



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No: 200/2021

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

Dated 10th March 2022

Complainant

Dual Core Apartment Owners Association
Dual-Core Apartment
Aquacity, Kottappuram,
Alangad P O, Aluva- 683511
Represented by its Executive Committee member
John Thomas
Flat No. 20ABC, Dual Core, Aquacity,
Aduvathuruth, Alangad P O,
Kottappuram-683511
[Adv P K Sreevalsakrishnan]

Respondents

1. M/s Shwas Homes Pvt Ltd
Ground Floor, Mystic Heights Phase-1,
Kaniyampuzha Road, Eroor P O
Ernakulam District, Pin- 682036
Represented by its Managing Director



2. Sreeni Parameshwaran
Managing Director, M/s Shwas Homes Pvt Ltd
Door No. 7/42- B5, Villa No.1, Mystic Bells,
Kaniyampuzha,
Eroor P O, Ernakulam, Pin-682306

The Complaint came up for hearing on 16/02/2022. The Complainant along with their Counsel Adv. P.K Sreevalsakrishnan attended the virtual hearing. The Respondent neither attended nor represented through anybody.

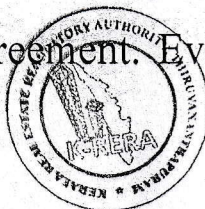
ORDER

1. The Complainant is an association formed by the residents and owners of Dual Core Apartment, a multi-storied apartment complex, which is a part of the Aquacity township Project in the 17.5 acres of land near River Periyar which is owned, developed and promoted by the 1st Respondent. The main object of formation of this association is to represent the members pertaining to their common problems in the premises, solve the issues and maintenance and up-keeping of common area and common amenities in the Dual-Core as well as the Aquacity Project. The Complainant is a registered association under Travancore Cochin literary, scientific, social Cultural Charitable Societies Act 1956, having registration No. TC/EKM/569/2019 was formed on 18/09/2019. The association is now having 125



owners having more than 150 apartments as, out of the 192 flat owners in the Dual-Core Apartment. The Executive committee meeting of the association held on 13-02-2021 decided to file the complaint and also authorized the Executive Committee member of the association, Mr. John Thomas, to represent the association.

The 1st Respondent is the owner, builder and promotor of a township Project named Aquacity near river Periyar situated in the Karumaloor Panchayath. The 2nd Respondent is the Managing Director of the 1st Respondent company. The buyers were interested in purchase of the flat after seeing the advertisement in newspaper and other medias. The members of complainant association were dropped down in the fulgent amenities offered by the Respondents in the project named 'Aquacity' and the Dual Core apartment, one among the apartments proposed to be constructed in the township project. Many of the members of the complainant association were NRIs at the time of purchase and even now many are residing abroad. The respondents had entered into sale and construction agreements with the members of the complainant association by which promised that the respondents would hand over the apartment after completion of the construction of all the common amenities in the project within the period stipulated in the agreement and the same was not done on time. As per the agreement, the respondents ought to have completed the project within February 2014 along with complete amenities offered in the agreement. Even though the members

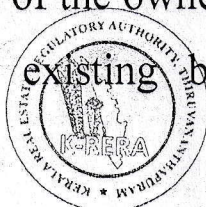


have made the payment on time without any delay, the respondents have not performed the contract within the time frame mentioned in the agreement. In addition, the respondents had also collected amounts for the water connection & association fund. The respondents handed over the apartment to the members without providing the offered amenities in the agreement, including basic mandatory amenities. Thereafter, the members came to know that the Dual Core apartment building has been handed over to them without obtaining Final Fire NOC, sanitation facilities, Sewage Treatment plant etc. When the same was enquired, the respondent shared a document showing that he had received a time extension from the Panchayat for obtaining the Fire NOC and sanitation facilities, and the members were convinced with the same. The respondent has neither taken any measures to provide the basic amenities required nor shown any interest to complete the Aquacity Project and hand over the same after forming an owner's association. The permanent electricity connection to the Dual Core apartment has been obtained only in the year 2018 which was clear from the reply given by the Electrical Section, Aluva.

