



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 18/2020

Dated 17th February 2021

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

1. Sri. Anvar Palliyalilthodi,
Palliyalilthodi (H), Kadannamanna (PO),
Mankada via, Malappuram 679324
2. Sri Abdulsalam Palliyalilthodi,
Palliyalilthodi (H), Kadannamanna (PO),
Mankada via, Malappuram 679324
3. Sri. Irshad Palliyalilthodi,
Palliyalilthodi (H), Kadannamanna (PO),
Mankada via, Malappuram 679324.

: Complainants

M/S Alhind Builders,
Convent Road, Near Tagore Hall,
Mananchira, Kozhikode 673032.

: Respondent

The above complaint came up for direct hearing. Sri. Shahabas, the authorized representative of the Complainants and Advocate Sameer Kharim, the counsel for the Respondent attended the hearing. Upon hearing the arguments of both the parties, the Authority passes the following order.

ORDER

1. The complainants are the allottees of apartment No. 29 E of the project "Burj Alhind" at Kozhikode, developed and constructed by the Respondent and an agreement for sale dated 14/01/2012 was being entered into between Complainants and the Managing Partner, Mr. M.V Vazeerudheen on behalf of the Respondent Firm. At the time of execution of said agreement, the Complainants paid the sale consideration of Rs. 30,50,000/- in lumpsum to the Respondent. As per the terms of the said agreement, the Respondent assured that they will complete and hand over the project by July 2015. The project is not completed as promised with all common amenities till date. Hence the Complainants filed the complaint seeking delivery of possession of the Apartment without any further delay. The complainants also alleged that the Respondent, without obtaining permission from the Complainants, changed the apartment No. 29-E on the 29th floor promised to be delivered to Complainants to Apartment No. 20-E on the 20th floor. After having collected the entire amount towards the sale consideration, other statutory charges and the then prevailing tax, the Respondents have failed to handover exclusive possession of the apartment with common amenities and facilities so as to make the apartment fit for dwelling. It is also alleged by the Complainants that without obtaining Corporation door number, permanent electricity connection, provision for uninterrupted supply of water, lifts, transformer, fire NOC, common amenities or facilities, the Respondents are compelling the Complainants to take possession of the apartment. The Copy of the Agreement for sale executed between the Complainants and Respondent has been produced by the Complainants (marked as Exbt A1).

2. The Respondent filed statement of objection on 8/9/2020 in which it is stated that the complaint is not maintainable as per Sec 31 of Real Estate (Regulation & Development Act 2016) as the complaint is filed against Managing Partner of M/s Alhind Builders instead of the promoter firm, Alhind Builders. It is also pointed out that the complaint is filed for compensation and hence it is not maintainable before the Authority and the complaint is to be dismissed in limine. During the hearing dated 8/9/2020, the Complainants requested time for curing defects in the complaint. The Authority, vide Interim order dated 08/09/2020, directed the Complainants to cure the defects in the complaint within two weeks in compliance of which the Complainants submitted the fresh complaint, amending the cause title in which the relief sought is for the delivery of the apartment with all promised facilities and corporation door number, permanent electricity connection, uninterrupted supply of water, lifts, transformers etc. at the earliest without further delay and also for providing the Complainants a clear date of handing over the possession of the apartment as promised. The copy of the amended complaint has been served to the Respondents.

3. The Respondent further contended that the project has been completed as early on 27-07-2017 but the Kozhikode Corporation has failed to consider the completion plan and issue occupancy certificate for the project. So, the Respondent filed W.P (C) No: 8554 & 32479/2018 before the Hon'ble High Court of Kerala and the Hon'ble High Court directed Kozhikode Corporation to reconsider the application for occupancy certificate along with the completion plan within two months from the date of receipt of judgment. True copy of

judgement dated 10-12-2018 in the abovesaid writ petition is produced by the Respondent (marked as **Exbt. B1**) and true copy of receipt dated 27-07-2017 by the Kozhikode Corporation for application received for occupancy certificate and true copy of receipt dated 24-01-2019 issued by same authority are also produced (marked as **Exbts. B2& B3**) before the Authority. The Respondent also contended that the delay in post-submission of application for Occupancy Certificate cannot be attributed to the Builder as the Builder is not accountable or responsible for the delay from the part of the statutory bodies.

