



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.30/2021

Dated 17<sup>th</sup> June, 2022

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

## Complainant

Sanal Kumar S,  
Varuvila Puten Bunglow,  
Avanakuzhy, Nellimoodu P.O,  
Thiruvananthapuram-695 524.

## Respondents

1. M/s Vrindavan Apartments  
Vrindavan Mist City,  
Karakolthamala,  
Kanthalloor,  
Munnar, Idukki.  
(Represented by its Managing Partner A.Rajan)
2. A.Rajan  
Managing partner  
M/s Vrindavan Apartments,  
Ragamalikapuram Road,  
Kottappuram, Thirissur,  
Now residing at Leela Bhavan,  
Kottapuram P.O, Poothole,  
Thrissur-680004.





3. Vrindavan Mist City  
Karakoathamala,  
Kanthalloor,  
Munnar, Idukki.

The above Complaint was finally heard on 11/05/2022. Only Counsel for the Respondent attended the virtual hearing. The Complainant has neither appeared nor represented.

### ORDER

1. The case of the Complainant is as follows:- The Complainant is an Allottee of project named 'Vrindavan Mist City' located at Kanthalloor village, Munnar, developed by the Respondents. According to the Respondents the said project consists of independent residential building of similar nature with common entertainment area, club house, internal roads, park etc in a highly attracted area. Based on the offers made by the Respondents, he Complainant had entered in to a composite agreement dated 30/06/2007 with the Respondents. Though the Respondents collected Rs.50,000/- as advance amount and Rs.1,59,250/- at the time of execution of the aforesaid agreement, nothing was done in pursuance of the agreement. The Respondents were reluctant even to register a plot in favour of the Complainant as offered in the agreement dated 30/06/2007. Later on 25/02/2008 the Respondents registered a plot having an extent of 6.040 cents of land comprised in re sy. No.16/5





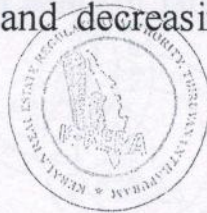
of Kanthalloor village in favour of the Complainant as per Sale Deed No.576/2008 of Devikulam SRO. The Respondents by their words, acts and various offers tempted the Complainant to join in the aforesaid scheme. But after the registration of the property, the Respondents were culpably failed to provide other offers in the scheme as agreed to the Complainant. Out of the 23 plots provided in the aforesaid scheme, the Respondents constructed building in one plot without providing other infrastructure facilities. No arrangements were provided for electric power from KSEB, water and road access or any other improvement to the property included in the scheme as offered.

2. The Complainant was constrained to execute another composite agreement dated 04/08/2013 for the construction of an independent building in the aforesaid 6.04 cents of property comprised in Resy.No.16/5 of Kanthalloor village along with other offers. The Respondents agreed to construct a residential building with an area of 540 sq.ft. in the aforesaid property. The Respondents demanded Rs.23 Lakhs for construction the building. The Complainant had paid the aforesaid amount towards the cost of construction as agreed in the agreement. Later, the Respondents demanded additional 6 Lakhs for making some modifications to the structure and pillars of the building to convert the same into a two storied building. While, the construction was going on, the Complainant had purchased the adjacent plot having an extent of 2





Ares 44 sq. mts property as per Sale Deed No.1211/2014 of Devikulam SRO. The Respondents handed over the building on its completion to the Complainant. But the Respondents failed to provide common amenities, and additional facilities that were offered under the agreement. Some of the deficiencies committed by the Respondents are :- no landscaped area provided, security person, all round compound walls, swimming pool, club house, play area, guest parking were not provided, first general body meeting of the building owners is not yet convened and no association is formed. The Respondents installed a remote controlled gate at entrance of the Vrindavan Mist City and which is always remaining locked. There is no security to operate the entrance gate, and one and only remote to operate the entrance gate is always with the manager of the Respondents and most of the time he is out of station. The Respondents also failed to form an owners association, which is one of the main offer made in the aforesaid scheme on or before 31/12/2016 as agreed in the agreement. The Respondents without forming the organisation continue to manage the affairs in the project as per their own accords. The Respondents arbitrarily and unreasonably fixed and increased the monthly maintenance charges. The Respondents arbitrarily denied the common access to the Complainant's building. Due to the denial of access, the Complainant's building is now lying idle without any timely maintenance and repairs and it is causing severe damages to the Complainants building and decreasing its value day by day. The





Respondents failure to complete the obligations as agreed with the Complainant resulted to cause untold hardship and huge financial loss to the Complainant. There is no sign of initiative steps from the part of the Respondents to fulfil their obligations even on continuous request made by the Complainant on various occasions. Instead the Respondent by their influence, falsely incorporated the Complainant in criminal cases. Copy of various E-mail communications were also produced.

