



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos. 168/22

Present: Sri. P H Kurian, Chairman
Smt. Preetha P Menon, Member
Dated 29th May, 2023

Complainants

George Joseph Kuruvila
B2, Rahma Apartments, Thekkilapeedika,
Thaze Chovva, Kannur

Respondents

1. Abdul Salam
Skason India Corporate Building,
Opposite Maruthi Service Centre,
Kappad Road, Thazhe Chovva,
Kannur
2. Salam Cholli Abdul Rasheed
Rahath P O, Thaze Chovva, Kannur- 18

The Counsel for the Complainant Adv. Aswathy Digesh and the counsel for the Respondents Adv. Ramesh Kumar attended the hearing today.

ORDER

1. The Complainant is an allottee in the project 'Rahma Apartment' developed by the 1st Respondent. The 1st



Respondent sold an apartment to the Complainant on 27.02.2021 by registered sale deed No. 658/2021 of Kannur SRO for a consideration of Rs. 22,00,000/- for the apartment, situated on the 1st floor of the said building complex, numbered as B2 measuring 1179 sq. ft with full enjoyment and access rights in the staircase, passage, parking area, well and other common amenities of the apartment. There are total 13 apartments in the project, but only 8 car parking spaces are provided. As agreed in the sale deed by the Respondent, the consideration was for the apartment, one parking slot, and common areas of the property. The Complainant submitted that when 7 allottees park their vehicles, others have to compromise otherwise it will cause difficulty to the free movement of the other vehicles. Due to this, the Complainant is deprived of his right to enjoy his apartment and car park to its fullest extent. The relief sought is for acquiring adjacent land to materialize convenient parking spaces and to direct the developer to pay Rs. 5 Lakhs to the Complainant for the inconvenience caused due to his unfair business methodology. The Complainant had produced copy of the sale deed No. 658/2021.

2. The Respondents filed written statement and submitted as follows: The Complaint is not maintainable. The building consists of ground floor plus two floors having 13 apartments. The allegation in the complaint that there is



parking space for only 8 cars is incorrect and in the parking lot, there are 10 covered parking and 3 open parking in the front portion itself. Apart from that, there is a space for parking 5 four wheelers and the said space is still unoccupied. As per Respondents, the complainant is not having a car or a SUV and he may be put strict proof with regard to the same. The complainant did not make any demand for parking space with the Respondent. The Respondent submitted that if the Complainant is having a vehicle, he can very well use any of the vacant car parking lots without any objection from others. The Respondents did not cause any unfair business methodology either to the Complainant or to any of the other apartment owners. The Complainant herein is not in good terms with any of the other apartment owners. The intention of the complainant is to harass the Respondent with some ulterior motives. The Complainant is not entitled to get any relief sought or any compensation amount and therefore the Complaint is to be dismissed. The Respondents produced copies of building permit, lay out plan and copies of photographs.

3. In the first hearing itself, it was noticed that the project is not registered under section 3 of the Act, 2016 and the Authority issued a direction to the Respondents vide interim order dated 03/11/2022 to show cause why the project named "Rahma Apartment" 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. The Respondent filed counter statement along with documents such as building permit, lay out plan and copies of photographs and submission of the counsel concerned only with regard to the relief sought by the Complainant. The Respondents submitted that there are 13 apartments and all the apartments have been sold out much earlier and also submitted that no agreement for sale was executed with the Complainant. The Authority noticed that the Respondents have neither given an explanation nor submitted any documents such as occupancy certificate proving that the project is not registrable under section 3 of the Act, 2016. On enquiry, the Respondent's counsel admitted that the occupancy certificate has been received only last year for the project. Hence it was found prima facie that the said project is required to be registered under section 3 of the Act, 2016. As the Respondent has failed to register the project under section 3 of the Act, 2016, despite specific directions, vide orders dated 03/11/2022 & 12/01/2023 it has been decided to initiate proceedings under section 59(1) of the Act separately.

4. The documents produced by the Complainant is marked as Exhibit A1. The documents produced by the Respondent are marked as Exhibit B1 to B3. The matter came up for hearing on 29/05/2023. The Complainant had produced



only the sale deed executed in his favour by the Respondent and marked as Exhibit A1, as per which all the rights, title, and interest over apartment No. B2 along with the undivided share of the Project land have been transferred to the Complainant. The said sale deed categorically states that the right, title, possession and interest over the staircase, passage, parking area, well, terrace over 1st & 2nd floors, and common facilities have been transferred in favor of the Complainant upon full satisfaction. Anyhow, it is noticed that the Complainant has failed to produce any documents to show that a specific car parking space has been offered to him by the Respondent/Promoter. Even though, the counsel appeared for the Complainant was specifically directed to produce the documents showing such an offer from the part of the Respondent, none of them were submitted before the Authority. Moreover, the counsel also admitted that no agreement has been executed between the Complainant and the Respondent and no other documents are there to prove such an offer of car parking to the Complainant. At the same time, the counsel for the Respondent submitted that sufficient car parking as required under the building Rules have been provided in the project and no offer was made to any of the allottees, with regard to car parking spaces and hence no question of violation of a contract arises in this case.




5. Section 31 of the Real Estate (Regulation & Development) Act, 2016 entitles an aggrieved person to file a Complaint for any violation of the provision of the Act, Rules & Regulations made thereunder. It is to be noted that Section 13 and subsequent provisions of the Act are based only on the terms of the agreement for sale executed between the Promoter and allottees and prescribing penal actions against violations of such terms of the agreements for sale. But in this case, no agreement for sale has been executed and apart from the sale deed, no documents could be produced by the Complainant showing such an offer or promise by the Respondent/Promoter. Hence this Authority lacks jurisdiction to take cognizance of the above Complaint and as it is outside the ambit of this Authority, the Complaint is liable to be dismissed.

6. In view of the above facts, the Complaint is hereby dismissed. Both parties shall bear their respective costs.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)

APPENDIX**Exhibits marked on the side of the Complainant**

Exhibit A1: True copy of the Sale Deed.

Exhibits marked on the side of the Respondents

Exhibit B1: True copy of the Building Permit.

Exhibit B2: True copy of the Layout Plans

Exhibit B3: True copies of photographs.