2. The Complainant submitted that the maintenance of the Dual-Core apartment has become a reverie even though, the monthly maintenance charges have been collected by the respondents as a promotor regularly. Since the



common amenities have not been provided by the respondent as promised in the agreement, the situation has become worse due to the recent flood that happened in the month of August 2018. The ground floor has become fully inundated and a lot of damages happened to the assets of Dual Core Apartments due to this. Then the allottees of the apartments decided to unite and informed the respondents to call for a meeting to form an association. Initially the respondent did not agree to the same but later due to constant pressure from the side of the allottees called up a meeting on 31st August 2019 and formed the complainant association. In the said meeting, the respondent/builder informed the complainant that they are giving up the day-to-day maintenance of the apartment tower hence the complainant association decided to hand over the facility management services from 1-10-2019 to the complainant association subject to some conditions. In the meeting, the respondent company promised to provide the mandatory requirements and amenities including Final Fire NOC, provision for drinking water, sewage treatment plant, etc. offered in the Dual-Core apartment and the Aquacity Township. The maintenance work was taken up by the association only on the condition that all the above amenities would be provided within a short period. Later on, the Fire & Safety Department visited the apartments for inspection and reported that there is a major threat to the lives and properties of the owners therein. And also, there is a clear violation of existing building rules. Thus, the

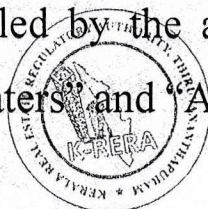


respondents have cheated the allottees by not providing the necessary approvals or common amenities. Even after many attempts, the respondents were reluctant in fulfilling the promises. The Complainant submitted that on 30.11.2019, the association issued a letter seeking a refund of association fund and statutory documents relating to the Dual-core apartment. The respondents responded through reply and mentioned about some false and frivolous accounts which are still due to the respondents. The Complainant replied stating that the respondent still collecting maintenance charges from the allottees by violating the decision taken in the General Body. It is clear from the site plan approved on 18/12/2007 as per No. A2/BP/213/2007-2008 that the respondent has got building permit for the entire Aquacity project and the site plan it can be seen that no provision for any such amenities offered and promised to be provided as per brochure, advertisement, sale and construction agreement and later as per the minutes of the meetings. The Complainant submitted that he has received a copy of the revised approved plan of the Aqua city project in which it is shown that nearly 2 acres of land have been removed from the project and the total project area have been reduced from 17 acres to 15 acres and this happened without the knowledge of the Complainant and it is clear violation of Section 14 of the Act.



3. The Complainant submitted that the Respondent has filed a suit against allottees before Paravur Munsiff Court as OS 539/2020 seeking an injunction restraining the allottees from obstructing the respondents herein and from entering into the common areas in the Aquacity Township project. Later the Munsiff court dismissed the injunction application filed by the Respondent herein as it doesn't contain any merits. The Respondents with the help of Panchayat, illegally constructed buildings by violating the mandatory provisions of Panchayat Building Rules and also constructing buildings in the area where it is proposed to be allotted for the common recreations and amenities. The relief sought by the Complainants are to 1) to direct the respondents to produce all the documents relating to the issue and conduct an investigation in the matter under sec 35 of the Act; 2) to direct to provide mandatory requirements for the apartments and also to hand over the ownership of common amenities and common areas in the complainant association name; 3) to direct the respondents to complete the Project works within a time frame fixed by this Hon'ble Authority. The documents submitted by the Complainant herein have been marked as Exhibit A1 to A18.

4. The Authority received earlier, 3 complaints No. 115/2020, 116/2020 and 117/2020 filed by the allottees of the apartment building named "Moon Waters" and "Aqua City Palmbay villas"



which are parts of the very same Project named “ Aqua City” with the same prayers in which a common order was issued on 23/12/2021 by the Authority as follows:

