



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.195/2022

Dated 22nd March, 2024

Present: Smt. Preetha P Menon, Member

Complainant

Olive Cressida Apartment Owner's Association,
Represented by its President Dr. Niju,
Apartment No.7B, Block I,
Olive Cressida Apartment, Near Technopark,
Kazhakootam, Thiruvananthapuram.

Respondents

1. Olive Builders,
103/104, JK Chambers,
Sector-17, Vashi, Navi Mumbai – 400703.
(Represented by its Chairman & Managing Director, Mathai P.V.)
2. Mathai P.V,
Chairman & Manging Director,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.



3. Sarakutty Mathai,
Director,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
4. Simi Mathew,
Director,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
5. Nimi Mathew,
Director,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
6. Mathew Thomas,
Director,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
7. Joy kutty Chacko,
DGM Finance & Acts
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
8. Jayaprakash J Prabhu,
Manager Finance,
M/s Olive Builders, Olive House, 50/932 A,
Edapally, Kochi – 682 024.
9. Tevin,
Power of attorney of Mathai P V & Sarakutty Mathai,
M/s Olive Builders, Olive House, 50/932 A,

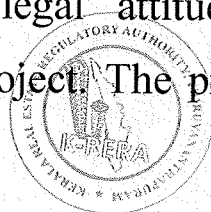


Edapally, Kochi – 682 024.

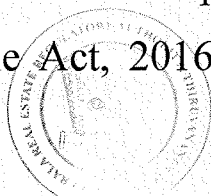
The above Complaint came up for hearing on 15/11/2023. The counsel for the Respondents Adv. Vijay Paul attended the hearing.

ORDER

1. The complainant is the association of allottees of project named 'Olive Cressida Apartments' located at Kazhakuttam, Thiruvananthapuram developed by the Respondents. The project includes 3 blocks comprised of 270 apartments. As per the prospectus, the Respondents assured completion of the project and handing over of the individual apartment in a ready to occupy condition within two years with various common facilities. The common amenities mentioned in the prospectus and the individual agreement are swimming pool, sauna & gym, indoor games (Half basketball shuttle court) kids play area, elder corner, party area for each block, reading room, elegant entrance lobby, CCTV, drivers' room, association room, numbered wooden letter box, provisions for cable TV connection etc. The complainant is the only association representing the allottees and the same is formed mainly for the maintenance and management of the common amenities and common facilities of the apartment project. The association is much aggrieved by the irresponsible and illegal attitude of the promoter in non-completion of the project. The promoters wilfully neglected the



agreements and public offers made by them. The Complainants further submitted that the Respondents agreed to provide car parking for all the allottees and also agreed to provide 2 automatic passenger lifts and one automatic service lift. But car parking facility is not provided for 73 members. Likewise, the Respondents failed to provide service lift for the apartments. The Respondents are obliged to provide car parking facility and service lift to the members of the complainant association. It was also submitted that the Complainant is entitled to get registered deed with respect to common area and other common facilities in its name. The Respondents with malicious intention are trying to evade from registering the project under the Act, 2016 and to make unlawful gain from the members of the Complainant association. While so, on 11/06/2022, the Complainant received a notice from the Respondents stating that they have provided all the amenities as agreed, and also provided individual association rooms in each apartment tower and also made available provisions for party area. On receiving such a notice, the Complainants came to know that the Respondents have no intention to complete the project. The Respondents have collected whole consideration from the allottees by showing the prospectus. Now the Respondents are trying to quit the project, without completing the promises in the agreement. Hence this Complaint. The Reliefs sought by the Complainants are (1) direct the Respondents to apply and to obtain the requisite registration under the Act, 2016. (2) direct the Respondents to



provide the basic amenities mentioned in its prospectus and agreements and (3) to direct the Respondents to execute and register a deed of conveyance in favour of the Complainant.

