



**KERALA REAL ESTATE REGULATORY AUTHORITY**  
**THIRUVANANTHAPURAM**

**Complaint No.21/2020, 22/2020, 23/2020, 24/2020**  
**25/2020, 26/2020 & 27 /2020**

Dated 3<sup>rd</sup> November 2020

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

**COMPLAINT No. 21/2020**

**Complainant**

Nithin Dev  
S/o K.V Sahadevan  
#1c, Seiken Hills Apartments,  
Pachakkil, Chevarambalam,  
Kozhikode- 673 017.

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1  
(By Advocate Sunil Sankar]

**COMPLAINT No. 22/2020****Complainant**

Shaji K.R  
S/o K A Rahiman,  
#10B, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1.

( By Advocate Sunil Sankar]

**COMPLAINT No. 23/2020****Complainant**

Dr. Biju Mohan  
S/o Narayanan Nair,  
#10A, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1.

(By Advocate Sunil Sankar]

**COMPLAINT No. 24/2020****Complainant**

Anil C.R  
S/o Radhakrishnan K.K  
#1A, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017.

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,

- Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1.

By Advocate Sunil Sankar]

### **COMPLAINT No. 25/2020**

#### **Complainant**

Sarath Kumar.K  
S/o PKP Menon,  
#7A, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017

#### **Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1.

(By Advocate Sunil Sankar]

**COMPLAINT No. 26/2020****Complainant**

Sri. Srideep Balakrishnan  
S/o Balakrishnan Adiyidi  
#1D, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017.

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1.

( By Advocate Sunil Sankar]

**COMPLAINT No. 27/2020****Complainant**

Dr. Vidya R. Memon  
D/o Ramakrishna Menon  
#6C, Seiken Hills Apartments,  
Pachakkil, Chevarambalam  
Kozhikode- 673 017

**Respondents**

1. Sacharia  
Chairman,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
2. Siraj  
Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut-1
3. Saleem C.S  
Managing Director,  
Seiken property Developers Pvt Ltd,  
6/940, Seiken Chambers, Kannur Road,  
Calicut- 1.

( By Advocate Sunil Sankar]

**COMMON ORDER**

1. As the subject matter, cause of action and reliefs sought in all the above complaints are one and the same as it is related to the same apartment project developed by the same Promoter, the said Complaints were being clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6(6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Complainants are Allottees of the apartment project named "Seiken Hills" at Pachakkil, Chevarambalam, Kozhikode developed by the Respondents and the said project was supposed to have been completed in December 2010 but the project is completed even after 9 years and the occupancy certificate has not been received for the project so far. Though the

flats have been registered in the name of allottees, they have not been numbered, they do not have separate electricity connections or corporation water connections. The electricity bills still come in the name of 3<sup>rd</sup> Respondent which is being paid by the owners. The STP is not functioning as it has not been granted NOC. The owners have started works on the same. The Fire and Safety certificate has not been obtained. The promised covered car parking has not been done, the watchman' security cabin is not finished. The basement car park flooring has not been done. The intercom facility, the main entrance, visitors' lobby and common areas have been left bare and unfinished. The swimming pool has not been commissioned and it is now black with dried moss and fungus. The area around the pool has not been plastered or finished. The Gym/health club is leaking during rains and the floor is flooded with water. The interlock tiles laid on the drive way has broken down and had to be re-laid by the owners. The apartment building has no board or name, nor the owners been provided individual letter boxes. The building is yet to be fully painted outside and the common areas. The CCTV installed is not functioning. The brochure given to the allottees mentioned that there will be a grand entrance lobby in the reception area. A promise was made regarding a guard room with 24 hours security, intercom between apartments. The reliefs sought by the Complainants are 1) to direct the Respondents to obtain Occupancy Certificate from the Corporation, 2) to direct the Respondents to reimburse the owners the expense of STP works done by them, 3) to direct the Respondents to commission the swimming pool and clean and plaster and beautify the area, 4) to direct the Respondents to fix the leak on the ceiling /wall of the gym, 5) to direct the Respondents to do flooring on the basement parking and finish the covered parking areas, 6) to finish the grand entrance lobby as promised, 7) to install the intercom facility, 8) to install the guard room with 24 hours security, 9) to

repair the CCTV, 10) to pain the apartment building and common areas, 11) to reimburse the actual cost of re-laying the inter lock tiles, 12) to place the name board for the building and install individual letter boxes for all owners.

Exhibits A1 to A37 are the documents produced by the Complainants.

