



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaints No. 212/2022 & 77/2023

**Present: Sri. P H Kurian, Chairman.
Sri. M P Mathews, Member**

Dated 31st July, 2023

Complaint No. 212/2022

Complainants

1. R. Subrahmanian
Flat G, Aiswarya Nest Sheshadri Nagar,
Puthiyangam Lane, Koppam,
Palakkad- 678001, Kerala
2. N.Seethalakshmy
Flat G, Aiswarya Nest Sheshadri Nagar,
Puthiyangam Lane, Koppam,
Palakkad- 678001, Kerala

[Adv. Feby Jacob]

Respondents

1. M/s Aiswarya Builders
Reg office at No. 12/1058(3)
Remya Chambers,
Mettupalayam Street,
Palakkad – 678 001
Represented by its Managing Partner
Sundar Kumar residing at Ahalya Nagar, Puthur Road,
Koppam, Palakkad - 678001
2. Mr. Sundar Kumar
Managing Partner,



Ahalya Nagar,
Puthir Road,
Koppam, Palakkad- 678 001

Complaint No. 77/2023

Complainants

1. Aiswarya Nest Apartment Owners' Association,
Reg.No. PKD/CA/451/2022
Represented by it's Secretary,
R. Subramanian, aged 61,
S/o Late Dr. V.S Rama Iyer

[Adv. Feby Jacob]

Respondents

1. M/s Aiswarya Builders
Reg office at No. 12/1058(3)
Remya Chambers,
Mettupalayam Street,
Palakkad – 678 001,
Represented by its Managing Partner
Sundar Kumar residing at Ahalya Nagar, Puthur Road,
Koppam, Palakkad - 678001
2. Mr. Sundar Kumar, Partner
Aiswarya Builders, Ahalya Nagar
Puthur Road, Koppam
Palakkad- 678 001
3. Mrs. Anjana Sundar, Partner
Aiswarya Builders, Ahalya Nagar,
Puthur Road, Koppam
Palakkad-678001

The above Complaint came up for virtual hearing on 30.05.2023. The Counsel for the Complainants Adv. Feby Jacob and for the Respondent/Promoter Sundar Kumar attended the hearing.

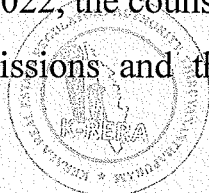


ORDER

1. As the above 2 complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No: 77/2022, filed by the Aiswarya Nest apartment owners Association(Herein after referred to as the Association) is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.
2. The Complainants in 212/2022 are joint allottees in the Project "Aiswarya Nest" developed by the Respondents. The Respondents had notified and advertised about the upcoming 2 BHK and 3BHK ultra- modern (Eco Friendly) flats in Sheshadri Nagar, Puthur Road, Palakkad District. The Apartment consists of 39 residential units. The Complainant submitted that they had entered into an agreement with the Respondent on 12-10-2017 to purchase one residential unit, which was a ready built apartment/ unit with occupancy certificate which had obtained Occupancy certificate from Palakkad municipality on 12.10.2017. According to clause 37 of the agreement the respondents had agreed to do the truss work above the fourth floor as free of Cost and in the schedule appended to the builder agreement, it is provided that the allottee shall be given marked car parking space in the basement admeasuring, 105 Sq.mtr.
3. Complainant in 77/2023 is the Association of owners in the real estate project and the facts of the case are similar to those in Complainant No. 212/2022. The reliefs sought by the Complainants are all related to common areas and hence the reliefs sought under Complainant No. 77/2023 are given below:-



