



**REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 279/2021

Dated 10th June 2022

Present: Sri. P H Kurian, Chairman

Smt. Preetha P Menon, Member

Complainant

Smt. Meera Rajan
Flat No 1-C, Mulberry Home,
Mystic rose, Lourdpuram,
East Fort, Thrissur- 680005
[Adv. Jyothi V]

Respondents

1. M/s Nithin Michelle Builders and Developers Pvt Ltd.,
(Represented by its Managing Director)
Building No. 12/324-3&4, Mulberry Towers,
Kerala-680006
2. Mr. George John,
Pallickal House, Jubilee ST,
Kuriachira P O, Thrissur,
Kerala- 680006
[Adv. M Reghu]

The Complaint came up for hearing on 01/06/2022. The Counsel for the Complainant Adv. Jyothi V and the Counsel for the Respondents Adv M. Reghu appeared for the virtual hearing.



ORDER

1. The Complainant and her son Mr. Ferrin Rajan jointly purchased an apartment No 1C on the first floor in the opposite party Project named “Mulberry Homes- Mystic Rose” constructed on 51.18 cents of lands comprised in Sy. No. 605/1 of Chembukavu village admeasuring a total area of 1575 sq. ft which is inclusive of the proportionate share of common area together with rights to enjoy the common amenities/facilities provided for the utilization of all the unit holders together with the right to use the parking space in the basement floors earmarked for the client as parking space No. 1C. Since Ferin Rajan is abroad, he is not joined in this Complaint as a complainant.
2. On 20/11/2018, the Respondents entered into a Sale and Construction agreement with the Complainant and her son. On 22/04/2021, Sale Deed No. 1059/1/21 was executed by the 2nd Respondent in favor of the Complainant and her son. The Complainant submitted that they got the absolute right and title over the Apartment for a total consideration of Rs. 58,50,000/-. As per the agreement, the Respondent must have completed the works on or before March 2020. The Respondents informed the Complainant that the construction is over and is ready to occupy. The Complainant visited the Project and noticed certain mentioned below. Thus, the Complainant asked the Respondents to clear the pending works and the Respondents assured to complete them even after occupying the apartment. Since the Complainant paid the entire sale consideration to the Respondent and they had no other options, the Complainant began to live in the flat from 19/06/2021. The promises made by Respondents were not carried out and without completing the assured construction and



amenity works the Respondent managed to obtain signed letter of understanding from the Complainant.

3. The Complainant further submits that the main defects are seen in the construction, in general, are the i)basement II car parking flooded with rainwater, ii)No sufficient car parking, iii)No proper Garbage disposal area, iv)No proper Fire and safety channels, v)the specifications of building and area not mentioned in title deeds, vi)no proper access to common amenities, vii) Badminton court, playing area, car wash area, solar lights, and intercom camera not provided, viii) No plastering was done in Basement I &II car parking area. As per the agreement, the Respondents don't have liability for any rectifications after the expiry of six months from the date of readiness. The Respondents compelled the Complainant to take possession before it is ready as assured in their advertisement and brochure. The Respondent's low-quality works caused a gross loss of Rs. 24,00,000/-. The Respondents are taking hasty steps to form an association as per their whims and fancies. They are trying to put the pending works under the responsibility of the association in which the Complainant will also become a member. Respondents reserved their right to create bye-law and other conditions for running the association through the construction agreement executed in between Complainant and the Respondents. On the strength of the clauses in the agreement, the Respondent is trying to lead the flat owners to agree with their terms and conditions. If the respondents succeed in forming an association before completing or curing the existing defects in the building project, it will cause an additional burden to the flat owners including the Complainant. The relief sought by the Complainant are i) to direct the respondents to complete the project as per brochure by doing the pending activities like basement 2 car parking rain flood, sufficient cark parking space, proper garbage disposal facility, proper Fire and safety channels, To



mention the specifications of building and area in title deeds, proper access to common amenities, to provide Badminton court, playing area, car wash area, solar lights, and intercom camera, to plaster the Basement I & II car parking area, to provide proper roofing on the north and south area of 11th Floor. The documents produced by the Complainants are marked as **Exhibit A1 to A6.**