3. The reliefs sought by the Complainant are to direct the Respondents (1) to provide uninterrupted water from the common source as agreed by them to the complainant (2) to conduct proper and sufficient maintenance to the visible damages at the Complainant's building at the risk and expenses of the Respondents within the time frame fixed by the Authority (3) to handover the administration of the entire buildings in the scheme 'Vrindavan Mist City' to an association of the owners of the buildings within the time frame that may be fixed by the Authority (4) to restrain the Respondents from obstructing the entry, use and enjoyment of the Complainants building at 'Vrindavan Mist City' in any manner either by them or any other men acting for them. (5) Restrain the Respondents from collecting any amount as monthly maintenance or in any other heads from the Complainant and other building owners at 'Vrindavan Mist City'.





4. The Respondents have filed counter statement and submitted that the above Complaint is not maintainable before the Authority and the scheme itself had to be abandoned in the view of the fact that during the year 2007, the government had initiated actions against illegal pattas in the Idukki district, including cases where persons had genuinely purchased properties based on pattas that were shown to have been issued by the authorities, and were subsequently found to be illegally and unauthorizedly fabricated by government officers. This had caused fear and apprehension in the minds of the people including those who had enquired and decided to purchase properties which had no defect of title with genuine title deeds and prior deeds as pattas issued by the government. Most of the people who had enquired and confirmed their interest and proceeded to purchase plots in the Respondents land and decided to have a villa constructed, had therefore backed out due to the above apprehensions, even though the Respondents title did not have any defect. In the Circumstances, a few of the persons who had not backed out purchased the land, and some of them thereafter did not even choose to construct their villas. Thus the dream project originally introduced in the year 2006 had a short life and was compelled to be abandoned in the above circumstances. As a result, the Respondent suffered huge loss in development of the said hilly area which could not be recovered as sufficient buyers were not available and consequently, a few of the plots agreed to be purchased had to be sold with the originally offered price. The original dream





project, which ultimately became mere 'individual sale of plots and contracted construction' also ended finally on 2014. The details of plots sold, their respective date of sale, date of construction and date of occupancy certificate obtained in the individual owner's name are furnished as a separate document. Even thereafter, since none of these persons were interested in permanently residing there, in order to avoid leaving them unproductive, for the benefit of the owners an arrangement was made to maintain the same at their cost, which service was optional for the villa owners, as they could have done it by themselves or could have even let out to any other. As many as 7 of the villa owners even, as on date continue to entrust the said work, which has been given to them by the Respondent Promoter. Under the said agreement the company is understood to have not denied any service of maintenance to any of the owners of the villas in the area including that to the Complainant. The same was subject to a reasonable charge towards monthly maintenance and consumables, which involves substantial cost including towards, man power, electricity, maintenance of infrastructure and amenities and facilities, which they could enjoy. Although the Complainant initially entrusted the same and enjoyed the said facility, he chose not to pay the arrears and to stop availing the same from the said company. The Complainant, despite various communications and reminders in this regard, had stopped availing the same by non payment of such facilitation charges towards the services of maintenance, which was adjusted from the amounts the villa owners used to generate by





letting out services. It was further submitted that the Complainant utilised the said premises as a holiday home solely for the purpose of entertaining himself and often his friends by conducting parties.

5. The Respondents further submitted that even when the parties to the agreements discontinued due to adverse publicity and the Respondent had to practically abandon the project due to non-viability, to all those who had subsequently expressed to construct the villa, the Respondent had facilitated such construction through local workers. The Complainant did not have sufficient money and he made the payments only after several request or reminders as the Respondent would only be happy to conclude each of the contracts at the earliest. All arrangements were made at the Respondents cost for drawing electric lines. Although almost every other owner of the villas contributed to the expenses, the Complainant did not contributed for the same. The whole area is well secured and gate as well as energised fencing all around the property were also provided for safety and security of the premises from external threats including that of the wild animals. The Respondent has not denied water facility to the Complainant as long as he was contributing towards the common charges payable for such services. The Complainant has kept arrears of Rs.2,10,281/-.

6. It was further submitted that the provisions of RERA does not arise since all the constructions were not scheme based and were individual contracted sale of lands and constructions before the





coming into effect of the Act and further that the said original proposal had to be abandoned in the above circumstances. Including the villa owners novating the same by their own conduct. The constructions provided also do not come under an ongoing project. The completed work as shown in the list of details attached do not require any registration as the same does not attract application of the provisions of the RERA Act, 2016 and there is no violation of the provision of the Act.

