



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No: 289/2020

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

Dated 28<sup>th</sup> January 2022

### **Complainant**

Sharmil Vibhakar Mudikkaran  
Represented by its Power Of Attorney Holder  
P K Hansa Anand  
Poothatta House, Kannothumbal  
Thana, Kannur District  
Kerala- 670012  
(Adv. K. O Thomas)

### **Respondent**

C H Aboobaker Muzhathadam  
Western Avenue, Muzhathadam,  
Thana, Kannur- 670012  
(Adv. Harish R Menon)

The above Complaint came up for virtual hearing today. The counsel for the Complainant Adv. K O Thomas and counsel for the Respondent Adv. K Harish R Menon attended the hearing.



## ORDER

1. The facts of the case is as follows- The Respondent is the builder of the Project "Western Avenue" at Muzhathadam, Kannur for which the Complainant expressed his desire to purchase a flat. On 6<sup>th</sup> September, 2011, a sale cum building construction agreement was executed between the Complainant and the Respondent whereby the Respondent agreed to construct and sell an Apartment No. C at 8<sup>th</sup> floor having 1696 sq.ft in the super built up area and covered car parking for a total consideration of Rs. 38,00,000/-. In pursuance to the covenant on 25.08.2011, the complainant had given a cheque for Rs. 15 Lakhs and the balance consideration of Rs. 23 Lakhs, the Complainant had arranged a purchase loan through HDFC Bank and the said amount was also received by the Respondent. The Apartment was not completed within the time frame as assured by the Respondent as per the terms of the agreement. The Complainant was abroad and believed in the words of the Respondents regarding the construction completion date. The Respondents failed to transfer the ownership of the Flat after completion of the entire works within 3 months as promised. The Respondents sought further time on the completion date due to some financial issues. On 30.06.2020, when the Complainant send someone to inspect the property, it was learnt that the flat has been occupied by one Mr. K V Valsan since 2015. It was learnt that the flat has been given for rent by the Respondent. This was done without the permission of the Complainant and the Complainant who is working abroad was kept in dark with the reason that the work was not completed due to financial issues of the Respondent. The Complainant submitted that the Respondent was supposed to inform the completion of the Flat and issue the



occupancy certificate after completing the necessary formalities. This act leads to cheating and breach of Contract. The Complainant has sustained heavy monetary losses and has also put to considerable mental agonies as he availed a loan of Rs. 23 Lakhs with an interest @12% p a. The Complainant paid an amount of Rs 15 Lakhs also. The Respondent is liable to pay the interest for the said purchase money from 30.03.2012, the date on which the Respondent assured to complete the construction as mentioned in the agreement dated 06.09.2011. The interest for the period from 30.03.2012 to 20.06.2020 is Rs. 37, 49,340/-. The reliefs sought for are (i) to pass an order directing the Respondent to allot Apartment No. C in 8<sup>th</sup> Floor of Western Avenue to the Complainant as assured in the Sale and Building Construction Agreement, (ii) to pay Rs.37, 49,340 i.e interest @ 12% for Rs. 38 Lakhs from the date of completion of the flat. (iii) to pay Rs. 14,85,000 i.e rent of the flat No. C in the 8<sup>th</sup> Floor of the Western Avenue from the date of completion of the flat to June 2020 and future rent @ Rs. 15,000/- p. m till the date of allotment,(iv) to pay Rs. 20 Lakhs towards compensation for the mental agony and hardships caused to the complainant.

2. The Respondent filed the objection and submitted that the Complaint is not maintainable. The Complaint cannot be entertained by this Authority as there is no jurisdiction to adjudicate the matter which arose before the enactment of concerned law. The Respondent submitted that the Complainant booked the Flat No. 8 C on 25.08.2011, but later he requested for Flat No. 9D in the 9<sup>th</sup> Floor as he wanted feel the beauty of nature. The flat 9D was already booked which was informed to the Complainant and also informed that it can be interchanged after a mutual discussion with the other allottee. Accordingly, everything was mutually discussed and the flat No. 8C



was registered in the name of other allottee and he is residing there since 2015 and only the Complainant has not registered the flat. All these were done on the friendly relationship with the Complainant and a written request was not taken from the Complainant for changing the flats. Moreover, the Complainant paid the consideration amount after repeated demands and there after no communication or phone calls were done or attended by the Complainant for a long time. There was no delay from the side of Respondent either on construction or on registration. The registration and the handing over of the said flat was delayed due to the reasons of the Complainant. If the Complainant has any complaint, he can approach other forums, not before this Authority as the cause of action arose in the year 2011. This Authority has no jurisdiction to entertain this case and hence may be dismissed.

3. The Respondents also filed an additional statement which states that the work of the Apartment was completed in the year 2012 and Occupancy certificate was issued by the Kannur Municipality on 21-06-2013 for total area of 6417.2 meter square. This Complaint is not maintainable before this Authority for the sole reason that the Real Estate (Regulation and Development) Act, 2016 does not have retrospective effect. This authority is intended to hear on the Projects yet to be commenced or ongoing Projects. This Act does not apply to the Project already completed or to which completion certificate/Occupancy certificate has already been granted at the time of commencement of this Act. It is submitted by the Respondent that, in view of the ruling of the Apex Court the complaint is not maintainable before this Authority on the sole ground that the completion certificate/occupation certificate was



issued on 21-06-2013, which is much prior to the coming into force of the Act and hence the Complaint may be dismissed.


4. The case came up for hearing on 28-01-2021 and after hearing both the parties and perusing all the documents, it is clear that the project has been completed in the year 2012. The photocopy of the Occupancy Certificate dated 21.06.2013 has been produced by the Respondent. We find that the Project is not an ongoing project and not registrable under the Act and hence the Real Estate (Regulation & Development) Act, 2016 does not apply to the Project.

In view of the above, the Complaint is hereby **dismissed**. The Complainants can approach appropriate Forum for getting their grievance redressed.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order/

  
Secretary (Legal)

