



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No 294/2022

Dated 27th February, 2023

Sri. M. P. Mathews, Member.

Complainants

1. Prakash. P.,
S/o Pavithran, Aged 56 years,
Flat No B 121, Centuary Park Apartments, 48 Richmond Road,
Asok Nagar, Bangalore, Karnataka State,

2. Lasitha Prakash.,
W/o Prakash .P, Aged 48 years,
Flat No B 121, Centuary Park Apartments, 48 Richmond Road,
Asok Nagar, Bangalore, Karnataka State,

[By Adv. Rajesh Kumar K., & Adv Pournami V.]

Respondents

1. The Secretary, Aquavista Apartment Owners & Allottees
Association, Aquavista Apartment Building,
Akkulam, Sreekaryam .P.O.,
Cheruvackal, Thiruvananthapuram, 695017.



2. PTC Builders, PTC Towers,
S.S.Kovil Road , Thampanoor, Thiruvananthapuram,
Represented by its Managing Partner, Biju Jacob.
3. Managing Partner, PTC Builders,
Residence at Palasseri House, Kottamugal,
Mannanthala, Thiruvananthapuram, 695015.

[Adv. M. R. Anandakuttan, Adv. Joseph Stephenson,
Adv.V. Ajakumar]

ORDER

Facts of the Case

1. The Complainants are the joint owners of apartment 6-A, on the 6th floor of Aqua Vista apartment, and the Respondent No 1 is the Secretary of the Aqua Vista owners and allottees association and the other respondents are promoters. It was submitted by the complainants that they were duly paying the monthly maintenance charges to the respondent Association ever since its formation. The complainants are therefore members of the respondent association. The case of the complainants is that the promoter had not fully completed the apartments, the complainants were constrained to purchase and occupy the apartment though it was unnumbered. As there was no effective initiation from the Respondent No 2 and 3 for approval of



construction, in the year 2016, majority of investors formed an association and got it registered on 03-06-2017.

2. According to the complainants the promoter with a view to break up the association, created another association with the help of proxy voters, and appointed one Sri. Yogaraj, the father of one of the allottees as its President. According to the complainant, the said association demanded huge money from investors for paying fees to their lawyers to argue case against the legally formed association in which the Complainant was also involved. In a series of complaints filed before the Real Estate Regulatory Authority by the allottees, the Authority, directed the Respondents/Promoter to form a single Association, and accordingly the respondent association was formed in January, 2021. It was submitted by the complainants that, Sri Yogaraj, who is not owning any of the apartments was elected as the President of the respondent association. The formation of the respondent association was intended to stop disputes between the association members, but the association is demanding money by way of maintenance charges for the previous period, and the respondent along with few other members of the respondent association unreasonably threaten the tenants occupying the apartments of cutting of facilities like lift, stair case, water supply electricity etc., further threaten to lockdown the apartment with the tenants trapped inside. The Complainants states that they are put to mental agony and worry due to threatening on their life and



property. The Complainant sought relief, to pass an order of permanent prohibitory injunction restraining the Respondents or their agents from obstructing the complainants or their tenants in their use and enjoyment of common amenities and common facilities in the apartment complex.

3. The Respondent No 1 filed counter statement, stating that the association was formed under the directions of the Real Estate Regulatory Authority in the course of settlement of a series of complaints filed by the allottees who are aggrieved by the delay in completion of works of apartments and regarding non-receipt of the occupancy certificate for the apartments and it was essentially intended to stop the disputes that existed between the two earlier associations and to provide opportunity to form a legal association as per orders dated 06-01-2021, accordingly association was formed in January 2021. Subsequently, the annual election was conducted and in the general body meeting on 08-05-2022, new office bearers were elected, with P.G Yogirajan as the president. As per terms of bye-laws, the accounts of the erstwhile associations stand approved, audited and accepted at the first budget in the first general body meeting convened within 30 days after the formation of the association. Steps to recover maintenance charges and arrears of maintenance charges from 01-01-2018 stands ratified, approved and as such, the legally formulated newly association, is legally and morally bound for the recovery of arrears of maintenance charges and no



member is entitled to bypass or evade liability on the claim that the claim of maintenance of previous association which was not statutorily recognized.

