



**KERALA REAL ESTATE REGULATORY AUTHORITY-
THIRUVANANTHAPURAM
Complaint No. 303/2020**

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

Dated 30th December 2021

Complainant

Ullathil Achu
Dyarc International Group,
P O Box 3841, 6th Floor, Amaal Tower,
Omar Al Mukhtar Street, Doha, Qatar.
Represented by the Power of Attorney
Mr. Ojas Sreeram, Meenekkodath House,
Poonithura P O, Pettah, Ernakulam P O- 682038

Respondents

1. M/s Jain Housing & Construction,
No.98/99, Habibullah Road, T Nagar, Chennai- 600 017
Having its Branch Office at Flat No. 4082, Chittethukara,
Nilampathinja Mugal Road, Kakkanad, Kochi- 682030
Represented by its Managing Director Mr. Sandeep Mehta
2. Mr. Sandeep Mehta,
Managing Director, M/s Jain Housing & Construction Ltd,
High Gates,8th & 9th Floor, No.82, D G S Dhinakaran Salai, MRC Nagar,
Chennai- 28



ORDER

1. The facts of the case are as follows- The Complainant is represented through his Power of Attorney holder authorized to conduct the case. The Respondents announced and marketed their 'Jain Coral Cove' Project in 2006. Jain Coral Cove consists of two multistoried residential towers in Maradu. The Respondents, through Media, advertised on the luxurious lifestyle apartments in international standards with world-class amenities in the Project with 122 housing units with state-of-the-art living facilities available in Maradu, Kochi. The Respondents claimed that the Project to be completed in 33 months from the date of starting of construction with an additional grace period of 3 months. The Complainant was approached by the Respondents and after initial inquiries, the Complainant agreed to purchase an apartment. Accordingly, on 26.03.2007, the Complainant entered into an Agreement for Sale with the original landowners through their Power of Attorney Holder, the 2nd Respondent herein for the sale of undivided share in the land for a total consideration of Rs. 1,19,523/-. Then, an Agreement for Construction was executed with the Respondents to construct apartment No. 14C. The original owners through their POA, the 2nd Respondent herein entered into sale deed on 30.03.2007. As per the agreement, the Respondents assured that the property covered under the agreement is free from all sorts of encumbrances and impediments and that they are the absolute owners and persons in possession of the property with the absolute right of alienation and assured that the Respondents shall indemnify and keep harmless the Complainant against all losses and damages.
2. The Complainant submitted that the Respondent neither completed the construction as agreed nor obtained Occupancy Certificate and thereby violated the terms and conditions agreed upon. The Respondents never



informed the Complainant on the litigations pending and unknown to the Complainant, the Respondents were waging a legal battle with the State as the building was built in violation of CRZ Regulations which ultimately ended up in order of demolition by the Hon'ble Supreme Court as per Order dated 27.09.2019 in Civil Appeal No. 4784 & 4785 of 2019. The Complainant also submitted that the Complainant took possession in August 2017 of the apartment on the false representation of the Respondents that the building was ready to occupy and the occupation certificate was issued to the building. As per the Construction agreement, the Respondents agreed to hand over the possession of the apartments within 33 months from the date of starting of the Construction with a grace period of 3 months. The Apartment in terms of the agreement was supposed to be handed over to the Applicant on 31.03.2010. The Complainant requested the Respondent to carry out some extra work in the apartment and had paid an amount of Rs. 1,15,878/-. After collecting the full payment, the Respondents had not completed the Flat as promised. However, without disclosing the illegalities involved in the Project or the litigations surrounding it, the Builder handed over the Flat and the Complainant took possession. Thereafter, the Complainant came to know that no fire NOC is obtained, an Occupancy certificate from the Municipality was not obtained, and some litigation on the property was pending. In May 2019, the Complainant saw in the media reports that the Hon'ble Supreme Court found that the constructions have been taken place in the prohibited area, within the CRZ zone and construction was wholly impermissible and unauthorized. Therefore, the Apex Court directed to demolish the building and the said order was executed by the State on 12.01.2020. The Complainant also submitted that the Hon'ble Supreme Court directed the State Government to pay a sum of Rs. 25,00,000/- to each flat owner who is evicted from the flat so as to enable them to be 'suitably rehabilitated'. Thereafter the Hon'ble



Supreme Court reiterated that the affected persons are free to initiate appropriate proceedings, civil or criminal, to redress their grievances. The Complainant also submitted that he approached this authority to redress their grievance as the building was never given an 'occupancy certificate' by the Municipality. The prospectus floated by the Respondent in 2007 exists and the building was erected. The Local authority has not issued any occupation certificate and in accordance with the notification of this Authority dated 26& 27 December 2019, the Real Estate Project becomes an 'ongoing project'. No Project can be deemed to have vanished in thin air just because the erected building was demolished by the orders of the court or by any natural disasters. The land on which the building stood can still be used to make another apartment with proper approvals. The Complainant also submits that he willing to wait for his apartment and is willing to take interest in the payment made from the date of promised completion i.e. 31.03.2010.

