



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.220/2022

Dated 25th September 2023

Present: Smt. Preetha P Menon, Member

Complainant

Sudheer,
Suja Nivas,
Pathirakkattukavu Road,
Njalakamkara, Kalamassery North,
Ernakulam – 683104.

(By Adv. Ratheesh P R)

Respondents

1. Grand Homes @ Grand Developers,
Having registered office at,
Manath Building, Opposite Hotel Ananda Bhavan,
Sea port Air port Road, Kakkanad.
Represented by its Managing Partner, Noufal U.
2. Noufal P.U,
Managing Partner,
Grand Homes @ Grand Developers,
Pukkatt House, Kuroopramala,
H M T Colony P.O, Kalamasserry- 683 503.
Thrikkakkara North Village.

(By Adv Binu Mathew)



The above Complaint came up for final hearing 14/07/2023. Counsel for the Complainant and Counsel for the Respondents along with 2nd Respondent attended the Virtual hearing.

ORDER

1. Complainant is an Allottee of project named 'Grand Moon Park' located at Muttakkad, Ernakulam developed by the Respondents. The said project is not registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act, 2016').

2. The facts of the Complaint are as follows:-
Believing the words of the Respondents the Complainant has booked a flat in their 'Grand Moon park' project. accordingly an agreement for sale was entered into between the Complainant and Respondents on 21/06/2018, wherein the Complainant was offered A type two bed room apartment No.4A bearing door No.XII/215 A21 having super built up area of 69.50 sq.mts on the 4th floor together with right to use common areas, facilities and one exclusive car parking for a total sale consideration of Rs.23,96,800/-. Thereafter on 06/12/2018 sale deed has been executed and by the end of 2018 the Respondents handed over the apartment to the Complainant. At the time of handing over the Complainant was neither provided with the completion certificate nor water connection, fire and life NOC, demarcated car parking on the



ground floor etc. as agreed by the Respondents. when the Complainant questioned these anomalies, the Respondents made false assurance that they will cure all these defects within a stipulated time frame.

3. The Complainants further submitted that he was shifted to the new apartments and started living there from 2019 onwards. Thereafter the Complainant found that the his apartment has not been provided with separate electricity connection / separate meter by the promoter. On investigation Complainant realised the awful truth that electric supply provided to his apartment as well as to the other 27 units was from a single electric meter installed by the KSEB for construction purpose. Immediately the Complainants contacted the Respondents and demanded separate domestic connection with separate meter at Complainants residence from KSEB. The Respondents acknowledged their fault and informed the Complainant that they will do all necessary procedures for getting separate connection at their own expense. It is also to be noted that the Complainant had paid an amount of Rs.22,000/- as electricity charges for the period from November 2021 to March 2022. The Respondents as per the mediations conducted on 05/06/2020, agreed to give independent domestic connection to all apartments, water connections from the KWA, demarcate the carparking and common areas, will form the association, handover the completion certificate on or before 15/08/2020. Till date the Respondents did



not take any action to redress the grievances raised by the Complainant. Meanwhile the Complainant filed an application dated 23/04/2022 under Right to Information Act, 2005 before the information officer at the Dept. of Electrical Inspectorate Ernakulam seeking information relating to the steps taken by the Respondents in order to provide domestic connection at the Complainant's flat. The Complainant has received a reply dated 05/05/2022 stating that the Respondents submitted the application only on 18/04/2022 and inspection is not over. The Complainant issued a legal notice dated 20/06/2022 to the Respondents to redress the above grievances and also demanded compensation for the mental agony and sufferings, to which the Respondent kept silent. Hence the above Complaint.

4. The reliefs sought by the Complainant are (1) refund of exorbitant amount of Rs.22,000/- paid by the Complainant as electricity charges (2) refund of Rs.50,000/- collected by the promoter for formation of association (3) compensation of Rs.50,000/- and (4) to cure the defects or deficiency in services in connection with the apartment.