- (a) Direct the Respondent/Promoter/Builder to provide 39 car parking slots in “Aiswarya Nest” residential apartment by making suitable alterations, if any, necessary without depriving/ compromising existing physical facilities and amenities to avoid disputes among the allottees regarding car parking number provided by the builder is less than the count of owners
 - (b) Direct the Respondent- promoter/ builder to do Truss Work over the roof top of the “Aiswarya Nest” residential apartment with rain water gutter facility to drain out rain water easily.
 - (c) Direct the Respondent-promoter/ builder to handover all basic documents viz. Approval Plan, drawings of electrical and Plumbing, basic documents of property, up to date permits and permissions from the statutory authorities, Annual Maintenance contracts, if any, Certificates of Electrical Inspectorate etc. pertaining to the Aiswarya Nest apartment to representative of the apartment owners’ Association.
 - (d) It may be submitted that the respondent has not provided roofing above the fire escape and tiling of the stair case leading to serious rain water inflow during the monsoon through the corridors which results in both the staircases becoming dangerously slippery. Issue appropriate direction to the respondent Builder to provide proper roofing and tiling to arrest the ingress rainwater.
 - (e) Issue appropriate direction to the respondent Builder to provide proper water proofing to arrest the ingress rainwater into the lift room
 - (f) Award cost of the proceedings
 - (g) Such other reliefs that the Hon’ble forum feel deem fit in the facts and circumstances of the case
4. The respondent had not filed any objections nor produced any documents from their side. On 26.10.2022, the counsel for the complainants appeared and based on their submissions and the documents produced by the



complainants, the authority passed an interim order on 26.10.2022 directing the respondents to submit application for registration of the project named 'Aiswarya Nest' under section 3 of the Kerala Real Estate Regulation Act, 2016 (herein after referred to as the Act, 2016) within 30 days from the date of receipt of the order. The respondents filed reply on 28.11.2022 stating as below:- They had no intention to sell the remaining flats and the project is not an ongoing project. According to the respondents, the were introduced with effect from 14.06.2018 and the authority was constituted only on 05.10.2019. The public notice dated 26.12.2019 issued by the authority stated that from 01.01.2020, the promoters shall not advertise, market, book, sell or invite persons to purchase or transfer any plot or apartment without registering under section 3. Therefore, the respondents contended that they had received the occupancy certificate before 01.01.2020 and their project is not registerable.

5. After hearing the parties, the authority vide order dated 29.12.2022 directed the respondents to register the real estate project named 'Aiswarya Nest' under section 3 of the Act, 2016 within 30 days from the date of receipt of the order. The respondents continued violation of section 3 of the act 2016 and another order was issued on 12th April 2023 directing the respondents to submit explanation as to why penalty under section 59(1) of the Act, 2016 shall not be imposed, within 15 days from the date of receipt of this order. No response has been received from the respondents and the authority is proceeding against the promoter under section 59 of the Act 2016.
6. Considering the above facts, it has been held that the real estate project Aiswarya Nest is a registerable project under Section 3 of the Act, 2016 and this authority decided to pass orders on the complaint filed by the allottee.



7. Documents produced from the side of the Complainant in Complaint No. 212/2022 is marked as **Exhibit A1 to A10**. Brochure produced by the complainants is marked as **Exhibit A1**. The registered sale agreement dated 12.10.2017 executed between the complainants and 2nd respondent and his wife is marked as **Exhibit A2**. This agreement is for purchase of apartment/Flat No. G in the ground floor measuring 1175 sq.ft along with 1/39 undivided share of land in 'Aiswarya Nest' constructed as per building permit bearing No. EJBR/96/13-14/PW5 dated 15.07.2013, 12.02.2014 and 18.12.2015. The second respondent has stated that in the agreement that occupancy certificate for the said project was obtained from Palakkad Municipality on 10.10.2017. Another agreement executed on the same day between the 1st respondent represented by the second respondent and partner of the 1st respondent and the 2nd complainant is marked as **Exhibit A3**. This agreement is for appointing the respondents as contractor for constructing the apartments described in schedule B of the agreement. The agreed consideration is 40,00,000 being Rs. 13,15,750/- for land and Rs.26,84,250/- for building. The respondents had undertaken to ensure that the construction is completed within 12 months from the date of its agreement and the handing over possession within 30 days after completion or after receipt of the entire payment by the complainants. It is further agreed that the truss work above the 4th floor shall be done by the respondent free of cost. **Exhibit A4** is the sale deed dated 01.11.2017 executed by the second respondent and his wife in favour of the complainants transferring 1/39 undivided share over 0.1223 hector of land and apartment door No. 19/994 in the building known as 'Aishwarya Nest' for a total value of Rs. 40,00,000/-. **Exhibit A5** is the initial drawing approved by the Municipal Engineer, Palakkad Municipality on 14.07.2017. This drawing shows 32 car parking spaces. **Exhibit A6** is the final drawing approved by the Municipal Engineer, Palakkad Municipality



