



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint Nos. 270/2021 & 271/2021

Present: Sri. M.P. Mathews, Member

Dated 23rd February, 2022

Complainants

1. Susila Devi : Complaint No.270/2021.
3B, Sukrithi Apartments,
Mylampadi,
Govindapuram P.O,
Kozhicode.
2. Shazia Aboobacker, : Complaint No.271/2021.
29/655K, Dhaytha Nivas,
30th Line, Janatha Road,
Vytilla.

Respondents

1. M/s Madhurapuri Builders
18/937 A3, Akai Tower,
Chalappuram, Kozhicode – 673002.
2. Sujatha Menon,
Managing Partner,
M/s Madhurapuri Builders
18/937 A3, Akai Tower,
Chalappuram, Kozhicode – 673002.



3. Unni Menon
Partner,
M/s Madhurapuri Builders
18/937 A3, Akai Tower,
Chalappuram, Kozhicode – 673002.

COMMON ORDER

1. As the above two complaints are related to the same project developed by the Promoter/Respondents, the cause of action and the reliefs sought in both the complaints are one and the same, the said Complaints were clubbed together for joint hearing. Complaint No:270/2021 was taken as the leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.
2. The Complainants are the Allottees of project named 'Sukrithi' located at Mylampadi, Govindapuram, Kozhikode developed by the Respondents. They had purchased flat No.3B & 3D respectively in the said project. The Complainants submitted that the construction of Sukrithi Villament was completed in the year 2015, but the ownership of the land where the flat has been built is still in the name of the builder. The documents such as original proof title deed of the entire land, encumbrance certificate, tax slip and other supporting documents, plumbing diagram, electrical writing diagram, inspectorate certificate from the department of power are not obtained or handed over by the builder.



3. The relief sought by them are to direct the Respondents to do all the pending works, form an association of owners and handover all the required documents including title deed of the land to the owner's society, compensation and cost of proceedings.
4. When the case was posted for hearing on 12/01/2022 only the complainants were present. A notice was issued to the respondent under section 59 of the Act to register the project within 15 days on receipt of the notice or produce the Occupancy Certificate received for the project before 01/05/2017. Notice was also issued to the respondent for appearance without fail during the next posting date and the respondent was informed that, in the event of failure to appear, the order shall be passed in his absence on 23/02/2022, the next posting date. The respondent produced Occupancy Certificate dated **30/10/2014** before the Authority.
5. When the case was taken up for hearing on 23/02/2022 both the complainant and the respondent were present and after hearing the complainant and pursuing the documents produced it was confirmed that the complaint is not maintainable before the Authority. The complainant had no dispute regarding the occupancy certificate produced by the respondent. As per section 3(2) (b) of the Act, no registration of the real estate project is required in case the occupancy certificate was received prior to commencement of Real Estate (Regulation and Development)




Act, 2016. In *Neelkamal Realtors Suburban Pvt. Ltd. and Another v. Union of India and Others* (2018 KHC 3034), the Bombay High Court has observed that only events taking place and instances occurring after registration of the project are taken note of under the penal provisions. Authority concerned would be dealing with cases coming before it in respect of projects registered under RERA. Since the occupancy certificate was received on 30/10/2014 much before the commencement of the Act, 2016, the real estate project is not registrable and the complaints are not maintainable before the Authority. The complaints are therefore dismissed as not maintainable.

Dated this the 23rd day of February, 2022

Sd/-

Sri. M.P. Mathews
Member

/True Copy/Forwarded By/Order


Secretary (legal)

Exhibit

Document produced by the respondent

Exbt.B1-Copy of Occupancy Certificate dated 30/10/2014.