5. The Respondents have submitted objection stating that the above Complaint is not maintainable before the Authority as the complaint relates to matters evolved prior to the coming into force of the RERA Act. The building permit for the project in question was issued by the Kalamassery Municipality on



26/09/2014, and the occupancy certificate was issued on 01/06/2018. The RERA Act has become applicable to the State vide Gazette notification dated 09/10/2019. The Rules applicable to Kerala was promulgated on 16/06/2018. On any count the project 'Grand Moon Park' was not an ongoing project as on 16/06/2018. At the time of handing over of the flat, though the construction of the project was over, the work of some of incidental facilities like vehicle parking were not completed and hence the Respondents has not applied for completion certificate from the Municipality and the apartments were already given door numbers by the Kalamassery Municipality and for all practical purposes the construction has been completed. At the time of handing over of the flat on the basis of the sale deed, the apartment was having bore-well water connection. Kerala Water Authority connection was duly applied for and has been obtained later. The project is equipped with both bore well and KWA connections. The Municipality will not grant building numbers to the apartments without fire and lift NOC. The said NOC was obtained prior to the numbering of the apartments. The car parking area has been provided in the ground floor of the project. There is no impediment for the Complainant to utilise this area for car parking. Even though the Complainant has no dues to the Respondents, there are others yet to clear the dues. The Respondents are ready to provide a demarcated car parking space to the Complainant. It is reliably learnt that the electrical inspectorate has approved granting independent domestic



connection to the apartments. As an interim arrangement the apartment owners are using the initial connection granted by the KSEB.

6. The Respondents further submitted that since the allotment of domestic connection is pending consideration before the KSEB, the bi-monthly bills for the apartments were paid by the Respondents till November 2021. After November 2021 onwards, each apartment owner pays an amount of Rs.500/- to Sri.Shanavas, an apartment owner and the balance is borne by the Respondents towards electricity dues. These Respondents are not aware of the averment regarding payment of Rs.22,000/- by the Complainant. The Kerala Water Authority connection has already been provided. The post covid financial slow down had caused fetters in the speedy execution of the procedural formalities required to obtain the required consents and approval from the KSEB. The Respondent had already undertaken to do all the necessary actions required to redress all the grievances pertaining to those issues, covered by the sale deed and the incidental issues. These Respondents further submitted that these Respondent is duty bound to transfer the amount of Rs.50,000/- to the Residents Association A/c only on proper formation of the association and opening of bank account.

7. The project named 'Grand Moon Park' is not registered with the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016. After conducting



multiple hearings it is found that the project in question is not yet provided with water connection, Fire NOC and the Occupancy certificate is not obtained so far and hence the said project comes under the purview of the Act 2016 and requires to be registered under section 3 of the Act, 2016. As per the Proviso to Section 3 of the Act 2016, it specifies that the “projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.” The corresponding Rule 3(2) of the Kerala Real Estate (Regulation & Development) Rules, 2018 stipulates that “In the case of ongoing projects on the commencement of the Section 3 of the Act, 2016 and for which the occupancy certificate has not been issued, the promoter shall make an application to the Authority for Registration of the project”. So, the said project in question here is undoubtedly an ongoing project required to be registered under section 3 of the Act, 2016.

8. Moreover, during the hearing on 14/07/2023 the Respondents admitted that the project is registrable and they have started procedure for registration under Section 3 of the Act, 2016 and the counsel appeared for the Respondents assured that the project will be registered within 2 weeks with the available documents. As the Respondents/Promoters have failed to register



the project with the Authority till now, the Authority decided to initiate penal proceedings against the Respondents/Promoters under section 59(1) of the Act 2016.

9. It is clear from the above facts that grievance of the Complainants is with respect to refund of exorbitant amount of Rs.22,000/- paid by the Complainant as electricity charges, refund of Rs.50,000/- collected by the promoter for formation of association, compensation of Rs.50,000/- and to cure the defects or deficiency in services in connection with the apartment. The relief sought is not with regard to any violation of the provisions of the Act. 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. Even though this Authority made the counsel appeared for the Complainant convinced in the 1st hearing itself that the reliefs sought herein are not maintainable and gave him ample time to make suitable amendments, if required, no steps have been taken so far in this regard.

10. As far as the prayer, with regard to the defects in the Construction is concerned, the Complainant has the right to seek remedy as provided under Section 14(3) of the Act, 2016, which stipulates that *“In case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating*



to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

11. Hence as per the said provision of law, the Allottee shall get protection within 5 years from the date of handing over possession as per which if the promoter fails to rectify the defects which comes under the said provision and as pointed out by the Allottee, within 30 days of getting such a notice from the allottee, the Promoter shall be liable to pay compensation to the aggrieved Allottee. The Complaint seeking compensation shall be in Form N and it shall be adjudicated by the Adjudicating officer of this Authority, as provided under Section 72 of the Act, 2016.

In view of the above, the above Complaint is hereby **dismissed**.

Sd/-

Smt. Preetha P Menon
Member

True Copy/Forwarded By/Order



Secretary (legal)

LSI