- 1) *The Respondents shall procure all the statutory clearances for the building “Moonwater” including clearance from PCB and Final Fire NOC and ensure efficient sewage treatment system and safety of the building and provide water and electricity within 3 (Three) Months from the date of receipt of the order;*
- 2) *The Respondents shall complete the car parking facilities and the amenities promised to be given exclusively for the building “Moonwater” and hand over all the documents related to said Tower to the Association of allottees, within 6(six) months from the date of receipt of the order;*
- 3) *The Respondents shall complete all the facilities and amenities in the entire Township project “Aqua city” with as promised to the Complainants as per the agreements for sale or other documents as mentioned in Section 12 of the Act, procure all the statutory sanctions and approvals required and hand over all the documents pertaining to the entire project including, land title deeds, sanctions, and approvals, technical drawings, etc. to the registered Apex Body Association, representing the Associations of all the Towers and Villas within 1(One) year from the date of receipt of the order.*
- 4) *The Respondents shall ensure that Associations are formed and registered as per the law in each of the residential Tower as well as the Villa project and finally an Apex body/ Federation of Associations representing all the Associations which is also to be registered. The 2nd Respondent shall also conduct meetings with the Association/s formally at the project site, on a periodical basis to discuss the progress of works and the Associations shall monitor the progress of works done by the Respondent.*
- 5) *In the event of failure on the part of the Respondent to complete the entire works of the project as stated above, the Respondents shall be liable to pay Rs.10,000/- per day as penalty from the date of expiry of periods prescribed above for compliance of direction No. 1,2, &3 till the date of completion, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016*



As the complainant herein also sought the same relief as on the previous cases aforementioned, directions No. 3,4 & 5 given through order dated 23/12/21 are applicable to the Complainant herein, also.

5. The complaint was filed on 5/8/21 and came up for final hearing on 16/02/2022. The notices issued by the Authority to the Respondents were returned unserved, hence paper publication was allowed as per the memo filed by Complainant. The Paper publication is submitted and is marked as Exhibit A19. The Respondents were absent on the next posting date also. Hence the Respondents were set ex- parte and on the basis of the above facts and findings, invoking Section 37 of the Act, this Authority hereby directs the following: -

1. The Respondents shall provide the Complainant/Allottees all the mandatory requirements for the Dual-Core apartments including Final Fire NOC, Sewage treatment Plant, Centralised gas connection, Kerala Water Authority connection, and separate car parking facilities and the Respondents shall handover the ownership of common amenities and common areas of Dual Core apartment to the complainant association with all the documents after completion of all the amenities offered to the allottees **within 3 months** from the date of receipt of this order, failing which the Respondents shall be liable to pay **Rs.10,000/- per day as penalty** from the date prescribed above for compliance of directions till the date of completion, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.



2. The directions No. 3 & 4 in the common order dated 23/12/2021 are applicable to the complainant herein also.

Sd/-

Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



[Handwritten Signature]

Secretary (Legal)

APPENDIX

1. **Exhibit A1-** True copy of the registration certificate of Dual Core Apartment Owners Association dated 18-09-2019.
2. **Exhibit A2-** True copy of the membership register of Complainant association.
3. **Exhibit A3-** True copy of the extracts of the Resolution of the meeting dated 26/05/21.
4. **Exhibit A4-** True copy of the brochure issued by the respondents with respect to the Dual Core and Aquacity project.
5. **Exhibit A5-** True copy of newspaper advertisement published in Guld times dated 12-01-2011.
6. **Exhibit A6-** True copy of sale and construction agreements dated 26/05/2011.
7. **Exhibit A7-** True copy of Sale Deed dated 15-04-2016.
8. **Exhibit A8 -** True copy of the reply given by the Electrical Section Aluva dated 26-06-2020 to the Right to Information question asked by the Complainant association.
9. **Exhibit A9-** True copy of the minutes and running minutes of the meeting dated 31-08-2019.
10. **Exhibit A10-** True copy of audit report dated 04/10/2019 submitted by Fire & Safety Department.
11. **Exhibit A11-** True copy of the letter dated 29-10-2019 seeking handing over of the documents and association refund.
12. **Exhibit A12-** True copy of the letter dated 29-10-2019 seeking progress and assurance of amenities.
13. **Exhibit A13-** True Copy of the letter dated 30-11-2019.

14. **Exhibit A14-** True copy of the letter issued by the respondent dated 10-01-2020.
15. **Exhibit A15-** True copy of the email communication of the complainant dated 10-02-2020.
16. **Exhibit A16-** Sanctioned plan of Aquacity Township Project in the year 2007.
17. **Exhibit A17-** True copy of the Revised plan of Aquacity project dated 17-12-2019.
18. **Exhibit A18-** True copy of the plaint in O S No. 539/2020 before Parur Munsiff Court.
19. **Exhibit A19-** Paper Publication.

