



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

### Complaint Nos.29/2022 & 46/2022

Present: Sri. M.P Mathews, Member

Dated 7<sup>th</sup> July, 2022.

#### Complainants

1. Sanjeev Sukumaran Nair, : Complaint No.29/2022  
Kambiyil Puthen Veedu,  
Naduthery Desom,  
Pattazhy P.O, Kollam-691522.
2. Prathyumnan V.K, : Complaint No.46/2022  
Rugma, Kozhunthil,  
Nileshwar P.O,  
Kasargode -671 314.

(By Adv.M.Rajendran)

#### Respondents

1. M/s Laura Ventures Pvt. Ltd.,  
No.50/566B, 1<sup>st</sup> Floor,  
Above Sproutz Mini Mart,  
NH85, Petta, Poonithura, Cochin-682038.
2. Devadathan P, Managing Director,  
M/s Laura Ventures Pvt. Ltd.,  
No.50/566B, 1<sup>st</sup> Floor,  
Above Sproutz Mini Mart,  
NH85, Petta, Poonithura, Cochin-682038.



3. Xavier M.J,  
Mukkadayil House,  
Kaloor P.O, Ernakulam -682017.
4. Daisy M Alaxander,  
Mukkadayil House,  
Kaloor P.O, Ernakulam -682017.

The above Complaints came up for virtual hearing 07/04/2022. Counsel for both the Complainants Adv.M.Rajendran attended the hearing. Respondent neither appeared nor represented.

### **COMMON ORDER**

1. As the above 2 Complaints are related to the same project developed by the Respondent/Promoter, the cause of action and the reliefs sought in both the Complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The case of the Complainant in Complaint No.49/2022 is as follows:- The Complainant is an allottee of project named 'NINFA CASA' located at Elamkulam Village, Ernakulam District, developed by the Respondents. Based on the advertisement given by the Respondents 1 & 2 in the name of M/sNinfa Builders, the Complainant had booked Apartment



No.4B in the 1<sup>st</sup> Floor of the project comprised in Survey No.222, sub division No.2 of Elamkulam Village with a total extent of 3.48 Ares belonging to the Respondents No.3 & 4. Later M/s Ninfa Builders and Developers Ltd. was reconstituted as M/s Laura Ventures Ltd. both of which 2<sup>nd</sup> Respondent is managing Director. An agreement was executed between the Complainant and the Respondents No.1 & 2 as builder and another agreement was also entered into between the Complainant and Respondents No.3 &4 as land owners for a total consideration of Rs.33,50,000/-. Another agreement was also executed between the Complainant and the Respondents 3 & 4 on 12/07/2019 relating to the entrusting of construction work of apartments to Respondents 1 & 2. As consideration and undivided share of the land, the Complainant had paid Rs.3,50,000/- on June and July 2019 as advance, and paid Rs.27,00,000/-out of the total sanctioned loan of Rs.30,00,000/- from HDFC Bank by transfer of the loan to the account of the builder -2<sup>nd</sup> Respondent which is the total value of the allotted apartment. The promised date of completion was 31<sup>st</sup> December 2019. Similar agreements were executed in favour of other investors also. But only the skeleton work of the structure was done by the Respondents. In the mean while the Respondents have misused the amount collected from the Allottees in spite of the lapse of two years, the Respondents did not chose to complete the construction and they have practically abandoned the site and no construction activities are





on at the site since the last one and half years. The photographs showing the present position is also produced. Several letters were sent to the 2<sup>nd</sup> Respondent by E-Mail for speedy completion of the work. Copy of the mail is also produced. In fact the Complainant had paid the said amount by raising a loan and is still paying the EMI's and he had incurred huge loss. Hence the applicants are entitled to recover the said amount with interest. The documents produced from the part of the Complainant are :- Copy of agreement between the Complainant and Respondents 1 & 2, copy of agreement between the Complainant and the Respondents, copy of agreement between the Complainant and the Respondents 3 & 4, copy of cash receipts and bank consolidated statement, copy of brochure, copy of photograph of site showing present position and copy of Email communications.

