



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No: 22/2021

Dated 12th August 2021

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

Complainants

1. P.Santhalingam,
46 Tagore Nagar,
Ponneth Temple Road,
Kadavanthara, Kochi-682020.
2. Sindhu Santhalingam,
46 Tagore Nagar,
Ponneth Temple Road,
Kadavanthara, Kochi-682020.

(Adv.Abraham K George)

Respondents

N.Jayakrishnan
8th Floor, KJK Sivam
Layam Road Kochi,
(Proprietor Jayakrishnan &Co.
Thottakattil Road, Kochi.

(Adv.Lakshmy S)

The above Complaint came up for virtual hearing today. The counsel for the Complainant Adv.Abraham K George and counsel for the Respondent Adv.Lakshmy S attended the hearing.

ORDER

1. The case of the Complainants is that the 1st Complainant had paid Rs.25,00,000/- as advance and Rs.70,00,000/- at the time of registration of the sale deed for the purchase of Apartment D1 at NJK Lakshmi Vihar Apartments situated at Warriam Road, Ernakulam in the name of his daughter. The Respondent is the promoter of the project named 'NJK Lakshmi Vihar Apartments' acted as Real Estate Agent in the purchase of the said Apartment. The 2nd Complainant is now the owner of the Apartment D1. The land where the said project is constructed originally belonged to Smt. Rajalakshmi Sathyapalan. On 12/02/2007, Smt. Rajalakshmi Sathyapalan, the land owner, entered into an agreement with the Respondent, for the purpose of constructing the proposed Apartment building. Subsequently, the land was sold to Smt. Anand Narayana Swamy and Lakshmy Anand by Rajalakshmi Sathyapalan. Thereafter on 01/11/2007, Anand Narayana Swamy and Lakshmy Anand entered into an agreement with the Promoters/Respondents for the construction of the said building. The 1st Complainant met the Respondent in connection with purchasing an Apartment in 'NJK Lakshmi Vihar' and made advance of Rs.25,00,000/- for the Apartment. It was agreed that the said amount would be adjusted towards the sale price of the Apartment. The 2nd Complainant herein purchased the apartment presently numbered as D1 from the said Anand Narayana Swamy and Lakshmy Anand on 28/06/2014 for a total consideration of Rs.70,00,000/-. The Respondent at the time of sale requested this amount by way of bank transfer and hence paid Rs.69,30,000/- and Rs.70,000/- was paid as TDS. Hence the advance of

Rs.25,00,000/- was outstanding towards the Complainants. The Respondent compelled the 1st Complainant to invest in his other ventures and stated that the advance of Rs.25,00,000/- could be treated as the first installment towards the purchase of one of his properties. But the Complainant was not agreeable to the same and sought for the return of the amount advanced. The Respondent stated that he was unable to refund the payment of Rs.25,00,000/- and executed a promissory note on 30/06/2014 in favour of the 1st Complainant agreeing to pay the said amount with 12 % per annum. On continuous demand the Respondent re-paid Rs.5,00,000/- in January 2017 and he paid interest of Rs.18,000/- from January 2017 to February 2018. From March 2018 the Defendant stopped making the interest payments. Thereafter Complainant issued a legal notice. Subsequent to this notice the Respondent paid Rs.2,00,000/- in November 2018. Hence this Complaint is filed. The Reliefs sought by the Complainants are to conduct an investigation in the affairs of the Respondent, Refund of Rs.18,00,000/- with interest at 12% P.A, to issue an order of attachment of property owned by the Respondent.

3. The Respondent has filed Written Statement and submitted that the construction of the building was completed in 2010 and the Apartments were handed over to the respective Allottees much prior to the enactment of Real Estate (Regulation & Development) Act, 2016. The Respondent is not a real estate agent and the Complainant does not have any cause of action to prefer this Complaint as the alleged transaction is of the year 2014 and the Respondent has not entered into any agreement with the Complainants with regard to the allotment of any flats constructed by the M/S NJK Builders Pvt. Ltd during 2014. The Respondent further submitted that he has not accepted a sum of Rs.25,00,000/- towards the purchase of Apartment and the undivided share covered by deed no.2850/2014 of SRO Ernakulam as the construction of

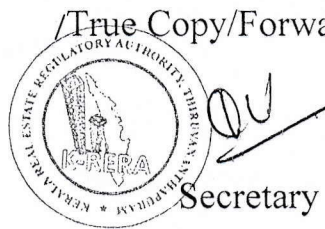
Apartments was complete as early as in 2010 and the Complaint is not maintainable before the Authority.

3. It is clear from the above facts that grievance of the Complainants is with respect to non-payment of invested money of Rs.18,00,000/- with interest. The relief sought is not with regard to any violation of the provisions of the Act and no agreement or document is produced, showing the promises made by the Respondent to the Complainants. The disputed amount is not the consideration of the Apartment over which the Complainants have no case. Prima facie the Complaint is not maintainable before the Authority.

4. In view of the above, the above Complaint is hereby **dismissed**. The Complainants can approach appropriate Forum for getting their grievance redressed.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/

Secretary (Legal)