

KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 233/ 2021

Dated 17th November, 2021

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

Complainants

1. Abraham George,
Nirayannoor House,
Pathanamthitta P.O,
Nannuvackadu, Pathanamthitta.
2. Sobhana Abraham,
Nirayannoor House,
Pathanamthitta P.O,
Nannuvackadu, Pathanamthitta.

Respondents

1. M/s Aswathy housing Pvt.Ltd.
Aswathy street,
Aswathy Gardens, Chittattumukku,
Menankulam, Kazhakuttam-695588.
(Represented by its director Alexander Vadakkedom).
2. Alexander Vadakkedam,
Q1 Aswathy Gardens,
Menankulam Village, Kazhakuttam,
Thiruvananthapuram.

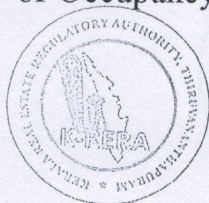


3. George P Thomas,
Aswathy Park,
Menamkulam Village, Kazhakuttam,
Thiruvananthapuram.

The above Complaint came up for virtual hearing today. The Counsel for the Complainant Adv. Jyothi and counsel for the Respondent Adv. A Santhosh kumar attended the hearing.

ORDER

1. The case of the Complainants is as follows:- the Complainant and the 2nd Respondent are natives and their family known to each other for the last 33 years. The 2nd Respondent insisted the Complainant to purchase a villa in the project named 'Aswathy park' developed by the Respondents. Out of the intimacy shown by the 2nd Respondent, the Complainant has agreed to purchase C-51 three storied luxury villa without entering into a construction agreement. The total consideration for the villa was Rs.87,50,000/-. On 21/05/2018 the 2nd Respondent has issued an allotment letter for the said villa, a payment chart was also issued to the Complainants. The Complainant has paid the down payment of Rs.10,00,00/- to the Respondent and also issued an undated cheque of Axis bank for balance consideration. There was no written agreement among the Complainant and the Respondents regarding the terms and conditions of the sale and construction. The Respondent has promised to complete the building within a month. The Complainant has spent 8 lakhs rupees and done its interior works interlocking. On 02/12/2018, the Complainants took possession and began to live there. When the Complainant began to live there, day after day they felt inconvenience one after another. 1st one of it was leaking on the roof. The Respondent has not issued copy of Occupancy Certificate to the Complainant. moreover the



Respondents are not ready to execute the Sale deed even after payment of Rs.30 Lakhs as consideration as per the oral agreement between them. Because of these reasons, the Complainants want to withdraw from the project and demanded the amount paid from the Respondent. the Respondent was ready to refund the amount paid to him for the said villa. But he demanded key of vacant villa. Then the key was handed over to the Respondent on 20/09/2020. But the Respondent slipped from their promises and did not pay the amount after obtaining the key of villa. Thereafter, the Complainant had lodged a Complaint before the Thiruvananthapuram city police Commissioner. Since there is no written agreement, none of the officials took any action against the Respondents. Thus the Complainant has filed a miscellaneous petition before the Attingal JFMC II and registered a Crime vide No.1789/2020 at Kazhakuttam police station under section 406 IPC. In between the Respondent utilized cheque issued by the Complainant by putting a fake on it and filed a complaint under section 138 of Negotiable Instruments Act.

2. The Reliefs sought by the Complainants are (1) direct the Respondents to return Rs.3288666/- the amount received by the opposite parties in respect of the C-51 Villa in 'Aswathy Park' with interest at such rate as prescribed under section 18 of the Act (2) allowing the Complainant to realise an amount of Rs.8,000,00/- the amount append by the Complainant for completing the construction of the said villa with interest as prescribed under the Act.
3. The Respondent has filed reply statement and denied the contentions in the Complaint and submitted that the complaint is not maintainable before the Authority and the Respondents are not promoters or persons and the Complainants are not Allotees as defined in the Act and Rules. The Respondent had formulated two villa projects 'Aswathy Gardens' and 'Aswathy Park' were completed and handed over to respective purchasers



long ago. All the respective purchasers in the two projects were in occupation from 1996 onwards. Certain villas in the projects are left unsold and are exclusively in the name of the 2nd Respondent. No marketing or sale is intended to be made in the name of the company. The project is not an ongoing project or new project. The project has been completed 21 years ago, prior to the implementation of the Act. It is further submitted that the Complainants and the Respondents had no agreement for sale as the promoter or allottee. The building in issue is in the personal name of the 2nd Respondent which was left unsold in the said project and was given possession to the Complainants out of personal friendship and due to the non-payment, the issues were raised and the matter is pending before the magistrate court, Attingal for the offence punishable under 138 of Negotiable Instruments Act for the dishonour of the cheque issued by the Complainants. The Occupancy certificate including the allotment of the building number was obtained in the year 2012. The copy of building tax for the year 2012 is produced. Since the building in issue is not attracting any of the provisions of the RERA Act and Rules, in the presence of sale agreement or valid document for the Complainants and on the view of the aforesaid reasons, the Authority lacks jurisdiction to entertain the Complaint and consequently the injunction petition for equitable remedy is also not maintainable and hence both are liable to be dismissed.

4. Heard counsels representing both sides in detail and perused the documents produced from both sides. The following issues were framed for consideration.
 1. Whether the Complaint is maintainable before the Authority?
 2. Can any of the reliefs sought for by the Complainants be granted?
5. The Complainants had produced copy of an order form signed by them with no payment details and date of affixture of signature, copy of allotment letter dated 21/05/2018 signed by the second Respondent,



lawyer's notice issued by the Advocate representing the 1st Respondent and copy of payment receipts, copy of payment structure, brochure were produced from the part of the Complainants, and the same was marked as Exhibits A1 to A6. Copy of tax receipt dated 25/07/2012 is the document produced from the part of the Respondent and is marked as Exhibit B1. From the said tax receipt produced, it is clear that the house is in the name of Alexander Vadakkedam, the 2nd Respondent and it is evident that what was proposed to be sold as per the order form and allotment letter, was a completed house, for which the local body had issued tax receipt as early as 25/07/2012. Hence, the Complaint is not maintainable before the Authority as there is no evidence to prove that the project was an ongoing project as on 01/05/2017. Since the Complaint is not maintainable before the Authority, the reliefs sought by the Complainant cannot be granted as per the Real Estate (Regulation & Development) Act, 2016. Hence the Complaint is dismissed, as not maintainable.

Dated this the 15th day of December 2021


Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri.M.P. Mathews
Member

Sd/-
Sri. P H Kurian
Chairman



/True Copy/Forwarded By/Order


Secretary (legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of Order form.
- Exhibit A2 : Copy of allotment letter dated 21/05/2018.
- Exhibit A3 : Copy of lawyer's notice issued by the Advocate representing the 1st Respondent dated 19/11/2020.
- Exhibit A4 series: Copy of payment receipts.
- Exhibit A5 : Copy of payment structure.
- Exhibit A6 : Copy of brochure.

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of tax receipt 25/07/2012.