on 05.10.2017. This drawing shows only 21 car parking space and 3 guest parking. These A5 and A6 drawings confirm the facts that the number of cark parking spaces stands reduced. **Exhibit A7** is letter dated 25-02-2022 addressed to the respondent by the complainant. **Exhibit A8** is the letter dated nil signed by 13 allottees addressed to the promoters. **Exhibit A9** letter dated 30.05.2021 of the president Aiswarya Nest owners adhock committee addressed to the respondents. **Exhibit A10** is the maintenance report of infra elavators dated 14.07.2021.

8. Based on the submissions of the counsels and considering the documents produced by the complainants the authority framed the following issues: -

- (i) Issue No.1 - whether order can be passed on allotment of car parking space as prayed for
- (ii) Issue No.2 - whether respondent/promoter is bound to do the truss work over the roof top of Aiswarya Nest residential apartment
- (iii) Issue No.3 - Whether the Aiswarya Nest apartment owners were entitled to obtain all documents as prayed for in complainant No. 77/2023

9. Issue No.1

Based on Exhibit A6 final drawing produced by the complainant there are only 21 car parking spaces available for allotment as per the approved plan. These parking spaces can be allotted by the association as decided by the members of the association. Those who have not obtained car parking spaces as promised in the agreement can approach the adjudicating officer for compensation. Issue No.1 is decided accordingly.

10. Issue No.2

After going through the Exhibit A3 agreement, it is clear that the respondents had agreed to do the truss work of the 4th floor free of cost.

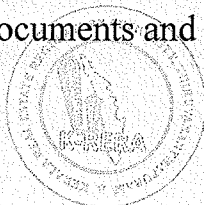


As per Section 11(4)(a) of the Act, 2016, the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots, or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. Exhibit A2 sale agreement does not give any commitment to the complainants regarding the truss work above the 4th floor. It is the Exhibit A3 agreement in which the respondents are appointed as contractor for constructing the apartments that the promise to do the truss work above the 4th floor is made. As per the Kerala Building Rules, Construction of truss work above the 4th floor can be done only based on an approval received from the concerned local bodies. Since, the sale deed transferring the apartment and undivided share are already executed the required permit for executing the work can only be made by the association. Therefore, the issue No. 2 is decided in favour of the respondents.

11. Issue No. 3

section 17(2) of the Act, 2016 states that after obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas,



to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, [to the association] of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate. Issue No.3 is therefore decided in favour of the complainants.

12.Hence, the authority invoking power under section 37 hereby directs as follows:-

The respondents shall hand over all basic documents viz. Approval plan, drawings of electrical and Plumbing, basic documents of property, up to date permits and permissions from the statutory authorities, Annual Maintenance contracts, if any, Certificates of Electrical Inspectorate etc. pertaining to the real estate project as per Sec. 17(2) of the Act, 2016, within 30 days from the date of receipt of this order.

Sd/-

Sri. M P Mathews
Member

Sd/-

Sri. P H Kurian
Chairman

True Copy/ Forwarded By/Order



Secretary (legal)

Annexure**Exhibits on the side of the Complainants**

- Exhibit A1 - Brochure Page Numbers 1-3
- Exhibit A2 - Registered sale agreement dated 12.10.2017
- Exhibit A3 - Agreement dated 12.10.2017
- Exhibit A4 - Sale Deed dated 12.10.2017
- Exhibit A5 - Initial Drawing of the Project dated 14.07.2017
- Exhibit A6 - Final Drawing of the Project approved by the competent on 15.10.2017
- Exhibit A7 - Letter dated 25.02.2022 addressed to the respondent by the complainant
- Exhibit A8 - Letter dated nil signed by 13 allottees addressed to the promoter
- Exhibit A9 - Letter dated 30.05.2021 addressed to the respondents by the adhoc committee.
- Exhibit A10 - Maintenance report of Infra elevators dated 14.07.2021