



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 272/2021

Present: Sri. M. P Mathews, Member

Dated 10th October 2022

Complainants

Anil Kumar Ramavarma &
Smitha Varma,
Villa T, Village Garden,
PWD Road, Amballur, Ernakulam-682315.

Respondents

1. Indus Gratia Creative Homes Pvt. Ltd.
Matrix Royale, Layam Road,
Oppo. Municipal Complex,
Statue Junction, Thripunithura,
Ernakulam-682301.
2. Saju Sadanandan,
Director, Indus Gratia Creative Homes Pvt. Ltd.
Matrix Royale, Layam Road,
Oppo. Municipal Complex,
Statue Junction, Thripunithura,
Ernakulam-682301.
3. Vijay Chandra Bose,
Director, Indus Gratia Creative Homes Pvt. Ltd.
Matrix Royale, Layam Road,
Oppo. Municipal Complex,
Statue Junction, Thripunithura,
Ernakulam-682301.



4. Prasanth Menon,
Director, Indus Gratia Creative Homes Pvt. Ltd.
Matrix Royale, Layam Road,
Oppo. Municipal Complex,
Statue Junction, Thripunithura,
Ernakulam-682301.

The above Complaint was finally heard on 01/09/2022. Counsel for the Respondent Adv.Thomas John & Complainants were attended the hearing virtually.

ORDER

1. The Complainants are the Allottees of project named 'Village Garden' located at Amballoor village, Ernakulam, developed by the Respondents. The Respondents have submitted application for registration of the said project before the Authority under section 3 of the Act, 2016 and the same is under scrutiny.

2. Based on the advertisement given by the Respondents, the Complainants approached the promoter for purchase of a plot of land having an extent of 5.07 cents, briefed as plot No.T to construct a villa having a plinth area of 1608 sq. ft. for a total consideration of Rs.70,00,000/-. The said project was a premium one containing villas equipped with the latest facilities. A land and construction deed dated 07/02/2017 was also executed between the Complainants and the Respondents. The Complainants also entered into a Memorandum of Understanding dated 20/02/2017 with the Respondents. It was specifically stated therein, the obligation of the buyer to complete the project as per the advertisement, inclusive of all facilities, with power and water, in consideration of the total amount.

3. The Complainants further submitted that the Promoters were obligated to complete the project within a period of 10 months from the date of Memorandum of Understanding with a grace period of 4 months. But the



said period was ended in 20/04/2018 inclusive of the grace period as envisaged in the deed and Memorandum of understanding. The Complainants have paid the entire amount of Rs.70,00,000/- as early as on 19/10/2017 and thereby the Complainants had completed their obligations under the deed and Memorandum of understanding. In addition to this a separate agreement was also entered into with the Respondent company for performing internal works. The said agreement dated 09/05/2017 was made for a consideration of Rs.11,00,000/- which was paid separately. The Respondent developer was furnished with all the specifications for the interior and the consideration was fixed purely based on the quality of the products demanded and the nature of the specification. The consideration for the interior work was also paid in full. But even after the completion of the total period of 12 months, the work as per the Memorandum of understanding has not been completed. There were still essential works that had to be completed to make the Villa habitable. Even generator and KWA water connection as expressly stated in the Memorandum of Understanding had not been installed. These are the most essential requirements for normal living, let alone an ultra premium villa which was expected to provide premium features.

4. The Complainants further submitted that to appraise the Respondents of their grievances, the Complainants personally submitted a letter to the Respondents on 6/10/2019 asking them to take steps to complete the project and comply with the terms of the Memorandum of Understanding. A list of works to be completed was also furnished. Despite informing them of the urgency in the matter, the Respondents failed to perform any of the works as required, and the villa still remained incomplete. The Respondents sought for further extensions and the Complainants graciously agreed. In the meanwhile, the Complainants were handed over the possession of the incomplete house on 01/03/2020. The Complainants occupied the Villa intermittently even prior to this, so as to monitor and supervise the work being performed and moved in



permanently on 01/03/2020. Thereafter on 05/05/2020, the 1st Respondent issued a mail to the Complainants stating that they will complete all the remaining works within 120 days starting from 17/05/2020. Even after the Completion of the said period of 120 days the works still remained incomplete. Therefore the Complainants sent a mail dated 19/09/2020 intimating them of the deficiencies of the construction and requesting them to immediately complete the construction. In response to the same the Respondents attended a meeting with all the residents and were assured that all the pending works will start immediately.

5. It was further submitted that Complainant had granted the Respondents ample time to completed the work. Even after 6 years have passed and still the Respondents have failed to complete the pending works. Even KWA water connection had not been provided, compound wall grill had not been constructed and none of the other specifications mentioned in the pending list had been completed. It was further submitted that the Respondents have failed to complete the construction of the common facilities including Gym, club house, Generator, CCTV Camera, intercom etc. or maintain the complete structure. The Respondents have not even issued the Occupancy Certificate or the Completion Certificate. Out of the total 23 Villas proposed to be constructed as part of the project, only 11 have been completed and 2 are under construction. Construction work is still being carried out in some of the villas. They have split the project into Phase 1 and Phase II. They are trying to evade their responsibility of completing the beautification work, crack filling, final painting, construction of compound wall grill for villa T, KWA water connection and the interior works, as promised. On 30/09/2021 the Respondents issued a registered notice to the Complainants directing them to pay a compensation and ultimatum was given to the Respondents to complete the pending works.

