



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

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

Complaint No. 275/2022

Dated 22nd August, 2023

Complainant.

Navanith Renahan,
Represented by his Power of Attorney Holder,
Renahan Vamakesan,
Villa No 23, Skyline Rosemount Homes,
Kunjan Bava road, Ernakulam, PIN-682019.

Respondents.

1. P.C. Jose,
M/s ASIAN DEVELOPERS,
ASIAN TOWER, 49/470 F2, 5th Floor,
Vytila Junction, NH-47, Vytila, Kochi- 682019.
2. M/s ASIAN DEVELOPERS,
ASIAN TOWER, 49/470 F2, 5th Floor,
Vytila Junction, NH-47, Vytila, Kochi- 682019.
(Adv. Biju Abraham)



3. Dr. Anil George Mathew,
Doctors Quarters, St James hospital,
Chalakkudi P.O. PIN-680307.
4. Ajith John Mathew,
C/o Dr. Anil George Mathew,
(Power of Attorney Holder of Ajith John Mathew)
Doctors Quarters, St James hospital,
Chalakkudi P.O. PIN-680307.
5. Jyothi Saramma Mathew,
No. 42, 18th A Cross, Bhuvanewari Nagar,
Kempapura, Habbal Village, H A Farm,
Bengaluru, PIN-560024, Karnataka State.
6. Sujan Thomas Mathew,
C/o Jyothi Saramma Mathew,
(Power of Attorney Holder of Sujan Thomas Mathew)
No. 42, 18th A Cross, Bhuvanewari Nagar,
Kempapura, Habbal Village, H A Farm,
Bengaluru, PIN-560024, Karnataka State.
7. Pavan Thomas Mathew,
C/o Jyothi Saramma Mathew,
(Power of Attorney Holder of Pavan Thomas Mathew)
No. 42, 18th A Cross, Bhuvanewari Nagar,
Kempapura, Habbal Village, H A Farm,
Bengaluru, PIN-560024, Karnataka State.

The Power of Attorney holder of the Complainant and the Counsel representing the Respondents No.1 and 2 herein were present in the online hearing on 04-08-2023. The Authority passed order as follows.



ORDER

1. The Complaint is with respect to a real estate project named "ASIAN ALLEGRA" at Maradu, Ernakulam. Being aggrieved by the non-rectification of an error in the sale deed and by providing inadequate car parking space by the Respondent/Promoter, the complaint is being filed by the Complainant who is represented by his Power of attorney Holder & father. The Complainant's case is that as per the offer of the Builder to deliver Apartment D3 together with covered car parking, Complainant, represented by his Power of Attorney Holder & father Mr. Renahan Vamakesan, entered into an agreement for sale on 11-06-2022 with the legal heirs of the land owner and the 1st Respondent as Developer for undivided interest in the land and apartment D3, having a super built up area of 115.34 Sq.M. together with covered carpark No 4 and proportionate share in common area and common facilities for a total consideration of Rs. 60,00,000/- The exact location of car park was not specifically informed. The consideration was paid as directed and arranged through bank loan. Sale deed for the transfer of land and apartment was registered on 30-08-2022 and keys were handed over. When parking of the car was attempted, it is almost impossible to take the 90 degree turning to enter the parking bay. The two attempts resulted in damages to the rear of the car as the corner pillars prevents the entry and exit. The car parking is not in conformity with the building regulations. Almost



all the residents, except two or three who were given parking near entrance in front, had the similar experience. The Complainant personally met the Respondent No 1, the builder for suitable remedy, though he promised solution but not done. The Respondent concealed this defect for making profit and thereby caused financial and mental agony to the Complainant. In the title document executed, a serious factual error was occurred in 'Schedule C', wherein the apartment is described as three bed room, while the apartment conveyed was of two bed room. This mistake has to be corrected with the Sub-registry and corrected document is to be handed over. The relief sought by the Complainant are to 1) execute and deliver a correction document for the error occurred in the registered title deed and 2) provide a proper and adequate covered car parking space and if it is not possible to give adequate compensation. The Complainant prayed for interim order restraining the Respondent from further alienating any of the car parking space by sale or transfer. The Complainant has submitted an additional statement, as per which he has enclosed a report from a chartered Engineer, engaged by him. As per the said report, the parking space does not have sufficient width for ingress and egress of vehicle at the corners and entry, moreover, the driveway width is only 3 meters as against 4.5 meters.

2. The Respondents No.1 and 2 have filed reply statement as follows. The flat purchased by the Complainant is a ready -to-



move flat, completed and the project was occupied almost 99% by 2019 itself. Except the flat to the Complainant all other flats were already sold and occupied. The Complainant and his father visited the flat and verified the feasibility of carparking with many cars and satisfied with the facilities. The description of flat, parking area, and share of property etc were clearly described before execution of agreement to the Complainant. The area of parking allotted is sufficient to accommodate big cars but the driver should show little patience. Other occupants never made complaints. With regard to the mistake in the sale deed, the execution of sale deed was a deficit approval and demanded for payment of balance amount due. Since, the land owners are in Bangalore, Respondents are waiting for the availability of land lord for execution of rectification deed. Now, the Respondents are waiting the orders of the Authority. The Complainant had obtained right over the property by a registered document and enjoying the same, without challenging the recitals in the document, have no right for claiming proper car parking from the Authority and the Authority have no power for modifying a title deed against the express agreement between the parties.

