



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint Nos. 40/2021, 41/2021, 42/2021 & 234/2021

Dated 5th December, 2021

Present: Sri. P H Kurian, Chairman.

Smt. Preetha P Menon, Member

Sri. M.P. Mathews, Member

Complainants

1. Dr. Jose George : Complaint No. 40/2021
Nedumattom House,
Inchakundu P.O-680312,
Thrissur.
2. Davis T.O : Complaint No. 41/2021
Thattil House,
Kizhakummuri P.O,
Thrissur – 680571.
3. Sreekumar. M : Complaint No. 42/2021
Madhavam, Puthenvettuvazhy,
Chembukavu P.O,
Thrissur-680020.
4. Alfa Breeze Apartment Residents : Complaint No.234/2021
Association,
(Reg.No.TSR/TC/116/2021),
Alfa Breeze Apartment, C R Iyyunni Road,
Building No.12/1212,
Chembukavu P.O,Thrissur-680020.
(Represented by its Secretary).

Respondents

Dr. Scott Chacko John
Orthopedic Surgeon,
Door No: C1, Alfa Breeze
Iyunni Road, Chembukavu P.O
Thrissur District- 680020

The above Complaints came up for virtual hearing today. The Counsels for the Complainant, Adv. Rajith Davis and Counsel for the Respondent, Adv. Sasindran attended the hearing.

ORDER

1. As the above four 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:234/2021 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 Complainant is Alfa Breeze Apartment association, registered under the Travancore Cochin Literary and Scientific Charitable Societies Act. The Respondent is the owner of 02.02 Ares in re sy. No.405/2-17 and 4.05 Ares inn sy.No.405/2-18 of Chembukavu village, Thrissur District and builder of residential project named 'ALFA BREEZE'. The total extent of the property is 6.07 Ares and builder constructed 1913 m² building in the said land and divided in to 15 number of residential flats. The Respondent has sold 14 flats to different Allottees. The Respondent is holding one flat in the project and he is residing in the said flat. The flats has been registered in the name of the different Allottees and obtained

Occupancy Certificate on 13/07/2020. A registered association has been formed on 29/03/2021 and the Respondent is also member of the said association and also a member of the Executive Committee. Even after obtaining Occupancy Certificate the Respondent has not completed road tarring, Gym, Sewage Treatment plant, boundary wall etc. and also the Respondent is not ready to give the car parking allotment to Allottees, hand over the original documents pertaining to the project etc. to the Association. The Reliefs sought by the Complainant are :- (1) direct the Respondent to hand over the possession of the common areas as per the Commencement plan to the association legally (2) direct the Respondent to give valid car parking allotment letter along with sketch with proper marking to all the Allottees (3) to cancel the car parking allotment letters which he has issued illegally to some flat owners (4) to put up compound wall and gate in northern side of the project by fixing the boundary (5) to take RERA Registration of the project as per the Act (6) to install sewage treatment plant in the premises (7) to set up GYM (Health Club) with quality products which is suitable for community use with proper roofing and flooring, security cabin as given in the brochure (8) to remove CCTV from common area which he has fixed for his personal purpose as it violates the personal rights of other Allottees (9) to tar the approach road to the Apartment starting from corporation road (10) to hand over all original documents, plans and other related documents pertaining to the land and construction of the building including electrical drawing, documents, pertain to generator, lift etc. and other equipment's to the Association.

3. The Respondent has filed Counter affidavit and denied the contentions raised by the Complainants and submitted that he has provided all the facilities offered and there is no dereliction. Road tarring was completed and thereafter it is broke open on a side for the purpose of cable work. The

gym is already set up and as per the rules, sewage treatment plant is not mandatory and the boundary wall is also constructed. All the Allottees were provided with car parking in the premises specifically marked and allotment letters were also given. The Complainants in Complaint No.40/2021, 41/2021 & 42/2021 have refused to accept the car parking allotment letter, though they are using the allotted car parking area. Car parking space is specifically mentioned in their respective sale deeds and specifically marked with number in the respective car parking areas. The original documents pertaining to the project etc. are already handed to the association and the allegations contrary are incorrect. There is no violation of the space requirements enumerated in the Building Rules. Regarding car parking it is submitted that car parking is provided for a large duplex apartment and it cannot be said that such a large apartment should not be provided with additional car parking facilities. It is not the look out of the Association as to how many car parking is allotted to an individual apartment owner. There are 9 flats having less than 60 sq.mtr. As per the building rules one car parking is required for three such units and therefore the mandatory parking for those 9 units are only three. There are 6 flats having extent between 60 to 150 sq. mtr. and one car parking each is mandatory for the same and therefore 6 car parking. Apart from that two guest car parking is mandatory and therefore the total number of mandatory car parking is 11. In the plan, it is required to show only mandatory car parking. As a matter of fact, the plan was prepared and operated before implementation of the RERA Act. Therefore only car parking were marked in the plan. Apart from the 11 mandatory car parking, there are sufficient space for 7 more car parking slots, those areas were also earmarked and allotted to different apartment owners in the sale deed itself which were executed much prior to the implementation of the Act. Even as per the Kerala Municipality Rules 2019, 50% of the open yard can be used as car