3. The case of the Complainant in Complaint No.29/2022 is as follows:- the Complainant is also an allottee of the said project. Based on the advertisement given by the Respondent No.1 &2 in the name of M/s Ninfa Builders, he had booked apartment No.2B in the said project. Later M/s Ninfa Builders and Developers Ltd. was reconstituted as M/s Laura Ventures Ltd. both of which 2<sup>nd</sup> Respondent is managing Director. An agreement was executed between the Complainant and the Respondents No. 2 as builder and another agreement was also entered into between the Complainant and Respondents No.3 &4 as land owners. As consideration the Complainant had paid



Rs.42,97,000/- which is the total value of the allotted apartment No.B2 and an additional amount of Rs.2,20,500/- towards registration charges. Though more than 5 years elapsed, the apartments are not yet completed constructed completely, only the skeleton of the structure was done. The agreed date of completion as per the agreement was 15/12/2015. Later the 2<sup>nd</sup> Respondent assured to complete the construction by 31/12/2019 and handover the same. But all such assurances were violated and ignored. Hence the Complainant has filed a complaint before the Ernakulam North Police station on 24/03/2021 which stands registered as petition No.46935/2021. Copy of the acknowledgement is also produced. Hence the Complainant is entitled to recover the said amount with interest. The documents produced from the part of the Respondents are :- Copy of agreement between the Complainant and Respondents 1 & 2, copy of agreement between the Complainant and the Respondents 3 & 4, copy of cash receipts and bank consolidated statement, copy of brochure, copy of photograph of site showing present position and copy of Email communications. Copy of notice issued to Respondents 2,3 &4.

4. The Relief sought by the Complainant in Complaint No.46/2022 is to direct the Respondents to pay a sum of Rs.30,50,000/- with interest at 18% from the date of last payment , till the date of repayment and allow the Complainant to recover the said sum from the Respondents and the property.





5. The Relief sought by the Complainant in Complaint No.46/2022 is to direct the Respondents to pay a sum of Rs.30,50,000/- with interest at 18% from the date of last payment , till the date of repayment and allow the Complainant to recover the said sum from the Respondents and the property.

6. The Respondents have neither filed any counter statement but he had produced copies of building permit and site NOC obtained from Corporation of Cochin & Fire NOC from Ernakulam division.

7. The Complainant in Complaint No.29/2022 has filed argument notes on 14/04/2022 and submitted that the said project is in an abandoned state and on the failure to discharge their obligation the above two Complaints are filed. It was further submitted that the above complaints are maintainable before the Authority. Section 3 of the Act obliges every promoter to get prior registration of every real estate project under the Act. As per section 3 (2) (a) 'when the area of land proposed to be developed does not exceed five hundred square metres or the number of apartments proposed to be developed does not exceed eight inclusive of all phases', registration is not mandatory. But this exemption is subject to proviso, which states 'provided that, if the appropriate government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be inclusive of all phases, for exemption from registration under this Act. it is obvious that the



area and number of apartments fixed is inclusive of all phases and the appropriate Government has the power to reduce the threshold below also. Apartment is defined on Section 2(e) "*apartment*" *whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;* This inclusive and descriptive description given to the term apartment takes in its sweep all floors of the property in whatever name it be called, or irrespective of the type of use to which it is intended. In the said project, to which the Complainants are Allottees as per two agreements the brochure produced shows the photograph and description of the project and it has five floors and ground floor. It is also stated 'This G+5 story apartment is aesthetically and ergonomically designed to bring out the best, our life has to offer. So the project ultimately is designed for G+5 storey. Mat be that they have only completed 4 storey + ground. That does not entail the Promoters for exemption. In the agreement between parties, it is stated that the present permit is for construction G+4 storied





building for construction of residential apartment (Not that the ground floor is exclusively for parking area or for the common area of the Allottees). Even if it is assumed that 4 floors are only under construction, nothing prohibits to get further permission for another floor and building apartment as declared in their brochure. As per definition of 'Apartment' in section (2) (e) *any unit separate and self contained part used or intended to be used for commercial space in any name will be treated as apartment.* Here apart from the 8 blocks already completed in 4 floors there is a unit in ground floor which is self contained part and there is nothing on record to show that it is not for commercial use. Even if it is a common area, when it is a separate and self contained unit, the same has to be treated as 'Apartment' as defined in 2(e). so also common area as per section 2(n) of the Act only excludes open parking areas and not a 'ground floor' the purpose of utility of which is not disclosed by anyone. However these are matters after filing a counter statement by the Respondents and on a consideration of the evidence to be produced by them regarding the use to which ground floor is proposed and whether the 5<sup>th</sup> floor yet to be constructed as per brochure. Further the real estate project as defined in section 2 (zn) also taken within its sweep apartment and common areas. As per section 38 though the Authority under the Act can regulate its own procedure, should be guided by the principles of natural justice. It was further submitted that registration of projects is only one of the





