



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 294/2021

Present: Sri. P H Kurian, Chairman
Sri. M. P Mathews, Member

Dated 23rd June, 2022

Complainants

Artech Florenza Apartment Owner's Association
Pottakuzhi, Pattom, Thiruvananthapuram
Represented by its Secretary

Respondents

1. M/s Artech Realtors (P) Ltd
Represented by its Managing Director
Mr. Ashok T S,
Artech House, T C 28/2128,
Thycaud, Trivandrum- 695014.
2. Mr. Ashok T S
Managing Director
Artech Realtors(P) Ltd
Artech House, T C No. 28/2128,
Thycaud, Trivandrum-695014

The above Complaint came up for virtual hearing on 13/06/2022. The Counsel for the Complainant and Respondents attended the hearing.



ORDER

1. The facts of the case is are follows-The Complainant is an association registered under the Charitable Societies Act (Certificate No. TVM/TC/628/2018) representing all the allottees of Artech Florenza Sky Villas situated at Pattom, Trivandrum. The 2nd Respondent is the Managing Director of the 1st Respondent and both are the Developers and builders of the above Apartment Project. They have acquired land at Pattom, Pottakuzhi junction for the construction of multi-storied flats with all modern facilities. The brochure regarding the project was published in the year 1998 stating that “ the campus offers all the luxuries such as infinity swimming pool at rooftop, Children play stations, multipurpose hall, plush entrance lobbies and lounge, fully equipped air-conditioned unisex gym, air-conditioned multipurpose hall, reticulated gas supply, video door phone, children play area, garbage disposal, and management, visitors car parking, DTH/Cable TV provision, drivers dormitory, landscaped area apart from the high-quality structure with good strength. So, once you get back home, you are in bliss”. Fascinated by the promises and attractive advertisement through brochures, the members of the Complainant have purchased Apartments in the said project hoping a convenient and trouble-free life in the flat. The Complainant submitted that the Respondents also assured the exceptional constructional techniques and best in the class material speculations. Anyhow, the Respondents failed to comply with all the above terms and conditions in its full letter and print. Regarding the flooring and tiles, the Respondents agreed that the car parking area, driveways, and walkways will be tiled with GRANO flooring with grooves or exterior grade paving tiles using 80 x 80 cm vitrified tiles. They further promised a reticulated LPG supply also. They have not complied with the above-said terms. The Apartments were constructed



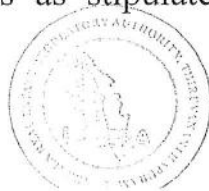
in two adjacent towers with 11 floors each. The two towers are constructed closely providing required space in between to keep the structure safe and crack-free. Even though the Respondents have provided an unscientific and weak umbrella-type roof to prevent seepage of water through the expansion joint, the said roof, flats below, and adjacent areas were totally damaged due to water seepage. Even though the respondents have made a temporary covering, with stretched ribbons, the same was also destroyed causing heavy leakage of water during monsoon. As there is no sunshade for the walls, there is a constant passage of water causing rusting of iron rods inside the walls and other damages ultimately causing very serious damage to the various flats.

2. The Complainants submitted that the reticulated gas supply system is poorly fabricated. The pipelines are of very poor quality and hence there are holes and cracks in the pipeline causing very serious threats to the inmates of the flats. Residents are facing serious safety issues as the system has not been implemented stipulating the safety measures and norms. Meanwhile, there was one explosion-like incident in one apartment kitchen and the kitchen drawers were blown off. No untoward incident happened because the resident could switch the gas off quickly. There was no response from the company that installed the gas infrastructure also. The lapses observed in this connection included the gas leakage in pipelines, regulators not of standard quality, many of the meters are not working properly, non-return valves are not properly fixed, and proper pressure gauge has not fixed. The LPG flows through the pipes and if any fire or accident occurs, the life of the inhabitants is at risk. It is also pointed out that the common facilities, roads inside the compound, and other security systems are not transferred in the name of the Complainant



Association as required under the law. The relief sought by the Complainant is to i) to issue notice to the respondents calling upon them to comply with the undertakings made by them through the brochures and other documents and also execute a proper deed transferring all the common facilities, roads inside the compound, security systems and all other common facilities enjoyed by the occupiers in the name of Complainant Association within a time fixed by the Authority. ii) To effect immediate repairs and maintenance to rectify the mistakes pointed out in the Complaint. If the Respondents have not complied with directions, appropriate legal action may be taken against them.