2. The 1st Respondent has filed interim counter affidavit raising contentions as follows: The Authority does not have any jurisdiction to entertain this complaint as the project 'Olive Cressida' was completed prior to 01/05/2017 as per the occupancy certificate issued by the Corporation of Trivandrum. The Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. V. State of U.P. and Others, it was stated that "Section 3 of the Act, 2016 includes only which were ongoing and where a completion certificate has not been issued." The Hon'ble High Court of Kerala in Alfa Ventures (P) Ltd. Vs State of Kerala and others has interpreted the ambit of 'ongoing project' under section 3 to hold that the projects which need to apply for registration under the Act, 2016, are the ones that are ongoing at the date of commencement of the Act and for which the completion certificate has not been issued. The apartment complex 'Olive Cressida' consists of three apartment towers and the building permit for the same were applied on 07/06/2008 which was subsequently renewed up to 06/06/2017. The Occupancy Certificate dated 21/01/2016, was granted for Tower 3 in which the date of completion of Tower 3 was specified as 01/12/2014. So, Tower 3 is completely excluded from the purview of



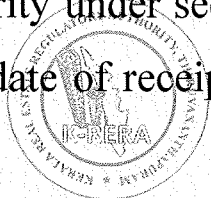
registration under section 3 of the Act, and requires no registration. Thereafter occupancy certificate for block 1 & 2 was given on 20/06/2018. The date of completion of block 1 & 2, as per the said occupancy certificate issued by the Corporation of Thiruvananthapuram is 01/05/2016. Even though tower 1 & 2 were completed on 01/05/2016 and immediately thereafter application was submitted for occupancy certificate, there was a considerable delay in grant of OC. Therefore, the Respondent was constrained to approach the Hon'ble High Court of Kerala, vide WP(C) No.6748/2018. On 10/04/2018, the Hon'ble High court in the above petition directed the Corporation of Trivandrum to grant Occupancy Certificate within one month from the date of receipt of the copy of judgement. Even though Tower 1 & 2 were completed there was a delay on the part of the assistant executive engineer to process the files concerning olive builders and so the Olive builders is deemed to have obtained Occupancy Certificate in 2016. Therefore, there is no requirement for towers 1 & 2 to be registered under section 3 of the Act,2016.

3. IA 169/2022 filed by the Complainants to issue show cause notice to the Respondents under Section 59(1) of the Act 2016 for not registering the project under Section 3 of the Act 2016 and IA 170/2022 filed by them for a direction to restrain the Respondents from alienating the apartments scheduled therein the petition without registering the project under Section 3 of the Act



2016 and to communicate the factum to the sub-registry and village office concerned. As the Respondents raised serious contentions that the project in question is not a registerable project and hence the above complaint is not maintainable before this Authority, it was decided to hear the issue of maintainability as the preliminary issue. The Complainants also filed their replication to the Counter statement filed by the Respondents and denied all the averments stated in the Counter. It was submitted by the Complainants that the number of apartments in the said complex is not tallying with the tax assessment order produced by the Respondent. There are 270 Apartments, ie., 90 Apartments in each tower with individual TC numbers in the project. Tax demand letters dated 30/07/2018 produced by the Respondent is only related to 80 Apartments. The remaining apartments might not be completed at that time. The Occupancy Certificate produced for Tower 1 & 2 is not reliable and with respect to Tower 3 only partial Occupancy Certificate is issued and hence the project is registrable under section 3 of the Act.

4. As the Authority found that the project in question comes under the purview of the Act, 2016 and the Complaint is maintainable before this Authority, an order dated 30/11/2022 was issued directing the Respondents / Promoters to register the project before the Authority under section 3 of the Act, 2016 within one month from the date of receipt of the order. The said order was



challenged by the Respondents/Promoters before the Hon'ble Appellate Tribunal and the Appellate Tribunal passed an order dated 29/09/2023 setting aside the order of this Authority dated 30/11/2022 with finding that the project in question is not an ongoing project and not liable to be registered under section 3 of the Act,2016.

5. On the basis of the judgement of the Hon'ble Appellate Tribunal, this Authority lost jurisdiction to entertain the above Complaint and hence it is hereby dismissed.

Sd/-

Preetha P Menon

Member

/True Copy/Forwarded By/Order/

Secretary (Legal)