parking. Therefore there is no prohibition in utilising the remaining areas as car parking. As a matter of fact, the Complainants in Complaint No.40/21,41/21 & 42/21 were allotted car parking in the mandatory car parking area shown in the approved plan itself. It is further submitted that Document No.8 Brochure produced by the Complainant is not issued by the Respondent. The phone number mentioned in the brochure is not of the Respondent. The recreation area can be at different area subject to a minimum 5m² at a place. The shifting of recreation to the rear side was with same extent of area. Open recreation space was shifted to the rear side with same area and the closed recreation was shifted to terrace. The shifting was necessitated on account of installation of transformer in the front area and the shifting was made as per the general body meeting held on 27/6/2020.

4. The Complainant Association has filed rejoinder and denied all the averments in the Counter affidavit filed by the Respondent and submitted that the Respondent was forced to broke open the tarred road due to his negligence. He tarred the road even before completing the cable work. So it is the liability of the Respondent to restore the road in its original position. The boundary is not fixed in the northern side and Trissur Corporation has already issued notice to the Respondent with regard to the same. The Respondent has not handed over all the documents to the Association. The builder has submitted the plan in the year 2018 and got Occupancy Certificate on 13/07/2020. So it clearly comes under the purview of RERA Act & Rules. There was no general body held on 27/6/2020 and the Respondent has not produced any minutes of the said meeting. It is further submitted that the sewage tank was overflowing and the parking area was filthy due to the waste water. It is clear that that the sewage tank is incapable of handling the full capacity of the building. The Respondent has not installed STP in the building. So as per expert opinion, the problem

can be solved only by fixing sewage treatment plant. It is purely the structural defects and defects in the quality of construction made by the Respondent / Promoter.

5. During the hearing on 19/03/2021, three I.A.'s ie. IA No: 41/2021, 42/2021 and 44/2021 filed by the Complainants in Complaints No: 40/2020, 41/2021 and 42/2021 for getting an interim order restraining the Respondent from alienating, disposing or converting the common area, recreation area and two wheeler parking into his own car parking area and allotting to anybody and also restraining from re allocate the earlier allocated car parking to other flat owners. On the same day the Authority granted an Interim Injunction restraining the Respondents from alienating, disposing or converting the common area, recreation area and two-wheeler parking into his own car parking area and allotting to anybody and also restraining from re allocate the earlier allocated car parking to other flat owners till 08-04-2021.
6. During the hearing on 20/04/2021, the Authority found that an Association of Allottees have been already formed and registered. There are 15 Allottees including the Promoter as one of the Allottees. On the same day, after hearing both parties in detail the Respondent was directed to convene a meeting of all the allottees through proper notice, giving at least fifteen day's time and to discuss all the pending matters regarding common amenities, allotment of parking spaces etc. and arrive at a consensus, after which handover the common amenities to the registered Association of Allottees through a detailed mahazar within a period of one month from the date of the order. The Respondent was also directed to file an affidavit of compliance of the above before the next date of hearing after serving copy to the Complainants. Both the parties submitted that a physical

inspection by the Officers of Real Estate Regulatory Authority or an Advocate Commissioner is necessary to report the present status of the Project, as well as the issues raised by the Complainants. Then the Authority had decided to send two officers of the Authority to inspect the Project site and submit detailed report after perusing the documents concerned before the next hearing date.

7. The Respondent, as per the direction of Authority, vide Order dated 20-04-2021, has filed an Affidavit, stating that the meeting was conducted with the Allottees on 03-07-2021 at 2:00 P.M but the meeting was deliberately interrupted by the Complainants, hence the meeting was stopped without reaching at a consensus. During the hearing on 27/08/2021, It was submitted by the Respondent that a detailed mahazar of the common facilities to be handed over to the Association was prepared and handed over to the Association but they haven't accepted the documents along with the mahazar. The officers of Authority conducted only a virtual meeting due to Covid-19 restrictions and report has been filed, in which it is stated that there are sheer violations of law.
8. On 27/08/2021, after hearing both parties, the Authority directed the Respondent to handover all the original documents pertaining to the Project including land title deeds, electricity & plumbing's, drawings, permits etc to the Association within 10 days. But the Respondent did not comply with the above direction and filed three IA's, IA.No.124/2021, IA.No.125/2021 and IA.No.126/2021 for extension of time for compliance of the interim order dated 27/08/2021 and seeking permission to handover the documents to the honourable Authority. During the hearing on 04/10/2021, the counsel for the Respondent submitted that he is ready to give all the documents to the Association within 10 days. After hearing

both sides in detail, the Authority on the same day issued directions as follows:- (1)The Respondent shall handover all the documents pertaining to the project including land title deeds, electricity & plumbing's, drawings, permits etc. to the association within 10 days, in the presence of both counsels, failing which penalty shall be imposed, as provided under section 63 of the Act.(2)The Respondent shall earmark the parking slots to the Complainants within 10 days (3) Notice shall be issued to the Trissur Municipal Corporation, seeking report as to whether there is Building Rule violation or not in the project named 'Alfa Breeze' at Trissur District. But no report has been filed by the corporation.