7. Heard both parties in detail and perused the documents produced from both the Sides. The documents produced from the side of Complainant is marked as Exbt.A1 to A6 and documents produced from the side of Respondents are marked as Exbt.B1 to B4. The composite agreement dated 30/06/2007 executed between 2<sup>nd</sup> respondent/Land owner, 1<sup>st</sup> respondent/Promoter represented by the 2<sup>nd</sup> respondent and the complainant is produced by the Complainant. It is stated in the agreement that the 1<sup>st</sup> respondent has promoted a scheme called 'Vrindavan Mist City' comprised of independent residential buildings of similar pattern having entertainment area, club house internal roads, parks, shopping facilities, community hall, water pumping facilities etc, to be constructed in phases to form a well contained colony. It is also confirmed that the common amenities and facilities shall be completed and made available for enjoyment latest by 31/12/2010. The maintenance liability period for the building is 12 months from





the date of written request for taking over possession of the building and the common areas 12 months from the completion of the same. The 1st respondent agreed to manage and maintain the common facilities and amenities during the maintenance liability period. The agreement was for transfer of 6.04 cents of land marked as Plot No D 16 and construction of building unit D 16 type 2 fully furnished, having super built up area of 493 Sq ft, car park, garden and barbeque area in Vrindavan Mist city as detailed in the schedule with common amenities including landscaped area, access roads, play area all round compound fencing and trained security personnel for 24 hours, swimming pool, guest parking, club house, with health club paid attendants, common walk area. The sale deed was executed based on the above agreement in favour of the complainant on 25/02/2008 by the 2nd respondent transferring 6.04 cents of land. This document is produced by the complainant and is marked as Exbt.A2. The complainant was constrained to execute another composite agreement dated 04/08/2013, similar to the agreement dated 30/06/2007 for the same purpose as in the first agreement This agreement is produced by the complainant and is marked as Exbt.A3. The complainant had purchased the adjacent plot having an extent of 244 Square Metres as per sale deed No 1211/2014 dated 21/04/2014. It is also stated in the Complaint that the Respondents handed over the building on its completion to the Complainant.





8. The Complainant failed to establish that 'VRINDAVAN MIST CITY' is a real estate project as defined under section 2 (zn) of the Act, 2016. The Complainant had entered into an agreement dated 30/06/2007 for a project that had no approvals from the local body. There is nothing in the agreement referring to the permits issued for the project under Panchayath Building Rules 2011 or the earlier building Rules if any applicable to the project as per government notifications. Only projects that are ongoing on the date of commencement of the Act and for which completion certificate has not been issued come under the purview of this Act. As per section 3(1) of the Act, 2016 projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued the promoter has to register the project before the Authority. No documents are produced by the Complainant to prove that it is an ongoing project liable to be registered, under the Act, 2016. As per Rule 3(2) of Kerala Real Estate Regulation & Development Rules 2018 ongoing projects on the commencements of Section 3 of the Act and for which the occupancy certificate has not been issued, the promoter shall make an application in Form "A1" to the Authority for Registration of the said project. The sale deed transferring the plot was executed in favour of the complainant on 25/02/2008. The construction was carried out in the plot owned by the complainant and after completion the same was handed over to the complainant by the respondent.






9. The Authority has no jurisdiction to entertain the Complaint filed by the Complainant as the project is not registerable. Section 31 of the Act allows any person to file a complaint before the Authority for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter. There is nothing in the Complaint to prove that there is any violation or contravention of the provisions of this Act or the rules and regulations made thereunder.

10. In the above circumstances the Authority is not in a position to entertain the Complainant and the same is dismissed as not maintainable.

No order as to costs.

  
Sd/-  
Sri.M.P.Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman



True Copy/Forwarded By/Order

Secretary (legal)



**APPENDIX****Exhibits marked from the Side of Complainants**

- Ext.A1- Copy of composite agreement dated 30/06/2007.
- Ext.A2- Copy of Sale Deed No.576/2008 of Devikulam SRO.
- Ext.A3- Copy of Composite agreement dated 04/08/2013.
- Ext.A4- Copy of Sale Deed No.1211/2014 od Devikulam SRO.
- Ext.A5- Copy of E-Mail Communications.
- Ext.A6- Copy of printout showing advertisements made by the Respondents in their website.

**Exhibits marked from the Side of Respondents**

- Ext.B1- Copy of photograph.
- Ext.B2 Series -Copy of no Objection Certificates.
- Ext.B3 Series - Copy of Building Permits.
- Ext.B4 Series - Copy of Ownership Certificates.

