sought by the Complainants are for



allotting permanent car parking as promised to them as per the agreements executed between them and the Respondents and as shown in the sale deeds executed by the Respondents in favour of the Complainants. Copies of agreements, sale deeds, mail communications etc. have been produced by the Complainants to prove their case. Later on, the Complainant in complaint No. 166/2022 filed an amendment petition I. A. 2/2023 for getting added in the prayer portion, a direction to the Respondents to pay the Complainant a sum of Rs. 67,34,818/- as interest for delay, based on the schedule submitted along with the petition. The Respondents 1-3 filed written statement and submitted that the Complaints are not maintainable either in law or on facts. According to the Respondents, the project 'Sowparnika City Crown' is not a registrable project under the Act 2016 as the completion certificate in respect of the said project was issued/approved by the Corporation before the commencement of the Act 2016 and the project was completed and handed over before the commencement of the Act and the Complaint is barred by limitation. The Respondents submitted that only one allottee has filed the Complaint and the apartment owner's association is not made a party. According to the Respondents, the Authority has no jurisdiction to entertain this Complaint as the project was completed and handed over before the commencement of the Act,2016.



2. During the hearing on 21.10.2022, when the complaints came up for hearing, the Complainants submitted that they were not yet provided with any car parking spaces even though covered car parking spaces have been promised as per the agreements and shown in the sale deeds and the representative of the Respondent/Promoter who was present agreed that they will provide the covered car parking spaces as promised on that day itself. Then the Authority, vide interim order dated 21.10.2022 directed the Respondents to allot, earmark and hand over the covered car parking spaces to the Complainants on the same day itself and the cases were posted to next day for reporting compliance of the said direction and the Respondent/Promoter was also directed to be present on the next day. On the next day, on 22/10/22, both the Complainants appeared. But the Respondent/Promoter failed to attend the hearing despite the direction issued on 21/10/22. The representative of the 1<sup>st</sup> Respondent Company appeared and submitted that the car parking shall be given, as directed, by 11 a.m on that day itself. But the Complainants alleged that nothing has been done by the Respondent till that time. The Authority asked about the alleged issue of the shortage of car parking spaces in the project to the President of Association of Allottees, who informed that some of the allottees are suffering due to shortage of car parking in the project. The Respondent's representative submitted that the Complainant in Complaint No. 152/21 has been allotted car



parking No.140 and the Complainant in Complaint No. 166 has been allotted car parking No. 143. As it was noticed that many of the Projects of the Respondent/promoter are having the same issue and several Complaints are pending in this regard, the Promoter was directed, vide notice dated 22/10/2022, to appear directly before the Authority on the next hearing date and to explain the same.

3. On 25/10/2022, the above Complaints were posted for direct hearing. But the Promoter failed to attend in person for the hearing in spite of specific direction. The Complainant in Complaint No. 166/22 alleged that the space said to have been allotted to him cannot be used as car parking as the space overlaps the badminton court and borewell provided in the project and the photographs to show the same also have been produced by him. On that day, the Authority directed the Respondents “1) to show cause why the project named “City Crown” is not registered under section 3 of the Real Estate (Regulations & Development) Act, 2016 and why the penalty under section 59(1) of the Act, 2016 shall not be imposed on him, **within 30 days** from the day of receipt of this order, 2) to file a sworn affidavit showing the details of the covered car parking spaces allotted to all the allottees of the Project “City Crown” as promised in the agreement and as per the law and 3) to file a Compliance report with regard to the direction given vide order dated 21/10/22. In compliance of these directions, the Respondents submitted their reply to the Show cause notice with regard to registration of the project, Compliance report with regard to allotment of car parking



to the Complainants and an affidavit along with details of allotment of parking spaces to all the allottees in the project in which the Respondents state that there are 9 car parking spaces for which the coverings have to be constructed for which they arrived at a settlement with the Association.