procedural steps in the implementation and function of the Authority constituted under the Act. The power to take cognizance of issues like payment of advance refund, compensation and similar other functions vested with the authority are not solely dependant on registration.

8. Heard the Complainants and perused the documents produced by them. On going through the agreement for construction between the Promoter / 1<sup>st</sup> Respondent (represented by the 2<sup>nd</sup> Respondent) and the Complainants, it is mentioned that the promoter is intending to construct a multi storied building in the property known as 'Laura Causa' consisting of 8 apartments. The Complainant had entered into an agreement for purchase of 1025/9200 sq.ft. undivided share in the 3.48 Ares, for the purpose of constructing an apartment in the property on the 4<sup>th</sup> floor-B10 and the Complainant entrusted the construction work of the apartment and the share in the common area and common facilities through the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent agreed to construct the apartment with 2 bedroom with a super built up area of 1025 sq.ft. for a construction cost of Rs.26,23,000/- and Rs.2,19,500/- expenses for statutory charges. During the hearing on 09/03/2022 the Respondents submitted that there are only 8 Apartments constructed on 348 square meters of land and the same is also confirmed by the counsel for the Complainant.



9. However, during the hearing the counsel for the Complainant argued that *“As per section 3(2)(a) when the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases, registration is not mandatory. But this exemption is subject to the proviso, which states if the appropriate government considers it necessary, it may reduce the threshold below five hundred square meters or eight apartments, as the case may be inclusive of all phases, for exemption from registration under this Act.”* The appropriate government has not reduced the threshold as stated above and hence the project cannot come under the ambit of registration under section 3 as an ongoing project. Another argument put forward by the counsel that the brochure which is marked as Exbt.A4 shows the photograph and description of the project and it has five floors and ground floor. As per section 12 of the Act 2016, *Any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:* However the building permit obtained by the Respondents is only for ground + 4 floors and stair cabin. Building permit is a pre requisite for registration of the project





under section 3. As per section 4 (2d) *the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;* has to be produced along with the application for registration of the project. The Complainant was also aware that there were only 8 apartments in four floors. Hence regarding registration of the project having only 8 units as per the approved building permit sanctioned by the competent authority, is not registerable.

10. In *Neelkamal Realtors Suburban Pvt. Ltd vs The Union Of India*, the Bombay High Court has confirmed that the authority concerned could be dealing with cases coming before it in respect of projects registered under RERA. It has also been confirmed by the Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others*.

11. From the above discussions and the agreement and the documents produced by the Respondents it is very clear that the project is not registrable before the Authority as there are only 8 apartments and the extent of land is only 3.48 Ares. Therefore the said project is not registerable before the Authority.

12. In view of the above and based on Exbt.B1 & Exbt.B2 documents the Authority found that the above Complaint is not registerable under section 3 of the Act and the same is not maintainable before the Authority since the project consists of only 8 units. The Complainant can approach appropriate forum for getting their grievance





redressed. Hence the above compliant is hereby dismissed as not maintainable.

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Sd/-  
Sri.M.P.Mathews  
Member

/True Copy/Forwarded By/Order

  
Secretary (legal)

**Exhibits**

**Exhibits marked from the Side of Complainants**

- Ext.A1series - Copy of Construction agreements.
- Ext.A2 - Copy of agreement.
- Ext.A3 - Copy of Sale agreement.
- Ext.A4series-Copy of payment receipts & Bank statement.
- Ext.A5-Copy of brochure.
- Ext.A6series-Copy of photographs.
- Ext.A7 series - Copy of various Email Communications & Notices.

**Exhibits marked from the Side of Respondents**

- Ext.B1 - Copy of building permit dated 29/05/2014.
- Ext.B2 - Copy of Site NOC.