4. The Respondents filed the objection as follows:- The Complainant and her son jointly purchased the flat mentioned in the Complaint on 22-04-2021. The Sale & construction agreement was executed on 20-11-2018. The Complainant had not made the payment towards the sale consideration in time as stipulated in the schedule without any reason and unnecessarily delayed it. The Complainant paid the final balance to the tune of Rs. 1,49,000/- six months after the date of occupation of the flat that is on 30.10.2021. The Respondent agreed to complete the Project in March 2020. Due to the flood that occurred in Kerala in 2018,2019, a short delay of three months had occurred in completing the Project for which no one had raised a complaint so far. The Complainant also has not raised any complaints in this matter even after registration of the flat in her name. The Complainant had executed a letter of undertaking as of 20.04.2021 which reveals that she is fully satisfied with the construction done by the Respondents in all respects including area, time span, specifications, and in all other matters in connection with the flat. The Respondents applied for an occupancy certificate for the Project on 17-06-2020 and it was obtained only on 07-12-2020, due to the Covid Epidemic. The Respondent denies the allegation that the complainant noticed the defects in the Project and asked the respondents to clear that. It is further denied that the complainant asked the Respondents to clear works before handing over the possession of the flat. The allegation that the Respondents had given assurance to the complainants for completion of



the work before occupation and complainant constraint to live in that flat from 19-06-2021 because of the reason that they have paid their sale consideration is false and denied.

5. The Respondents denied the allegation that the complainant noticed defects in the construction of the flat after occupying. It is also further denied that the Respondent had not carried out the work of the flat as promised and advertised. The Respondents denied the allegation that the basement II car parking area has flooded in the rain is totally false and fabricated. The Respondents submitted that the Complainant was allotted parking slot No. 50 in basement 1 of the above flat. The Respondent challenges the Complainant to bring technical evidence before this Hon'ble Forum for proving the allegation with help of a qualified Structural Engineer. The allegation against Garbage disposal is denied and submitted that the system was installed in the Project and was approved by the statutory authorities and free from any sort of complaints. After inspection of all the things, the corporation issued an occupancy certificate to the Project. The allegation of Fire & Safety and escape channels are not fixed is denied and submitted that the Respondents had received completion certificate from the fire department after making all the inspections from their side. The Respondents also deny the allegation that, no specific information was given to the Complainant regarding the areas, undivided share, common area, and total area of the building. The Complainant entered into agreements after knowing the facts and was fully satisfied with the sale deed registration also. The Complainant so far has not raised any Complaints regarding the above matter. The details of areas of flat 1C allotted to the Complainant were also shown by the Respondent.

6. The Complainant's flat is situated on the 1st Floor, on the backside of the Project. There is no possibility of water entering into their Veranda any cost during the rainy season. All the



occupants are enjoying the amenities and none raised any complaints so far. The solar plant of 5 KV A capacity is already installed in the premises long back, in order to provide better services. The Respondents had installed a high-capacity solar plant that produces enough electricity to support all common lights, pumps, and other equipment. The excess electricity generated from the plant after use in the flat is given to KSEB which reduced the monthly electricity bill charged for common facilities. All columns and beams are either plastered or covered with texture paint and the rest of the basement ceiling is exposed concrete and painted, which is normal approved form. The rooftop barbecue area is very safe and the side walls are constructed as approved by KMBR stipulations. As per rules, the Respondents are not supposed to cover the open terrace area. It was denied by the Respondents that the Complainant was forced to take possession of the flat before it was ready for occupation. The Complainant had not narrated details regarding the loss incurred due to low-quality works done by the Respondent, which proves that Complainant herself has no idea regarding the loss. On 13/10/2021, a meeting was conducted by the flat owners to form an association and for electing their executives. The Complainant also attended the meeting. The association of the flat owners is already formed and the video of the flat owners meeting and its election process held on 13/10/2021 can be produced.