6. The relief sought by the Complainants are (1) direct the Respondents to adhere strictly to the ultra premium standards promised as per



the advertisement with respect to the amenities and fittings provided (2) direct the Respondents to fulfil the promises and complete all construction of the project and Plot T occupied by the Complainants as per the advertisement and the deed of land and construction (3) direct the Respondents to complete all pending internal works in tune with agreement dated 09/06/2017.

7. The Respondents have filed objection stating that the above Complaint is not maintainable and admitted that the Complainant had entered into a deed & construction on 07/02/2017. As per the said agreement the 1st Respondent agreed to completed the construction of the villa within 14 months including grace period of 6 months. The construction of villa was completed during 2018 well within the said period. Having been satisfied with the construction activities of the Respondents, the Complainants also requested the promoter to do the interior works of their villa. The Construction of the said villa was completed and possession was handed over to the Complainants on completing the interior works, the Complainants had started residing in the said villa. The photographs uploaded by the Complainants in their facebook account itself clearly shows that they have been happily residing in the said villa since then. Copied of the said photographs also produced.

8. The Respondents further submitted that in addition to the various amenities, the Respondents have also provided additional waste management system of CREDAI and also an incinerator at the project. Inverter backup was already been provided to the Complainants Villa. The well water has been provided to all villa owners at the time of handing over of villas. Even though KWA Water connection was not offered at the project, the 1st Respondent took steps to get the connection to the villa owners who have requested for the same. The Respondents have submitted application for the KWA water connection for the Complainants villa and KWA meter has also been installed. It was also submitted that the Respondents had convened a meeting of the project on 28/05/2022 through google meet since most of the owners are out of



station. Intimation of the said meeting was given to all owners. But only 5 owners attended the said meeting and hence the owners association was not formed.

9. The Respondents further submitted that the 1st Respondent has been maintaining the project till date. The Complainants are enjoying the amenities and resources of the project without spending any amount as monthly maintenance charges and they are not willing to share the monthly maintenance charges.

10. Heard both parties in detail. The documents produced from the part of the Complainants are marked as Exbts.A1 to A8 and the documents produced from the part of the Respondents are marked as Exbts.B1 series. During the hearing on 14/07/2022 the Authority directed the Respondents to file an affidavit showing the list of pending works showing the date of completion. In compliance of the same, the Respondents have filed a statement showing the features stated in the brochure and its status. As per the statement club house, swimming pool, gymnasium, common hall, landscaped lawn, villa front yard with landscape, wide road, water body/fountain, all round compound wall with security cabin, Vaastu friendly, street lights are completed. The children's play area and 24 hour security CCTV will be completed by 31/08/2022. During the hearing on 01/09/2022, the Complainants submitted that the common amenities mentioned in the statement filed by the Respondents were not yet complete as per the advertisement and promises given by them.

11. After hearing and examining the documents produced, the Authority is convinced of the delay occurred in completion of works in the project as offered to the Complainant as per the deed and advertisement and that the Respondents have pathetically failed to honour the promises given to the Complainant. By considering the Covid-19 Pandemic, the Authority decided to grant 30 days time to the Respondents to complete the project as per the advertisement and deed of land and construction in all respects. The



Respondents / Promoters has also undertaken that they shall complete the project with all the amenities and facilities offered to the Complainant along with all the mandatory sanctions and approvals, within 30 days.

12. In view of the above facts and findings and with the consent of both the parties and, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows: -

1. The Respondent/Promoter shall complete the entire works of the project "Village Garden " with all the mandatory sanctions/approvals and common amenities/ facilities in accordance with the terms of the deed of land & construction agreement executed with Complainant, within 30 days, from the date of receipt of this order, without fail.

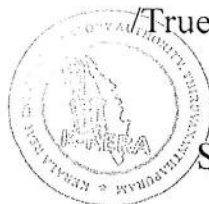
2. In the event of failure on the part the Respondent / Promoter to complete the entire works of the project as per the terms of the deed of land & construction as stated above the Respondent/ Promoter shall be liable to, pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.


This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

18/

Sd/-
Sri.M.P. Mathews
Member

/True Copy/Forwarded By/Order




Secretary (legal)

EXHIBITS**Exhibits marked from the Side of Complainants**

- Ext.A1- Copy of printed advertisement of the project 'Village Garden.
Ext.A2- Copy of deed of land & Construction dated 07/02/2017.
Ext.A3- Copy of Memorandum of Understanding dated 20/02/2017.
Ext.A4- Copy of account statement & payment details.
Ext.A5- Copy of agreement dated 09/06/2017.
Ext.A6- Copy of representation submitted by the Complainant to the
Respondents dated 06/11/2019.
Ext.A7 series- Copy of Email communications.
Ext.A8 - Copy of registered notice dated 30/09/2021.

Exhibits marked from the side of Respondents

- Ext.B1 - Copy of Photographs.

