



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 235/2022

Dated 15th December 2022

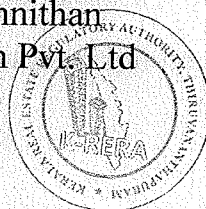
**Present: Sri. P. H Kurian, Chairman
Sri. M.P Mathews, Member**

Complainant

Dr. Purushothama Bharathi
18 A, Cordial Bharati,
Nanthancode, Kowdiar P.O
Thiruvananthapuram- 695003

Respondents

1. M/s Cordial Foundation Pvt. Ltd
27, Janville Lane, Vellayaballam,
Shasthamangalm P.O
Thiruvananthapuram- 695010
2. Shri. N Vijayan Unnithan
M/s Cordial Foundation Pvt. Ltd
Exe. Director, 27 Janvilla, Vellayaballam,
Shasthamangalm P.O
Thiruvananthapuram- 695010
3. Shri. N Kochaniyan Unnithan
M/s Cordial Foundation Pvt. Ltd
Exe. Director, 27 Janvilla, Vellayaballam,
Shasthamangalm P.O
Thiruvananthapuram- 695010
4. Shri. N Dhananjayan Unnithan
M/s Cordial Foundation Pvt. Ltd



Exe. Director, 27 Janvilla, Vellayaballam,
Shasthamangalm P.O
Thiruvananthapuram- 695010

The counsel for the Complainant and counsel for the Respondents
attended the Physical hearing on 06/12/2022

ORDER

1. Cordial Bharathi is a real estate project registered with the Kerala Real Estate Regulatory Authority with registration number K-RERA/PRJ/TVM/156/2022 valid up to 27.09.2022.

Facts of the case

2. The Complainant had entered into a Joint Venture development agreement with the 1st Respondent M/s Cordial Foundations Pvt Ltd on 24.01.2013. The Municipal Corporation had issued an occupancy certificate on 19.12.2019. The Builder had issued an allotment letter to the Complainant stating the share area of the built-up space to be given to the Complainant based on the Joint Venture agreement. The Respondents have not transferred the ownership right over the space allotted in the building in the name of the Complainant through the Municipal Corporation. On complainant's request, before starting the construction work of the building, the executive directors of M/s Cordial Foundations Pvt Ltd had agreed to give a storage space under the swimming pool near to the complainants flat 18 C. An iron fence was erected below the bucket of the pool to separate the area earmarked for the Complainant and the wall of the apartment was demolished to make a passage to the storage area at the expense of the complainant. The Complainant had given Rs 20,5000/- for the Iron fence and the passage, but the Respondents have not issued the allotment letter of that area.
3. Reliefs sought by the Complainant are-
 - 1) Transfer the ownership rights of the Complainant over buildings



- through the municipal corporation within a week.
- 2) M/s Cordial Foundation issue an allotment letter for the storage space under the swimming pool.
 - 3) Direct the executive directors of M/s Cordial Foundation Pvt. Ltd not to liquidate the company before settling the claims of the complainant.
4. The Respondents filed their objection in which the Respondents allege that the Complainant had suppressed the material facts and filed the complaint without sufficient bonafide and therefore the same is to be dismissed and the complaint is not maintainable. The Respondent further submits that a similar complaint was filed before the Hon'ble Adjudicating officer, RERA, Thiruvananthapuram as C.C.P No. 50 of 2022, seeking the very same main relief sought for in this complaint i.e., to transfer ownership of his allotted built-up space as per the joint venture development agreement. The Respondents further submits that even according to the complainant, he is not an allottee but only a land owner/ promoter, which is defined under Sec. 2(zk)(i) of the Real Estate (Regulation and Development) Act, 2016 read along with explanation to Section 2(zk) and the complaint is purely in respect of an inter se contractual dispute between the land owner and the promoter as per the Joint Venture Development Agreement dated 24.01.2013. which is admittedly beyond the scope of adjudication as per the provisions of Real Estate (Regulation and Development) 2016.
5. The Respondent also submits that there is no privity of contract between the Complainant and the Respondents other than the joint venture development agreement and the remedy for breach of the terms of the agreement is not before this Authority. According to the Respondent a land owner who causes construction of building or development of plots for sale is also considered as a promoter having joint liability with the promoter as per the Act, the Rules and Regulations.