4. Heard both sides in detail and perused the documents submitted by both parties. The Complainants submitted that the Respondent had assured to complete the project and hand over it to them by July 2015. They paid the entire sale consideration of Rs. 30,50,000/- in lump sum at the time of execution of agreement. Apart from the delay in completion of the project and handing over, the Complainants also have a serious case that the Respondent had changed the apartment No. 29E on the 29th floor, which was allotted to them and promised as per the agreement for sale, to Apartment No. 20E on the 20th floor, without consent of the Complainants. The Complainants allege that without obtaining Corporation door number, permanent electricity and water connections, lifts, transformer, fire NOC, etc., the Respondents are compelling the Complainants to take possession of the apartment. From the Exbt. B1 Judgement as well as from the submissions of the complainants, it is noticed that the Respondent has grievously failed to complete the construction as per the sanctioned plan and permit and done drastic deviations from the sanctioned plan which was the reason alleged by the local authority for not issuing Occupancy

Certificate for the project. As per the provisions of the Real Estate (Regulation & Development) Act 2016 (hereinafter referred to as 'the Act'), the Respondent cannot make any such deviations from the sanctioned plan without getting previous written consent of two third of allottees of the Project. Section 14 (1) of the Real Estate (Regulation & Development) Act 2016 stipulates that "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.

(2) 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 apartments, plot or building, as the case may be, the promoter shall not make—

(i) 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 authorised Architect or Engineer after proper declaration and intimation to the allottee.

(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.” In Para 5 of the Exbt. B1 judgement, the Hon’ble High Court found that “it is an admitted fact that Petitioner has deviated from the building permit and approved plan”. But it is noticed that in the statement of objection submitted before this Authority, the Respondent opted to keep silence to the serious allegation raised by the Complainants as to the change of apartment promised to him on the 29th floor to another one on the 20th floor. Hence it is admitted that the deviations from the sanctioned plan including reduction of number of floors have been done without any previous consent from the Complainants which amounts to violation of provisions under Section 14 of the Act. Hence the Authority decided to send a separate Show Cause Notice in this regard to the Respondent.

5. As the project in question has not so far obtained the Occupancy Certificate, the said project is mandatorily registerable before this Authority as per the provisions under Section 3 of the Act which is noticed by this Authority after receipt of this complaint. Before issuing Show Cause Notice to that effect by this Authority, the Respondent filed a Writ Petition before the Hon’ble High Court of Kerala challenging the provisions of the Act including Section 3 which mandates registration of such projects. The contentions of the Respondent that “the delay in post submission of application for Occupancy Certificate cannot be attributed to the Builder as the Builder is not accountable nor responsible for the delay from the part of the statutory bodies” are not sustainable because the Respondent could not prove in any manner that the delay in obtaining Occupancy Certificate is due to the failure from the part of the local authority. The Respondent frequently states that “the project stood completed as on 27.07.2017,

but the Kozhikode Corporation has failed to issue Occupancy certificate for the building, without any sufficient or valid reasons and hence they had to approach the Hon'ble High Court in which the Hon'ble High Court gave direction to the Corporation to reconsider the application to issue Occupancy Certificate". Even after getting a direction from the Hon'ble High Court that too as early on 10.12.2018, to reconsider the application within two months from the date of receipt of judgement, how could the local authority make this much delay in complying it in violation of the order of Hon'ble High Court? If such a violation was done by Kozhikode Corporation, what all actions been taken by the Respondent /Promoter against the Corporation? The Respondent appallingly failed to produce any proof regarding such an action taken by him against the failure/inaction from the part of the local authority, Kozhikode Corporation in this regard. The Respondent /Promoter is responsible to procure all the statutory clearances mandatorily required for the project and ensure the safety and security of the allottees who trusted him and paid their hard-earned money for their dream homes. Without obtaining the Fire NOC or Occupancy Certificate for the project, how could the Respondent easily blame the Complainants that "they deferred from taking delivery of possession of the apartment" and before getting such mandatory clearances, who gave permission to this Builder for allowing the allottees to occupy the building? If any mishaps happened to the occupants during this unauthorised occupation, who will take the responsibility? The Authority observes very seriously such malpractices of the Builders and also the inaction/negligence from the part of the local authorities who blinks their eyes knowingly or unknowingly on such abuses prevailing in the State. The Respondent claims that the project has been completed in 2017 itself but he himself admits that Occupancy Certificate or Fire

