



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 237 /2021**

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

Dated 20<sup>th</sup> January 2022

**ORDER**

**Complainants**

1. Sabu. M. George & Omana Sabu  
Madathil House, Iringole P.O  
Perumbavoor, Ernakulam-683548

**Respondents**

1. Midhun Kuruvila Kurien  
& Ashna Midhun Kurien  
Vandanathil House,  
Mangattoor Kara, Kolencherry  
Ernakulam- 652311
2. M/s Anta Builders & Developers P.Ltd  
Mangattoor Kara, Kolencherry  
Ernakulam- 652311
3. Pramod Wariyar.T.R  
Kathir, Ravipuram Road  
Cochin-16

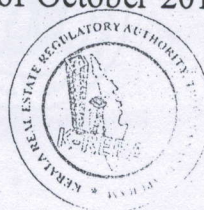
The Complainant and the Counsel for the Complainant  
Adv. B.Rajasekharan Nair along with the Counsel for the Respondent Adv.  
Animon A. John attended the virtual hearing.





1. The facts of the Case is as follows: the Complainants had booked a proposed apartment of the Respondent builder M/s Anta Builders & Developers "Anta Marvel" vide a tripartite agreement of sale and construction between builder, landowners and Complainants dated 19-10-2015. Total payment of Rs.55,00,000/- was collected in advance by the Respondents and as per the agreement, construction of apartment was to be completed in all respects on or before 19.10.2017. Moreover, as per clause 11 of the agreement, in case of any failure on the part of the builder to handover the apartment in time, the builder will be liable to pay the Complainants a compensation amount of Rs 55,000/- per month. Notwithstanding this agreed terms, the Respondents failed to complete and handover the flat. The Complainants made regular and repeated calls to the Respondent's office but the Respondents were not providing any specific reply on the matter. The progress on the construction works are being dragged in a most negligent matter. Hence it is submitted by the Complainants that the Builder/ Respondent has committed blatant violations and contraventions warranting appropriate remedial actions as per the RERA Act 2016. The compensation amount of Rs 55,000/- per month which is due from October 2017 was not complied by the Respondents. The reliefs sought by the Complainants are to issue directions to the Respondents to complete the flat in all respects as per agreement and for interest for delayed completion and handing over of flat at the rate of 18% per annum from date of promised handling over of the flat as per agreement, i.e 19.10.2017 till completion of flat in all respects and for monthly compensation amount of Rs 55,000/- due from October, 2017.

2. The Respondents have entered appearance and filed Objection on 21-12-2021. The Respondents submitted that the Complaint is not maintainable either in law or on facts and the Complainants. It is submitted that even though the construction of the apartment was to be completed in all respect within 24 months from 13<sup>th</sup> day of October 2015, the said 24 months period of





construction was fixed subject to the extension of the period on the ground of any force majeure conditions affecting the construction and due to any extra work sought by the purchasers. It is also submitted that, the Respondents had faced force majeure since 2016 to 2021. In the year 2016-2017, due to the demonetization declared by the Union Government, the majority of the clients who booked the flats were unable to pay the instalments on time as agreed upon. Accordingly, there was a delay in progress of the construction in the year 2016-2017. Thereafter in the year 2018 and 2019 migrant workers left due to the flood affected in our State. In Maradu Municipality, the Municipality sought a fresh NOC from the CREZ in order to issue completion certificate. Therefore, there was a delay in obtaining the completion certificate, even though these Respondents submitted an application for completion certificate along with the completion drawing on 23-10-2019. It is submitted that the building was completed in all respect in October 2019 and upon which these Respondents filed application for Occupancy Certificate along with the certificate of the Architect affirming that the building is completed in all respect. It is furthermore submitted that the Apartment No. 10 A in 'Anta Marvel' allotted to the Complainants was ready in October 2019, but they were unable to pay the balance amount of registration charges such as Stamp Duty and Registration fees in the execution of the Sale Deed in favour of these Complainants. Hence it is submitted that the Complainants herein are not entitled to get any relief as prayed for and also submitted the Respondents have submitted an application for registration of this Project named "Anta Marvel" before this Authority and registration fee for an amount of Rs 2,04,958 has been remitted on 02-09-2021 and is awaiting registration certificate.

3. Heard Counsels for both parties in detail. The Project is registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 with the Authority. Exhibits A1 to A3 were marked





from the side of the Complainants and Exhibit B1 to B4 were marked from the side of the Respondents. In the agreement for sale and construction dated 19-10-2015 which is marked as Exhibit A1, it is specifically mentioned that the builder undertakes to ensure that the construction of the Schedule B apartment will be completed within 24 months from 13<sup>th</sup> day of October 2015 subject to any extension of period becoming necessary due to any extra works required by the Purchasers not in adherence of the terms and conditions of this agreement or any force majeure conditions affecting the constructing industry. It is also mentioned that the purchasers agrees that delay due to Governmental sanctions, statutory clearance, KSEB & KWA will not be construed as delay in handing over the apartment. That if the builder failed to complete the construction within 24 months from 19<sup>th</sup> day of October 2015 which is not due to any extra works required by the Purchasers not in adherence of the terms and conditions of this agreement by the force majeure conditions affecting the constructing industry or delay due to Government sanctions, statutory clearance, KSEB & KWA, the builder shall be liable to pay the purchasers as a compensation amount of Rs.55,000/- per month. The Complainant has also produced Exhibit A2 which is receipt of payment of Rs 55,00,000/- made to the Respondent on 22-10-2015.

4. The claim of the Respondent that the delay was due to the demonetization declared by the Union Government due to which the clients were unable to pay the instalment as agreed upon is not acceptable as a ground of any force majeure condition affecting the construction. There is no justification in the delay and the Promoter is entitled to give interest for every month of delay till the handing over of the possession at the rate prescribed under Kerala Real Estate (Regulation and Development) Rules, 2018.

5. During the hearing, the Counsel for the Respondent submitted that, the execution of sale deed in favour of the Complainants and handing over of the Project shall be completed within two months, provided the





balance registration charges as applicable is remitted by the Complainants. Based on the above submission and invoking the provisions under Section 37 of the Real Estate (Regulation and Development) Act, the Authority hereby directs as follows:-

- 1) The Promoter shall forward the details of payment received or balance payment due if any, and the registration charges applicable on the consideration received from the Complainants as per the agreement within two weeks from the date of receipt of this Order, to the Complainants.
- 2) The Complainants shall deposit this amount with the Promoter within two weeks on receipt of the above statement and should co-operate in the process of registration with the Respondent.
- 3) The execution of sale deed in favour of the Complainants and handing over of the Project should be completed by the Respondent within 2 months from date of receipt of this Order after fulfilling all the promises made as per the agreement and other information provided as per Section 12 of the Real Estate (Regulation and Development) Act, 2016.

Dated this the 20<sup>th</sup> January, 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 : True Copy of agreement for Sale and Construction dated 19/10/2015.
- Exhibit A2 : Receipt of Payment made by the Complainant
- Exhibit A3 : True Copy of email.

### Exhibits on the side of the Respondents

- Exhibit B1 : Payment receipt issued by K-RERA.
- Exhibit B2 : Receipt No. 9348 dated 23-10-2019 issued by Maradu Municipality
- Exhibit B3 : Occupancy Certificate dated 05-01-2021
- Exhibit B4 : NOC dated 26-06-2020 issued by Kerala Coastal Zone Management Authority.