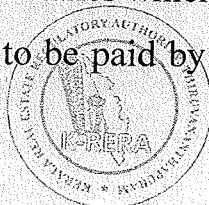


6. The Respondent submits that the Complainant who is a landowner is not entitled to invoke any of the provisions of the RERA Act, Especially Sec 17, which is made applicable in the case of an allottee who has a privity of contract as per the sale agreement executed between the builder and the Allottee. In this case the Respondents alleges that the Complainant has no sale agreement and he is only relying upon the Joint Venture Development Agreement with the builder and the Complainant has no locus standi or any rights to file a complaint as per the RERA Act. Moreover, the Respondent further submits that the Real estate project "Cordial Bharathi" was commenced and completed as per the Joint Venture Development agreement. Furthermore, the Respondent submits that as per the agreement between the parties, if any dispute arises, the same can be resolved through Arbitration Proceedings and therefore also the complaint file before the Authority is not maintainable.
7. According to the Respondent the complainant has conveniently suppressed factum of previous correspondence with the Respondents, wherein it was categorically informed to the complainant the reasons for non- issuance of NOC in his favour to change ownership in respect of the built-up space allotted to the complainant. It is submitted by the Respondent that the complainant had not remitted GST payable for the built-up space allotted to him as per the Joint Venture Development Agreement.
8. The complaint was finally heard on 06/12/2022, and after hearing the learned counsels for the complainant and the Respondents, and perusing the documents produced by the parties including the argument notes submitted by the Respondent, the following issues arises for consideration
 1. Is the complaint maintainable before the Authority
 2. Is the complainant an allottee as defined under the Act, 2016
 3. Is the complainant entitled to the reliefs prayed for



Issue No 1 and 2

9. The documents produced by the complainant were marked as Exhibit A1 to A3 and the documents produced by the Respondent were marked as Exhibit B1 to B17. **Exhibit A1** is the joint venture development agreement entered into between the complainant and the 1st Respondent (M/s Cordial foundations Pvt Ltd) on 24.01.2013, represented by the 2nd Respondent, 3rd and 4th Respondents, wherein the 1st Respondent agreed to develop the properties mentioned in the schedule A attached to the agreement subject to the terms and conditions mentioned in the agreement. As per the agreement the 1st Respondent was to bear the entire cost of construction including Architects fees, charges which include statutory levies of the government and miscellaneous expenses, and the complainant is not liable to incur any financial obligations on that behalf, in the development work in respect of the property and construction and completion of buildings and structures thereon in accordance with the terms and conditions stipulated by concerned authorities except rendering all assistance and cooperation that may be required by the 1st Respondent. Building permit was obtained in the name of the 2nd 3rd and 4th Respondents on 20/06/14 and renewed on 19/12/2019 and was valid up to 19/06/2020 by virtue of power of Attorney dated 03.02.2013 executed by the complainant in favour of the 1st Respondent represented by its executive directors, 2nd, 3rd and 4th Respondents marked as Exhibit B1. **Exhibit A2** is the occupancy certificate issued by the Corporation on 19.12.2019 in the name of the 2nd 3rd and 4th Respondents. An irrevocable power of attorney was executed by the complainant in favour of the 1st Respondent delegating all necessary powers required to carry out the work of development in all respects as required under the agreement and the land was handed over. As per the agreement (**Exhibit A1**) all taxes which generally falls on the Land Owner (except service tax) was to be paid by the 1st Respondent. **Exhibit A3** is



the allotment letter of the 1st Respondent dated 18/02/2021 addressed to the Complainant. The ownership right of the commercial space on the ground and first floor having super built-up area of 5000 Sqft each and 5 no's apartments in the 11th 15th and 18th floors as detailed in Exhibit A3 the allotment letter has not been transferred, through the Municipal Corporation by the 1st Respondent.