3. The Respondents filed written statement and submitted that the Complaint is not maintainable either in law or on facts. The Respondents admitted that they completed the construction of the apartment and obtained the occupancy certificate and handed over the apartments to the allottees before 2017. The association of allottees was also formed and the running of common amenities and common areas were handed over to the association on 1/09/2018 after running the common areas and common services up to 31/08/2018 as per the agreement. The association thereafter failed to maintain the common areas and common facilities with periodical maintenance and proper care and for which if any defects occur, the promoter is not liable. Even assuming that there is any lack of facilities promised of any defect in the quality of materials used and if there is any defect in the construction, the association or the allottee can only make a claim for compensation under sec 14(1) before the Adjudicating Officer. All the averments contained in the Complainant except those which are specifically admitted are denied. The 2nd Respondent is a totally unnecessary party to this Complaint. The constructions were done with standard quality materials as stipulated in the agreement and the



allottees and their association have accepted the same in full satisfaction and they cannot complain of any defect that occurred due to lack of proper maintenance after years of taking possession. The flooring was done with GRANO flooring as promised. LPG supply system was installed through reputed contractor and the same has to be maintained by paying annual maintenance to them by the association as done by 1st Respondent earlier. The rusted pipes have to be periodically removed as the area is near the sea coast. The reticulated gas supply could be installed only under the supervision of experts of the gas company using materials approved by the gas company officials. The design of the apartment complex was done by a reputed architect and the construction was done through reputed contractors. The building requires periodical maintenance and the same has to be done by the allottees and their association.

4. The Respondents submitted that the reticulated gas system was installed using best quality materials through a reputed agency at the Supervision Indane Authorities. The accessories like gas meter, valves, regulators, etc have only one year warranty and the same has to be replaced as and when it is defective. The connection tubes have to be installed by the allottees and if it is defective or due to improper use there may be a chance of a fire accident for which the allottee has to take proper care. There was no leakage in the gas lines when the building was handed over and when it was maintained by the 1st Respondent. If any leakage occurs due to lack of proper maintenance the same has to be rectified by the allottees and their association as it was handed over about 5 years before and the same comes under periodical maintenance for which the promoter is not responsible. The Complainant is making improper demands and they were told that maintenance is the burden of the association and 1st respondent could



only suggest proper agencies for assistance and maintenance. The promoter is not bound to be periodical maintenance and replacement materials that may occur due to wear and tear once the apartment complex is handed over. The conveyance deeds were executed in favour of the allottees before the commencement of the Act inclusive of the common areas. The allottees only could reconvey it to the association if they want the same. The Complainant is not entitled to get any of the reliefs as prayed for and the respondent prayed that the Complaint may be dismissed with cost to the 1st and 2nd Respondent.

5. Heard both the parties. The documents submitted by the Complainant are marked and Exhibit A1 to A3. The Complaint was filed on 02/12/2021 and taken for final hearing on 13/06/2022. During the hearing, it was admitted by the Respondent's counsel that the occupancy certificate was received only in 2018. Hence, it was found by the Authority that it is an ongoing project and is not yet registered u/s 3 of the Real Estate (Regulation & Development) Act, 2016. Accordingly, a show-cause notice dated 27/04/2022 was issued to show cause with sufficient explanation as to why the above said project has not been registered before this Authority. The Respondent had failed to reply to the said notice and to register the project under sec 3 of the Act, 2016.

6. The relief sought by the Complainant is to execute a proper deed transferring all the common facilities, roads inside the compound, security systems, and all other common facilities enjoyed by the occupiers in the name of the Complainant Association. The Authority observes that the sale deeds were executed in favour of the allottees transferring undivided share over the common areas also along with the apartment. Hence, it is not possible for the promoter to execute the deed transferring all the common facilities, roads inside the



compound, security systems, and all other common facilities in the name of the Complainant Association as sought by the Complainant.

7. In view of the above facts and findings and invoking Section 37 of the Act, this Authority hereby issues directions as follows:

1. The Respondent/Promoter shall register the project named 'Artech Florenza Sky Villas' within 30 days from the date of receipt of this order, failing which further proceedings under section 59 of the Act, 2016 shall be initiated.
2. The Respondents shall hand over possession of all common facilities, roads inside the compound, security systems and all other common facilities to the Complainant Association within 30 days from the date of receipt of this order.

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.

Sd/-
Sri. M P Mathews
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



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Secretary (Legal)

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APPENDIX**Exhibits**

Exhibit A1 - True copy of the notice dated 30.10.2021 issued to the Respondents with postal receipts.

Exhibit A2 - True copy Acknowledgement card signed by the Respondents.