3. In the copy of agreement for sale dated 11-06-2022, produced by the complainant, entered in to between the parties, it was specified that Late V.A. Mathew (deceased land owner) and M/s Asian Developers entered in to a Memorandum of understanding on 29-09-2015 and formulated a scheme to



construct multi storied residential apartment complex called ASIAN ALLEGRA and V.A. Mathew entrusted the development and construction work to M/s Asian developers having expertise in construction activities and for selling apartments along with undivided share to prospective purchasers. As per the said agreement it was agreed to provide 1114/20010 undivided share in 6.00 Ares of land in survey No 71/11 of block 13 of Maradu village having a super built up area 115.34. Sq M in the third floor of the apartment complex called ASIAN ALLEGRA along with covered car parking No 4 and all improvements, easements together with right in the common area. In the sale deed executed dated 30-08-2022 by the legal heirs of the land owner, the undivided share of land and common amenities were transferred to the Complainant.

4. Hence, the Authority confirmed that the above said project is an on-going real estate project as per the provisions of the the Real Estate (Regulation and Development) Act, 2016 [herein after referred to as the Act, 2016], which is not registered before the Authority under section 3 of the Act, 2016. Even though, the Counsel for Respondents No 1 and 2 has submitted that the application for Registration u/s 3 of the Act, 2016 has been submitted, the Authority found that the above said project is not yet registered before the Authority even after a show-cause notice No 1870/K-RERA/2022 dated 17-02-2023 issued to the Respondents No 1 and 2, stating, why penal provisions mandated



under the said Act, should not be imposed on them in this regard. It is also noted that the Respondents No 1 and 2 are the developers of the real estate project and no documents have been submitted by the Respondents to prove that the project was completed before 1.05.2017. The Authority also found that the agreement executed on 11-06-2022 with the Complainant by the Respondents is not in the prescribed "Annexure-A" Form as provided under Section 13(2) of the Act, 2016 and Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Hence, there is violation of the provisions u/s Section 13 of the Act, 2016 from the part of the Respondents. After hearing both the parties on 13-04-2023, the Authority directed the Respondents No 1 and 2 to show cause within 2 weeks, why penal action should not be initiated u/s 59(1) of the Act, 2016, for not registering the Real Estate Project "ASIAN ALLEGRA" before the Authority under Section 3 of the Act, 2016. The Respondent/Promoters have grievously failed to comply with the direction and to register the project as provided under the law.

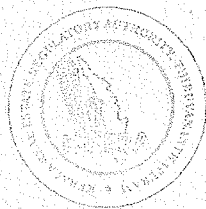
5. When the case came up for hearing on 16-06-2023, the Counsel for the Respondent 1 and 2 submitted that the case is settled between the parties. But the Complainant has no clarity as to the said settlement. However, he has submitted that the Respondents called only that day and offered to provide a car parking on the front side which is being used by one of the partners of the project, for which no written communication or



deed emerged. The Complainant agreed that the correction in the sale deed has been done.

6. After hearing both the parties the Authority observed that with respect to the non-registration of the project the Authority has no other alternative other than to impose penalty on the Respondents/Promoters as prescribed u/s 59(1) of the Act, 2016 before which to conduct a direct hearing of the promoters in this respect for violation of provisions Section 3 of the Act, 2016. The Authority vide order dated 16-06-2023 directed the Respondents to attend for a direct hearing on 04-08-2023 on violation of registration of the Real Estate Project "ASIAN ALLEGRA" under Section 3 of the Act, 2016 and also directed the parties to report settlement, if any, arrived at between them with respect to the Complaint.

7. When the matter came up for hearing on 04-08-2023, the Respondent/ Promoter was absent even though he was directed to appear directly. The Complainant filed a memo for the withdrawal of the Complaint and the same was considered, wherein it was stated that the 2nd Respondent had issued a letter dated 26-06-2023 whereby a new car parking facility had been allotted to the Complainant instead of the existing car parking facility and copy of the said letter was produced as per which letter the car park of land owner had been re-allotted to the Complainant and with regard to the correction of an error in the sale deed, a rectification deed had been registered as document



No 1232/1/2023 with the Sub Registrar Office Maradu, Ernakulam and the Respondents have assured that the same would be handed over to the bank, since a loan pending there. In the light of the above, the Complaint was withdrawn by the Complainant, seeking liberty to file fresh Complaint, if required.

8. In view of the above facts and circumstances, invoking Section 37 of the Act 2016, the Authority hereby passed orders as follows:

i) The Complaint is dismissed as withdrawn, reserving the right of the Complainant to file fresh Complaint, if required.

ii) The Respondent No 1 and 2 shall file explanation with documents in support of their contentions, if any, to the show-cause notice within 15 days, failing which the Authority will be constrained to pass orders under section u/s 59(1) of the Act, 2016.

The case is posted to **12.09.2023 at 11 AM. for direct hearing** on violation of registration of the Real Estate Project "ASIAN ALLEGRA" under Section 3 of the Act, 2016. The promoter shall be present in person for the hearing.

Sd/-
Preetha P. Menon,
Member.

Sd/-
P. H. Kurian,
Chairman.

True Copy/Forwarded By/Order

Secretary (Legal)



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