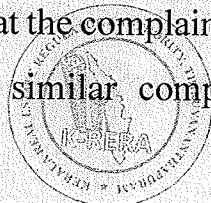
10. Documents produced by the Respondents were marked as Ext B1 to B16.

Ext B1 is the power of attorney dated 13-02-2013 executed by the complainant in favour of the 1st Respondent represented by its executive directors, 2nd, 3rd and 4th Respondents. The power of attorney authorizes the Respondents (1) to appear, prepare and submit plans for construction of buildings in respect of the Schedule mentioned property before the corporation of Thiruvananthapuram, Development Authority and any other local or government authorities/Quasi -Judicial Authorities, etc. (2) To sign and verify all affidavits and papers necessary for such proposed developments. To enter into agreements with banks for availing loan for builder and buyers. (3) To submit applications and to make declarations before the competent authorities and any other Authority or office. (4) To fix the terms and conditions for sale of the 'Schedule A' mentioned property in undivided share or shares to the several purchaser or purchasers, *except the portion set apart for the executant/ land owner*. (5) To enter into an agreement or agreements for sale and to execute the same if necessary for and on behalf, to receive all payments under the agreement or agreements and issue all lawful and effective receipts and to apply and avail loans from the financial institution for the project. (6) To execute sale deed or deeds in favour of the prospective buyer or buyers for the undivided share of the lands in respect of the property except the portion set apart for the executant and present each of the sale deed or deeds for registration



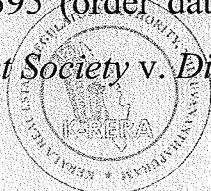
before the registering Authority to admit execution thereof and to receive all payments under the sale deed.

11. **Ext B2** is the order dated 21-02-2022 of the TNREAT, the facts and circumstances of the case is totally different from that in the complaint and the joint venture agreement, and hence need not be considered in the present complaint. **Ext B3** is the copy of the GST invoice in the name of Usha one of the four land owners, dated 31.12.2020. As per the allotment letter which is marked as **Ext B14**, 2 apartments having an area of 3649 Sqft is allotted to the land owner Usha. The GST invoice shows the value of apartment as Rs 3,05,94,000/- and the GST charged is 5 % on the value of apartment. **Ext B5** is the copy of the GST invoice in the name of Ajith another land owner dated 31.03.2021. As per the allotment letter which is marked as **Ext B15**, 4 apartments allotted to the land owner Ajith is having an area of 8118 Sq ft. The GST invoice shows the value of apartment as Rs 4,87,05,000/- and the GST charged is 5 % on the value of apartment. **Exhibit B8** is the letter dated 06-04-2022 addressed to the complainants by the 1st Respondent, in which it is stated that since the Joint Venture Development Agreement was executed prior to 2019, it is the liability of the land owner to pay the GST of his share as per the Joint Venture Development Agreement. It is also stated in the above letter that the complainant ought to have changed the ownership in his name once the occupancy certificate was obtained on 05-10-2019. When no GST bill was raised and no intimation to settle the amount due and obtain transfer of ownership was forwarded immediately after receipt of the occupancy certificate the Respondent has failed in performing his functions and duties under 11(4) (b) (f) and 17(1) of the Act, 2016.
12. The Respondent in the statement of objection dated 04.11.2022 filed before this Authority had stated that the complainant had suppressed material facts regarding pendency of a similar complaint filed before the Hon'ble



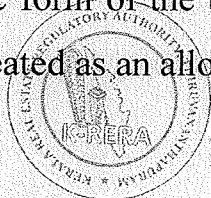
Adjudicating officer, RERA, Thiruvananthapuram as C.C.P No. 50 of 2022 seeking the very same main relief sought for in this complaint i.e to transfer ownership of his allotted built up space as per the joint venture Development agreement and he has even given a wrong declaration in his complaint saying that no other complaint is pending for the same relief and therefore the second complaint is clearly bad for suppression of material facts and for giving wrong declaration before this Hon'ble Authority. It should be noted that the complainant is free to approach the Authority and also the adjudicating officer under Sec 31 of the Act, 2016. Adjudging compensation under Sections 12,14,18 and section 19 is within the powers of the adjudicating officer and he shall consider only the claim of compensation as above. It is submitted by the complainant that complaint in form N of Kerala Real Estate Regulatory Authority is pending before the Adjudicating officer of Kerala Real Estate Regulatory Authority. Hence there is no suppression of material facts by the complainant as alleged by the Respondent.