4. Even though the Respondents had complied with the directions and submitted the compliance report in that respect, in the reply to the Show cause notice with regard to the registration under section 3 of the Act 2016, they raised contention that the project 'Souparnika City Crown' is not a registerable project because the project was completed on 20.01.2017 as shown in the Occupancy Certificate issued by the local authority as "the date of completion". According to the Respondents, as the date of completion in the Occupancy Certificate is certified as 20.01.2017, by the competent authority, the said project is not an 'ongoing project' and hence it is not liable to be registered u/s 3 of the Act 2016. The Respondents also referred a public notice dated 19.04.2022 issued by this Authority, as per which it was made clear that "the Real Estate projects those commenced before 1/5/2017 and not completed or not received occupancy certificate as on 1/5/2017 are to be considered as 'ongoing projects' which will come under the purview of the Act 2016 and will be registrable under section 3 of the Act." The Respondents filed written statement also contending that the project in question is not a



registrable project under the Act, 2016 as the completion certificate with respect to the said project was issued/approved by the Corporation well before the commencement of the Act. The Respondent produced the copy of the Occupancy Certificate, in which the date of Completion is shown as 20/01/2017. But it has been noticed that the actual 'date of issuance of the Occupancy Certificate' is not mentioned in the said certificate and hence the corporation of Trivandrum was directed, vide notice dated 07.11.2022, to submit a report regarding the actual date of issuance of the said certificate issued after verifying the records. But no response has been received from the Corporation till date. Any how the Respondents produced copy of RTI communication done by one of the Complainants in which it is replied by the Corporation that the Occupancy Certificate is issued on 31.05.2018. As per the said communication, the Corporation also replied to the question as to the date of enforcement of the Occupancy Certificate in the project 'City Crown' as '20.01.2017'. On the request of the Respondents, the issue of 'maintainability' was considered as the preliminary issue. Both parties were heard and documents were perused.

5. As per Section 2 (q) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as 'the Act'] , 'completion certificate' means "*the completion certificate or such other certificate, by whatever name called, issued by the competent authority,*



*certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.”* The definition of the term ‘competent authority’ under Section 2(p) is as follows: “competent authority” means *“the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over and under its jurisdiction, and has powers to give permission for development of such immovable property.”* As per Sect 2 (q), project means real estate project under Clause (zn). According to Section (zn) “real estate project” means *“the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building ds the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement rights and appurtenances belonging thereto”*.

6. Section 3 (1) of the Act 2016 stipulates that *“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”*. The provisions under Section 3 of the





Act 2016 came into force on 01.05.2017. Section 3 deals with prior registration of real estate project with the Real Estate Regulatory Authority. Sub section (1) of Section 3 interdicts the promoters from advertising, marketing, booking, selling, offering for sale or inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority. Going by the mandate of the 1<sup>st</sup> proviso, projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, are bound to apply for registration.

7. The Hon'ble Supreme Court in its judgment dated 11/11/2021, in M/s Newtech Promoters & Developers Pvt Ltd. Vs State of UP & another, has reiterated the fact that the Real Estate Projects that are not completed and for which the Occupancy Certificate/Development Certificate has not been issued on the date of commencement of Real Estate (Regulation & Development) Act, 2016, shall be registered under Sec. 3 of the Real Estate (Regulation & Development) Act, 2016, and such projects will come under the purview of the Act, 2016. The relevant portion of the abovesaid judgment is extracted hereunder:

"Para 40. Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be



registered under the Act. Therefore, the ambit of Act, is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, Learned counsel- submits that the said proviso ought to be read with Section 3 (2) (b) , which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3 (2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act.

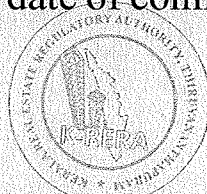
Para 47: The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project are done in an efficient and transparent manner so that the interest of consumers in the real- estate sector is protected by all means and Sections 13, 18 (1) and 19 (4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees, In the given circumstances if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act/ even on facts of this case."