3. The Respondents filed their Counter Statement in which they contended that these complaints are not maintainable in law or on true facts of the case and the complaints are highly belated and is barred by limitation. The Respondents 1-3 are directors of M/s Seiken Property Developers who is a reputed builder in North Kerala. The Respondents also state that some of the complainants are not the original owners/purchasers of the apartments and they took possession much later and so the Respondents have not solicited or lured them to purchase the apartment. These Complainants after due inspection and satisfaction paid the consideration amount to the original allottees directly and the Respondents only joined the assignment deed between the two parties to facilitate the registration of sale deed. Moreover, the Complainants being the purchasers legally has to be aware of what they buy. Hence, they cannot claim compensation since they purchased the apartment directly from another person and was put in possession immediately. The complainants have since been occupying the apartments. The allegation of non-obtaining of Occupancy certificate is not fully correct. Though the completion certificate was initially submitted to the Corporation, there was change in Fire rules which necessitated some more works to be done as per the new rule. So, the application was withdrawn and after the completion of said additional works a fresh application was submitted which is under process. As per KMBR', if no such Occupancy certificate is issued within 15 days the owner may proceed as if such occupancy certificate has been duly issued and it is deemed to be issued and hence there is no deficiency. The electricity connections with separate meter to each flat has



been given and connected by KSEB and it is the duty of the individual owners to come forward and mutate the same. The Respondent can only assist in the process. The Complainants have not done this so far to save the caution deposit which may be demanded by KSEB. As of now, separate meter, consumer number and the bills are being issued in the name of 3<sup>rd</sup> Respondent. The STP is functioning and the Fire NOC has been received. Car parks are provided to all the allottees and watchman cabin or guard room is provided near the entrance. The visitors lobby and other areas are well maintained and usable. The Respondents cannot deviate from the actual permit and plan approved by the Corporation according to the whims and fancies of the customers. There is no proper owners' association formed and so they have not yet come forward to take over the maintenance of swimming pool. The pool requires daily maintenance and so need a responsible association for all these purposes. There were due amounts from 2 of the allottees and the Respondents directed them to pay the said amounts to the temporary association and the said amount was used by them for repair works. The natural wear and tear will be there and the Complainants cannot expect the Respondents to look after the project indefinitely. The Complainants are not entitled to any compensation. These complaints are highly belated and speculative filed with ulterior motives to get undue enrichment by misusing the new Act. All the allegations raised in the complaints are frivolous, self-serving and untenable and are liable to be dismissed in -limine.

No documents were being produced by the Respondents.

4. Heard the learned counsels appeared for both sides and perused the records. The arguments of the Respondents that the complaints are not maintainable in law or on true facts of the case and the complaints are

highly belated and is barred by limitation are not acceptable. The Real Estate (Regulation & Development) Act 2016 was enacted by the Parliament As Act No. 16 of 2016 ('the Act' for short) and Sections 2, 22-39, 41-58, 71-78, 81-92 came into force w.e.f. 01.05.2016 as per S.O. No. 1544 (E) dated 26.04.2016 and sections 3 to 19, 40, 59-70, 79-80 came into force w.e.f. 01.05.2017 as per S.O. No. 1216(E) dated 19.04.2017 of the Central Government. As Section 31 of the Act which gives right to any aggrieved person to "file a complaint before the Authority or the Adjudicating Officer for any violation or contravention of the provisions of the Act or the Rules and Regulations made thereunder against any Promoter, allottee or real estate agent" came into force on **01.05.2016** itself, the right got vested with them since that date. If a real estate project was not completed as on 01.05.2016, as per the promises made by the Promoter, the aggrieved party can approach this Authority with his grievances related to that project. In this connection, it is significant to note that the completion of a 'Real Estate Project' is not merely the completion of building/s or execution of sale deeds or receipt of Development Certificate/Occupancy Certificate from the local authority but completion of the whole project with all the common amenities and facilities as committed to the allottees as per the terms and conditions of the agreements executed between the Promoter and Allottee. It is also to be noted in this context that the Promoter shall have the responsibility to enable formation of Association of allottees, to transfer common areas to the Association and also to hand over all the documents pertaining to the project to the Association before exiting from the project. Here, the Respondents admit in their Counter Statement that Occupancy certificate has not been obtained and a proper Association has not been formed and registered. Another contention raised by the Respondents that some of the Complainants are not the direct purchasers and as did not give any consideration to, the Respondent directly,

they cannot claim compensation or seek any relief, also has no legal footing because as per the Act, definition of the term 'Allottee' includes "the person who subsequently acquires the allotment through sale, transfer or otherwise". Hence subsequent purchasers also have every right to stand in the shoes of original allottees and seek relief in their grievances related to the project. Though the Respondents claimed that Fire NOC and other sanctions required have been received, it is noticed that none of those documents were being produced by them before the Authority. The Respondents' tried to justify the delay in getting Occupancy Certificate for the project and claimed of receipt of 'deemed occupancy'. But the Respondents failed to produce the 'Deemed occupancy certificate'. As laid down in the 2<sup>nd</sup> proviso to Rule 20(3) of Kerala Municipality Building Rules (KMBR for short), "On the expiry of fifteen clear days from the date of valid application for occupancy certificate, the applicant shall submit a letter stating that he is liable to get occupancy certificate and now it is deemed to have issued by the authority. All Secretaries of Local Self Government Institutions shall acknowledge the receipt of the letter stated in the above paragraph with stamp and date on the same day on the duplicate copy of the letter. This shall be a deemed occupancy certificate".