13. The Respondent has further submitted that even according to the complainant, he is not an allottee but only a land owner/ promoter, which is defined under Sec. 2(zk) and the complaint is purely in respect of an inter se contractual dispute between the land owner and the promoter as per the Joint Venture Development Agreement dated 24.01.2013, which is beyond the scope of adjudication as per the provisions of Real Estate (Regulation and Development) 2016. The definition of 'promoter' under RERA begins only with the word "means". It is settled law that the usage of the word 'means' in the beginning of a definition indicates that the list provided therein is an exhaustive one, and such definition cannot be further widened. See: *Gough v. Gough (1891)2Q.B.665*; *P. Kasilingam v. P.S.G. College of Technology*, AIR 1995 SC 1395 (order dated March 24, 1995); *D.A.V. College Trust and Management Society v. Director of Public Instructions*,



AIR 2019 SC 4411 (order dated September 17, 2019). The building permit and the occupancy certificates were obtained in the name of the 2nd 3rd and 4th Respondents. Hence, complainant cannot be considered as a promoter under any of the conditions of the Joint Venture agreement.

14. The Hon'ble Supreme Court in (2008) 10 SCC 345 (Faqir Chand Gulati Vs Uppal Agencies P Ltd and Anr) considered a joint venture agreement and held as follows. "The test to determine a building construction agreement between the land owner and builder to be treated as a joint venture agreement. When there is absence of control or participation in the management of the activity concerned, nonexistence of sharing of profit and loss and a requirement of each joint venture being the principal as well as agent of the other party, the agreement in question cannot be said to be a joint venture in the legal sense. Mere use "joint venture" in the title of the agreement or body part does not make a transaction a joint venture. The same view has been followed by the Hon'ble Supreme Court in Bunga Daniel Babu Vs M/s Sri. Vasudeva Construction and others. In the said decision also the Hon'ble Supreme Court held that "the land owner is neither a partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business and he is only entitled to a certain constructed area. The conclusion is that he is only a consumer under the consumer protection Act". The Hon'ble Appellate Tribunal in the Common Order dated 28/10/2022 in REFA Nos 28,34,35 to 41 of 2021 had confirmed that the Landowner is not a promoter but an allottee based on the circumstances referred to in a similar agreement. On a consideration of the above and from the joint venture agreement (**Exhibit A1**), and the POA (**Exhibit B1**) it is evident that the complainant is only a land owner who does not share the profit or loss of the real estate project. He is to receive consideration in the form of the built-up area constructed by the Respondents, and can be treated as an allottee under the Act, 2016.



15. **Allottee** is defined under Sec 2 (d) as a person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent; The Complainant is an allottee in the real estate project as he is allotted commercial space and apartments under the Joint Venture agreement and allotment letter **(Exhibit A3)** and is entitled to approach the Authority under section 31 of the Act, 2016 for the violation or contraventions of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

16. Though the Respondent had raised the issue that the matter can be settled under the Arbitration and Conciliation Act, 1996, the Hon'ble Supreme Court decision in Emaar MGF Land Limited v. Aftab Singh (2018 KHC 6983 Supreme Court) has categorically made it clear that where specific/special remedies are provided for and which are opted by an aggrieved person the judicial Authority can refuse to relegate the parties to arbitration. The Act, 2016 is intended to protect the interest of consumers in the real estate sector and specific special remedies are provided for and the aggrieved person has approached the Authority to protect his interest under the Act, 2016. Issue No 1 and 2 is decided accordingly in favour of the complainant as he is an allottee under the Act, 2016, and the complaint is maintainable before the Authority