8. The Hon'ble Apex Court, in another judgment dated 11.01.2022 in Samruddhi Co-operative Housing Society Ltd. vs. Mumbai Mahalaxmi Construction Pvt. Ltd., a civil appeal from the judgment of the National Consumer Disputes Redressal



Commission, also held that *“the failure of the Respondent/Promoter to obtain the occupancy certificate is a deficiency in service for which the Respondent/Promoter is liable.”*

9. The Hon’ble High Court of Kerala in its judgment dated 10.06.2022 in Alfa Ventures (p) Ltd. Vs State of Kerala & others, an appeal filed challenging the direction of this Authority for registration of the project, held that *“the ‘completion certificate’ under the Act 2016 is distinct from the completion certificate contemplated under Rule 22 of the Kerala Municipality Building Rules. Under Rule 22 of the KMBR, the owner can/ on completion of the building, submit completion certificate certified and signed by him, to the Secretary of the Municipality in the form in Appendix E. On the other hand, the 1<sup>st</sup> proviso to Section 3 of the Act contemplates issuance of completion certificate by the competent authority, viz, the Secretary of the Local- Self Government Institution. Indisputably, the completion certificate of Alfa Horizon was not issued in the manner provided under Section 3, prior to the introduction of that provision. As such, it can unhesitatingly be held that Alfa Horizon was an ongoing project as on the date of introduction of Section 3 of the Act (01.05.2017), the concomitant position being that the project is liable to be registered with the K-RERA.”* Hence, it is indisputably settled that only the date of issuance of Occupancy Certificate from the local authority is pertinent to decide whether the project comes under the purview of Section 3 of the Act 2016 or not and ‘the date of completion’ written on the Occupancy Certificate has no relevance in this regard. Here, the Occupancy Certificate is obtained only on 31.05.2018 much after the date of commencement of the Act 2016.



Moreover, the Complainants herein also kept on alleging that they have not provided with car parking spaces as promised to them and the Respondents/Promoter also admitted in their affidavit that 9 car parking spaces are yet to be completed which indicate non-completion of an important amenity promised to the allottees. The Hon'ble Madras High Court in its judgment dated 16.02.2021, in M/S.Sare Shelters Project Pvt. ... vs Sare Squires, rightly observed as follows: *“It is relevant to note that even in common parlance, the word “completion” defines the “substantial completion” in accordance with contract. Thus, even in the absence of any statute, specifically, a completion certificate is to be issued by any Competent Authority, once if the project is completed. Therefore, the completion must be in all respects and in accordance with the contract between the parties. The covenants in the contract are the essential parameters, which must be the deciding factor regarding the actual completion and not mere completion of structure in the project. This being the object to be sought for, even in the absence of the RERA Act, the completion certificate issued by the Executive Officer, Town Panchayat is improper and not in consonance with the established principle for issuing a completion certificate even in a common parlance and under the Town and Country Planning Act.”*

10. Based on the above facts and findings, the Project in question is found liable to be registered before this Authority under Section 3 of the Act and the above Complaints related to the Project in question are well maintainable before the Authority. Hence, invoking section 37 of the Act, 2016 we hereby




direct the Respondents to register the real estate project named "Sowparnika City Crown" under section 3 of the Kerala Real Estate (Regulation & Development) Act, 2016 within 30 days from the date of receipt of this order, failing which penal actions shall be initiated as provided under Section 59 of the Act 2016 against the Respondents.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order

  
Secretary (legal)



## Exhibits

### Documents produced by the Complainants

- Exhibit A1- True copy of the Agreement for sale
- Exhibit A2- True copy of the Sale deeds
- Exhibit A3- True copy of the settlement deed.
- Exhibit A4- True copy of the payment receipts
- Exhibit A5- True copy of the email communication.

### Documents produced by the Respondents

- Exhibit B1- True copy of the occupancy certificate.
- Exhibit B2- True copy of the application and reply under RTI Act.
- Exhibit B3- True copy of the Allotment letter in both the Complaints