5. In compliance with our Interim orders, the Respondents have completed some of the pending works mentioned in the complaints which were acknowledged by the Complainants. According to the Complainants, the reliefs sought as No. 3,5,7,8,9 & 12 (as shown in complaint No. 21/2020) are yet to be completed. On 16.09.2020, the Respondents agreed that they shall complete all the pending works within 45 days. But on the next hearing date on 03.11.2020, the Complainants alleged that the Respondents have not completed the pending works. The Respondents requested for a short further time finally to complete

the whole project in all respects. As it is observed that the Respondents have already initiated the completion of works pending, the Authority decided not to impose any penalty at this juncture for non-compliance of previous order/direction. It was also orally submitted that the Respondents have obtained Occupancy Certificate for the project, but no copy of the same was being produced. according to our Public Notice dated 17.09.2020. According to our Public Notice dated 17.09.2020, if the Occupancy Certificate is obtained on or after 01.01.2020, the project is liable to be registered before this Authority as per the provisions under Section 3 of Act. If the application is not submitted by the Respondents, the Authority shall issue separate show cause notice to them in this regard.

6. Hence invoking Section 34(f) & 37 of the Act, we have decided to issue directions as follows:

- 1) The Respondents shall complete all the pending works such as completion of swimming pool and its related works, flooring on the basement parking, furnishing the covered parking areas, arrange intercom facility, guard room with 24 hour security, repair and set right the CCTV, placing of name board in a prominent location, and install individual letter boxes and any other works, if any, as promised to the allottees of the project;
- 2) The Respondents shall enable formation of Association of allottees and its registration as per the law
- 3) The Respondents shall complete all the executions of sale deeds, if any, related to apartments / common areas in favour of allottees/Association.
- 4) The Respondents shall handover all the documents pertaining to the project such as a) title deeds of land, b)

permits/sanctions/approvals/NOCs, etc, c) all drawings of electricity, plumbing, etc. to the Association.

5) All the above works shall be completed **within 45 days** from the date of receipt of this order. The Association shall monitor the works and make sure that it is being carried out completely within the time frame. In case of any failure from the part of the Respondent, the Association can approach this Authority.

In the event of any non-compliance of this order by the Respondent, this Authority shall initiate severe penal actions as provided under Section 63 of the Act.

This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation, for the loss sustained to them, in accordance with the provisions of the Act and Rules.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman



Secretary (legal)

*AV*

True Copy/Forwarded By/Order/

**Exhibits on the side of the Complainants**

Exhibit A1	: Copy of brochure of project	}	Complaint No. 21/20
Exhibit A2	: Copy of Specification with details provided by the Architect		
Exhibit A3	: Copy of building permit dated 20.12.2018		
Exhibit A4	: Agreement between Frelix Ummer and Respondents		
Exhibit A5	: Copy of the re- assignment dated 19.11.2014 between Frelix Ummer and Complainant		
Exhibit A6	: Copy of agreement		
Exhibit A7	: Copy of brochure of project	}	Complaint No. 22/20
Exhibit A8	: Copy of Specification with details provided by the Architect		
Exhibit A9	: Copy of building permit dated 20.12.2018		
Exhibit A10	: Deed of Agreement between Complainant and Respondent		
Exhibit A11	: Communication between Complainant and Respondent		
Exhibit A12	: Copy of brochure of project	}	Complaint No. 23/20
Exhibit A13	: Copy of Specification with details provided by the Architect		
Exhibit A14	: Copy of building permit dated 20.12.2018		
Exhibit A15	: Deed of Agreement between Complainant and Architect/Owners		
Exhibit A16	: Sale deed between Complainant & Respondents		
Exhibit A17	: Bank loan Statement		

Exhibit A18	: Copy of brochure of project	} Complaint No. 24/20
Exhibit A19	: Copy of Specification with details provided by the Architect	
Exhibit A20	: Copy of building permit dated 20.12.2018	
Exhibit A21	: Deed of agreement between Complainant and previous owner	
Exhibit A22	: Sale deed between Complainant & Respondents	
Exhibit A23	: Bank loan Statement	
Exhibit A 24	: Copy of brochure of project	} Complaint No. 25/20
Exhibit A25	: Copy of Specification with details provided by the Architect	
Exhibit A26	: Copy of building permit dated 20.12.2018	
Exhibit A27	: Copy of the sale deed between Complainant and Respondent and landowner dated 9.05.2013	
Exhibit A28	: Copy of brochure of project	} Complaint No. 26/20
Exhibit A29	: Copy of Specification with details provided by the Architect	
Exhibit A30	: Copy of building permit dated 20.12.2018	
Exhibit A31	: Copy of sale deed between Complainant and landowners dated 3.09.2018	
Exhibit A33	: Copy of brochure of project	} Complaint No. 27/20
Exhibit A34	: Copy of Specification with details provided by the Architect	
Exhibit A34	: Copy of building permit dated 20.12.2018	
Exhibit A35	: Deed of agreement between Complainant and Respondent	
Exhibit A36	: Sale deed between Complainant and Respondent	
Exhibit A37	: Bank detail statement	

**Exhibits on the side of the Respondents**

nil

*AV*