4. According to the 1st respondent the previous association was also legally formed, and they denied all allegations in the complaint and stated that baseless allegations were seen incorporated to evade the liability to pay arrears of maintenance charges due from the complainant amounting to Rs. 68,250/- for the period from 01-01-2018 till January 2020. Even if the complainants are paying maintenance charges for the subsequent period, (not admitted) it will not exonerate them from their liability to pay arrears for the previous period. An amount of Rs. 68250/- is due from the complainants, which the present association is entitled to recover from the complainants and their assets. If they are reluctant to remit the dues then it is open to the association to deny the services to those members. No office bearers or other members of the 1st respondent ever threatened the complainants and at no point of time there was any move to cut off usage of stair case, water supply, electricity on the ground of non-payment of electricity, nobody had threatened the tenants to lock down the apartments with the tenants trapped inside, there was no occasion for any mental agony or worry to the complainants due to threat on their life and property.
5. On 27-02-2023, Counsels for the Complainant and the Respondent No 1 appeared physically and were heard.



Respondent No 2 was virtually present through his Counsel. Having heard the Counsels for the parties on 27-02-2023 and having perused the documents of the case, the issue that came up for consideration is whether a complaint can be filed with this Authority, by an allottee against the respondent association, under Section 31 of the Real Estate (Regulation & Development) Act, 2016.

6. The relief sought for by the Complainant is that to pass an order of permanent prohibitory injunction restraining the Respondents or their agents from obstructing the complainants or their tenants in their use and enjoyment of common amenities and common facilities in the apartment complex. In a series of complaints filed by allottees, against the promoters as Complaint No 3/2019, 4/2019, 5/2020, 170/2020, 188/2020, 189/2020, 199/2020, 200/2020, 203/2020, 212/2020, 213/2020, 227/2020, 242/2020 and 240/2020, this Authority on 06-01-2021, gave interim direction to the Respondent/Promoter to convene a meeting of all allottees for the formation of an association, as provided under the Act, in the presence of the Counsels appearing for both the parties, and in the presence of an officer of the Authority. There was a direction to the Officer of the Authority to submit the report, and to the Respondent/Promoter to file minutes of meeting containing decision taken regarding formation of association, with signature of all participants who attended physically and the details of those who attended virtually. This Authority on 08-11-



2021 passed final orders in the above complaints and found that the building was completed to the satisfaction of the corporation authorities. The promoter was also directed to hand over the common amenities after inspection to the satisfaction of the association. The Authority had also found that the occupancy certificate was issued as per the directions vide Order dated 6-04-2017 of the Hon'ble High Court in WP(C) No 7236/2017. In the occupancy certificate the date of completion was 11-01-2013. The project is not therefore registered with the Authority under Section 3 of the Act, 2016.

7. This Complaint has been filed against the Association and the promoters, seeking reliefs as stated above. As per Section 31 (1) "Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be for any violation or contravention of the provisions of this Act or the rules and regulations made there under against any promoter allottee or real estate agent, as the case may be".

Explanation. – "For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force".

8. It is evident that under Section 31 of the Act, 2016, any person can file a complaint only against a promoter, allottee or real estate agent. An allottee association when aggrieved, is entitled to file a Complaint with this Authority against the promoter or an allottee or a real estate agent by virtue of the explanation to sub section




(1) of Section 31 of the Real Estate (Regulation & Development) Act, 2016, since, person would include an association of allottees, The 'association of allottees' is not included in the definition of 'allottee' given in Section 2(d) or of 'promoter' given in Section 2(zk) or of real estate agent given in Section 2 (zm) of the Real Estate (Regulation & Development) Act, 2016; and therefore, no complaint can be filed against an association of allottees with this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016. Accordingly, the present complaint is not maintainable as against Respondent No 1. Since the building is completed and handed over to the respondent Association the promoters have nothing to do with the maintenance of the common areas and therefore Respondents No 2 and 3, are unnecessary parties in the complaint.

On the basis of the above facts and circumstances of the case the authority has found that the complaint is not maintainable against the respondent Association and is therefore dismissed as not maintainable.

Sri M.P Mathews
Member

/True Copy/Forwarded By/Order/


Secretary (Legal)