Issue No 3

17. Under Section 11 (3) the promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:— (a) sanctioned plans, layout plans, along with specifications, approved by the competent Authority, by display at the



site or such other place as may be specified by the regulations made by the Authority; (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity. Under Section 11 (4) (a) 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. Under Section 11 (4) (f) the promoter shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent Authority, as the case may be, as provided under section 17 of this Act. Here the conveyance deed has not been executed and it is submitted by the Respondents that only an NOC is required as the allottees are landowners who had been allotted commercial space and apartments on the basis of the joint venture agreement. Under Sec 17(1) this has to be completed within three months from the date of receipt of the occupancy Certificate. There is no correspondence produced by the Respondent informing the complainant about payment of service tax for transferring the ownership rights of the space allotted to the complainant. The correspondence produced are all in 2022 only. It is also admitted by the Respondent that no GST bills are raised till date. The JVA was entered into before Annexure A sale agreement was notified in June 2018, and it is to be noted that the total price to be quoted as per the prescribed agreement is on carpet area inclusive of all taxes.

18. The complainant is therefore entitled to the first relief sought for in the complaint to obtain ownership rights over the space allotted as per the Joint



Venture agreement and the allotment letter. Issue No 3 is therefore decided accordingly, and the other reliefs sought for by the complainant are not within the powers of the Authority under the Act, 2016. According to the Respondent the commercial space and the apartments are in the possession of the complainant and the ownership can be transferred only upon settling the GST as applicable. On examining the joint venture agreement all taxes which generally falls on the Land Owner (except service tax) was to be paid by the 1st Respondent. Service tax is not applicable after the introduction of GST and Authority has no jurisdiction to examine the service tax liability of the Respondent if any after the introduction of GST. The service tax is only one of the components of GST which includes Central excise duty Additional excise duty, Additional customs duty, special additional duty of customs, Value added tax Entertainment tax Central sales tax Octroi and entry tax, Purchase tax, Luxury tax and various other taxes. This can be taken up with the appropriate forum. Considering the above facts and legal aspects discussed the Authority invoking powers under section 37 of the Act directs the Respondents

- 1) To transfer ownership of the commercial space and the apartments as detailed in the allotment letter (Exhibit A3) within 15 days on receipt of this order

Dated this the 15th day of December 2022

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 : Joint Venture Agreement dated 24/01/2013
Exhibit A2 : Occupancy Certificate issued on 19/12/2019
Exhibit A3 : Allotment Letter given by M/s Cordial Foundations Pvt. Ltd to the Complainant dated 18-02-2021

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of Power of Attorney Executed by the complainant in favour of the Respondents.
Exhibit B2 : Copy of the Judgement of Tamil Nadu RERA dated 21.02.2022.
Exhibit B3 : Copy of GST Invoice dated 31.12.2020 and payment receipts dated 19.01.2021
Exhibit B4 : Copy of GST Invoice dated 30.09.2021 and payment receipts dated 04.07.2022.
Exhibit B5 : Copy of GST Invoice dated 31.03.2021 and payment receipts dated 23.04.2021.
Exhibit B6 : Letter dated 07.03.2022 issued by the complainant.
Exhibit B7 : Letter dated 24.03.2022 issued by the complainant.
Exhibit B8 : Letter 06.04.2022 issued by the 1st Respondent to the complainant.
Exhibit B9 : Letter 13.04.2022 issued by the 1st Respondent to the complainant.
Exhibit B10 : Letter dated 03.05.2022 issued by the complainant.
Exhibit B11 : Letter dated 12.05.2022 issued by the complainant.
Exhibit B12 : Letter 21.05.2022 issued by the 1st Respondent to the complainant.
Exhibit B13 : Letter dated 02.11.2022 issued by the complainant.
Exhibit B14 : Allotment letter dated 27.08.2014 to Mrs. Usha/Land Owner.
Exhibit B15 : Allotment letter dated 23.02.2015 to Mrs. A.S Ajith/Land Owner.
Exhibit B16 : Allotment letter dated 02.02.2015 issued to the complainant/land owner.