NOC have not been obtained so far. The Complainants have a strong case that the project is not yet provided with any of the promised facilities, corporation door number, permanent electricity & water connections or lifts, transformers etc. by the Respondent. We have made it clear in our previous orders that an allottee of a real estate project invests his/her hard-earned money, rather bigger amount than that of an individual house, not only for the single unit/apartment/villa but for the whole amenities and facilities offered to him/her in the project and also for enjoying a peaceful community living there. As misconceived by many of the Promoters, the completion of a real estate project is not merely handing over the apartments or execution of sale deeds or somehow obtaining occupancy certificates, but completion of the total project in all respects with all the sanctions and approvals as promised to the allottees and ultimately handing over all the documents concerned to the Association of allottees.

6. At the time of hearing, the Complainants prayed for a direction to the Respondent to complete the project and hand over the apartment to the Complainants with all the promised amenities and facilities and the Respondent admitted the delay occurred in completion of the project as promised and assured that the pending works shall be completed within the time frame, if allowed by this Authority, we decided to issue final direction to the Respondent for completion of the works within a fixed time period. The Respondent submitted that the work is still going on progressively and some more works are yet to be finished. Hence the Authority, vide its interim order dated 10.12.2020, directed the Respondent to file a sworn affidavit declaring the period of completion for the whole project in all respects as promised to the Complainants as per the terms of the agreement executed with the Complainants with

copy to the Complainants. In compliance, the Respondent submitted the affidavit dated 04.01.2021 sworn and signed by M V Vazeerudheen, Managing Partner of the Respondent firm, in which he assures that he will complete and hand over the flat No. 20E with all the promised amenities as per the agreement as well as the whole project in all respects on or before 31/03/2021 'subject to issuance of Occupancy Certificate from the authorities concerned'. But the Authority directed the Respondent not to file such a conditional undertaking but to submit an affidavit affirming clearly, the date of completion of the project in all respects as promised to the Complainants as per the terms of the agreement executed with the Complainants. We think it is worthwhile to mention it again that it is not at all the liability of the allottees but sole responsibility of the Promoter himself to procure such mandatory clearances for the project from time to time till handing over the project to Association of allottees.

7. On the basis of the confirmation and undertaking by the Respondent as per the above-mentioned affidavit and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows:

- a) The Respondent shall complete and hand over to the Complainants, the flat No. 20 E with all the amenities and facilities, as committed/promised as per the agreements executed with the Complainants, along with all the mandatory sanctions / approvals required to be received from the Authorities concerned and complete the registration of sale deed in favour of the Complainants on or before **31.03.2021**;

- b) The Respondent shall convene a joint meeting of all the allottees of the project "Burj Alhind" formally so as to enable formation of Association of Allottees as per the provisions under Section 11 (4) (e) of the Act and its registration after which all the documents pertaining to the Project shall be handed over formally to the Association;

The compliance Report shall be submitted by the Respondent on or before **05.04.2021**, failing which the Authority shall initiate penal actions as provided under the Act.

The Complainants are at liberty to approach the Adjudicating Officer of this Authority with his claim for compensation for the losses and damages sustained, if any, due to any defaults from the part of the Respondent.

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 Complainant

Exhibit A1 : Copy of Agreement for sale and construction dated 14/1/2013.

Exhibits on the side of the Respondent

Exhibit B1 : Copy of Order of Hon'ble High Court in Writ Petition (c) No. 8554/2018 and 32479/2018.

Exhibit B2 : Receipt dated 27.7.2017 of Kozhikode Corporation.

Exhibit B3 : Receipt dated 24.1.2019 of Kozhikode Corporation.