9. Both parties submitted argument notes. Heard both sides in detail. The documents produced from the part of the Complainants were marked as Exbts.A1 to A12 and the documents produced from the part of the Respondents were marked as Exbts.B1 to B9. The officers of the Authority had conducted a joint meeting of flat owners and has filed a report which is marked as Exhibit X1. According to the Respondent the construction of the Apartments was based on a permit issued on 04/05/2018 which was revised on 01/09/2018 and the construction of the building was completed before 25/11/2019. But Exhibit A1, the copy of the Occupancy Certificate shows that the date of completion is 05/01/2020.
10. The three Complaints ie, 40/2021, 41/2021 & 42/2021 were filed by the individual Allottees and they have produced copy of sale agreements, copy of brochure, copy of sale deed in the name of the Complainants. On examining the agreement for sale, the brochure and the approved plan, it is seen that the facilities mentioned in the agreements are not conforming to the reliefs sought for in the Complaint filed by the individual owners and the Association. Building permit No.DBA-92379/2018 issued by Trissur

Corporation to construct a multi storied residential building in the 'schedule A property' described in the agreement for sale is referred to in the sale deed produced. The Schedule C property is the apartment under construction wherein the right to use an exclusive car parking facility by way of lot at external periphery or in the building 'Alfa Breeze' is seen stated. It is clear from the approved plan that it has only 11 car parking. As per section 2 (n)(iii) of the Act of 2016, open parking area came under the definition of 'common area' which cannot be sold/allotted to a single allottee in any way. Hence the Respondent / builder is liable to allot covered car parking spaces to each allottee as promised to them as per the law. But the Complainants alleged that though each of them were allotted with separate car parking for which separate amount was also paid by them to the Respondent, sufficient car parking spaces were not given by the Respondent. The Complainants also alleged that the Respondent / builder has taken 3 car parking spaces for his own use. If the Respondent is the owner / allottee of a single apartment he can enjoy the facilities and a single car parking space as in the case of any other allottee of the project. Similarly, the Respondent has no right to put the common area or the whole project under surveillance of a camera under his control, affecting the right of privacy of any other person. Needless to say, it is the responsibility of the Promoter to do whatever is needed for the comfortable safe and peaceful living of Allottees in the project including proper sewage system, compound wall with gate etc. even though they are not specifically mentioned in the agreement.

11. In view of the above and after hearing both parties in detail and on perusal of documents produced, and by invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions: -

1. The Respondent is directed to give car parking allotment along with sketch of the parking area designated in the approved plan with correct measurements of each parking as stated in the sale deed **within one month**. Those who are not allotted with car parking as promised can approach the appropriate forum for compensation.
2. The Respondent is directed to hand over all the documents, approved drawings related documents pertaining to the land and construction of the building named 'ALFA BREEZE' **within one month** to the association.

In the event of Non-compliance of this order by the Respondent/promoter, he shall be liable for penalty under Section 63 of the Real estate (Regulation & Development) Act, 2016.

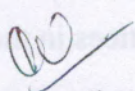
Sd/-
Smt. Preetha P Menon
Member

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 Occupancy Certificate dated 13/07/2020
- Exhibit A2 : Copy of completion plan.
- Exhibit A3 : Copy of rough car parking sketch given by builder.
- Exhibit A4 : Copy of land tax receipt dated 25/08/2021.
- Exhibit A5 : Copy of car parking letter given to one of the Allottees.
- Exhibit A6 : Copy of Brochure.
- Exhibit A7 series : photographs showing the present status of GYM.
- Exhibit A8 : Copy of building permit dated 04/05/2018.
- Exhibit A9 : Copy of building permit dated 01/09/2018.
- Exhibit A10: Copy of notice issued by Thrissur Municipal Corporation
Dated 01/07/2021.
- Exhibit A11: Photographs showing the present status of northern boundary.
- Exhibit A12: Copy of certified copy of settlement deed No.1860/2021 dated
14/10/2020.
- Exhibit A13 series: Copy of agreements
- Exhibit A14 series: Copy of sale deed.

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of Photographs showing additional construction made by
The Complainant.
- Exhibit B2 : Copy of Photographs showing GYM set up by the Respondent.
- Exhibit B3 : Copy of Photographs showing actual view of the Generator and
Transformer room.
- Exhibit B4 : Copy of Photographs showing car parking area.
- Exhibit B5 : Copy of Notice dated 26/04/2021.

Exhibit B6 : Copy of notice dated 11/05/2021.

Exhibit B7 : Copy of notice dated 17/06/2021.

Exhibit B8 : Copy of minutes of meeting.

Exhibit B9 : Copy of mahazer.

Exhibit X1 : Copy of Site Inspection Report filed by officers of the Authority.