7. The Respondents submitted that the Complainant desperately wanted to be the president of the association. The Complainant formed separate wats app group for her campaigning. The Complainant's husband Mr. Rajan sent messages in the said group for electing her as president of the association, but she withdrew from the contest due to a lack of support from others. The report of the engineer produced with the complaint is false and fabricated. The engineer named P R Govindhan never inspected the premises and the details in the seal prove that he is not



a qualified structural engineer for reporting the details mentioned in the report. The Respondents also submitted that the allegations raised in the complaint are vague and fabricated and hence the relief sought in the complaint should not be allowed at any cost. The documents produced by the Respondents are marked as **Exhibit B1 to B7**.

8. Heard both parties and taken for orders on 22/12/2022. The Project was registered on 02/11/2020 and date of completion in the certificate was 02/08/2021. As the date of registration expired, the order was kept pending. Meanwhile, the Respondents uploaded Form 6 and the occupancy certificate to the website of the Authority on 10/02/2022. As it was mentioned in the Form 6 that the project has been completed in all respects as promised to the allottees of the project, the case was posted for further hearing to know the version of the Complainants. On 11/04/2022, both sides were heard and the Respondent submitted that the Association of Allottees was formed and registered. The Respondents also submitted that the project is completed and Form-6 is uploaded to the web portal of the Authority. But the Complainants denied the same. During the hearing, the Authority noticed that no document was produced to show that common areas have been handed over to the association and directed the Respondents through interim order dated 11/04/2022 to produce an affidavit along with documents showing that the project has been handed over to the Association and the issues raised by the Complainant are solved after serving copy to the Complainant within one week and the Authority also directed the Complainant to file replication if any, to the counter statement before the next posting date, after serving copy to the Respondents.

9. The Respondent in compliance with the order dated 11/04/2022, filed an affidavit on 22/04/2022 along with a letter of undertaking signed by the Association of Allottees and the



Respondent/Builder with regard to handing over of the common areas to the Association. The Respondents also submitted in the affidavit that prior to the above-said undertaking, a joint inspection was conducted by the Respondent/Builder and the office bearers of the Apartment Association. The Association was fully satisfied with the amenities provided by the Respondent/builder as promised to the Allottees. During the hearing, the Complainant's counsel objected the above-said affidavit and undertaking, but no counter or replication is filed by the Complainant. The counsel for the Complainant raised the allegation that they have not received any documents related to the project. But the Respondents submitted that the necessary original documents have been handed over to the Association and the Complainants can approach the Association for the same.

10. In view of the above facts and circumstances, it is found that the Complaint filed before the Authority has been resolved and the same stands **disposed of**.

This order is issued without prejudice to the right of the Complainant to submit claims for compensation in Form N 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.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri P H Kurian
Chairman

/True Copy/Forwarded By/Order/


Secretary (Legal)



Handwritten mark

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Inspection report dated 15/07/2021 issued by P R Govindan, a chartered engineer and registered valuer.
- Exhibit A2 : Printout of photographs of the defective areas.
- Exhibit A3 : Brochure of the project ' Mulberry Homes'
- Exhibit A4 : Copy of allotment of car parking area to the Complainant dated 20/04/2021 issued by the Respondents.
- Exhibit A5 : Photocopy of Sale agreement dated 20.11.2018
- Exhibit A6 : Photocopy of construction agreement dated 20/11/2018.

Exhibits on the side of the Respondents

- Exhibit B1 : The details of payment made by the Complainant to the Respondents .
- Exhibit B2 :The true copy of the Sale deed dated 22-04-2021
- Exhibit B3 : The true copy of the Occupancy certificate dated 07-12-2020
- Exhibit B4 : The photographs of basement2 and amenities.
- Exhibit B5 : The list of executive committee members elected in the meeting held on 13/10/2021
- Exhibit B6 : Minutes extract of the meet.
- Exhibit B7 : Affidavit dated 22/04/2022.