3. The relief sought by the Complainant are (i)to direct the Respondents to register the Project "Coral Cove" with RERA and complete the construction and obtain the occupation certificate within a period of 3 years; (ii)to pay the Complainant interest on the amount paid from the date of payment till date and direct the Respondent No.1 to continue paying monthly interest until the date of actual possession of the property after receipt of occupancy certificate. (iii) In the event of the Builder refusing to continue with the Project, the Authority to initiate steps as envisaged under Sec 8 of the Act.

4. The Respondents filed written statement and submitted that the Complainant filed the complaint by suppressing material facts and only as an attempt for fraudulently extracting money from the Respondents. Thus, the complaint is



prima facie not maintainable. Respondents submitted that this Hon'ble Authority has no jurisdiction to entertain this complaint in view of Sec3 of the Real Estate (Regulation and Development) Act,2016. This Hon'ble Authority can take cognizance only when the apartment Project is an ongoing and registered Project. The residential apartment Project M/s Jains Coral Cove was a completed apartment Project as of 25.06.2010. The Complainant has accepted the fact that he took possession of the Apartment in August 2017. The construction of the Apartment was completed as early as 26.06.2010. It was only the final permissions from the Authorities that were pending. Clause 12(a) of the agreement between the complainant and the first Respondent explains the handing over process. For ready reference clause 12(a) is extracted below "For the purpose of these presence Handing over of possession of the constructions' shall mean handing over possession of the constructed super built space with standard specifications hereby agreed upon and, in any context, does not cover the electrical, water, sewage and other service connections which are regulated by the government and other statutory bodies from time to time. However, the party of the first part shall put forth all earnest efforts to secure the same before handing over possession and the party of the second part does hereby agree that any delay in obtaining such connections shall not be a constraint for taking over the possession of the said building/apartment as per these presents on receipt of due notice from the party of the first part". Hence there is no merit in the contentions of delay in the complaint.

5. The Respondents submitted that in the affidavit submitted by the Complainant they have sworn to as follows "This is to confirm that we have taken possession of Flat No. 14 C, the extent of 1468 Sq. Ft of built-up area and 266 Sq. Ft of common area in the 14th Floor, Open terrace Nil Sq. Ft, at JAINS



CORAL COVE in Nettoor Desom, Maradu Village. We are satisfied with the constructions and provisions of amenities in the above said Flat and Plot as per the agreement dated 26.03.2007 and I have no claims as regards the construction and amenities and specifications of the building, Plot and aforesaid I shall pay all charges, payable to Government, Electrical Consumption charges, sewage and water charges, etc. from this date in respect of the Aforesaid Flat and Plot". The Complainant further sworn that "In view of vacant Possession and handing over effected to us, I hereby confirm that there is no other monetary obligation whatsoever pending between us". Furthermore, it was submitted by the Respondent that as per the Complainant the apartment complex 'Jains Coral Cove' was demolished on 12/01/2020. It was only thereafter on 10/11/2020 this complaint was filed.

6. The Respondents also submitted that the Complainant has filed his claim before Justice Balakrishnan Nair Committee constituted by the Hon'ble Supreme Court of India as CP No. 249/2019 and has already received Rs. 25 Lakhs from out of the amount deposited by the 1st Respondent in the account of Justice Balakrishnan Nair Committee. As per the orders of the Hon'ble Supreme Court of India, the first Respondent has deposited Rs. 14,62,00,000/- with Justice Balakrishnan Nair Committee to be disbursed to the allottees of the flats in Jains Coral Cove. Further as directed by the Hon'ble Supreme Court of India in its order dated 25.10.2019 the enquiry is being conducted before the Committee regarding the further amount due to the Complainant. Hence this Complaint is prima facie not maintainable. Further the Hon'ble Supreme Court of India has not fastened the liability on the 1st Respondent. The Hon'ble Supreme Court has held that the liability of the State Government, Local Self Government, its employees and others have to be decided before fastening liability on the 1st Respondent. The Hon'ble



Adjudicating Officer of Kerala Real Estate Regulatory Authority, Thiruvananthapuram vide its order date 16.10.2020 in Complaint No. CCP 32/2020, 33/2020 & 59/2020, on the same Project, while upholding the contentions of the 1st Respondent has held that the Real Estate project in question is neither a registered nor a registerable Project coming under purview of the Act and Rules and accordingly dismissed all the cases. Furthermore, the Hon'ble Kerala Real Estate Appellate Tribunal, Ernakulam vide its Order dated 23.04.2021 in the cases REFA No. 10/2021, 11/2021 & 12/2021, of the same Project held that the Project in question is not an ongoing Project as on the date of commencement of the Act and accordingly dismissed all the appeals.

7. The Respondents further submitted that the apartment was a completed Project as on 25.06.2010. The handing over process was started to customers in 2011 who paid the dues. Admittedly the Complainant has cleared the dues and taken possession of his apartment No. 14 C during August, 2017. Meanwhile, other allottees have also taken possession and were staying in the said property. The 1st Respondent has provided regular electricity connection from KSEB and 24 hr generator back up also. The maintenance of the apartment is done by the 1st Respondent for free and piped KWA water was also provided. The 1st Respondent had all statutory licenses and permissions from Statutory Authorities to construct the building. All the licenses and permissions obtained by the first Respondent were without any conditions regarding the coastal regulation zone. But as the building was completed and a portion of the area was recognized as Coastal Regulation Zone and the complete work of the project was stayed by the Authorities. This was challenged by the 1st Respondent before the Hon'ble High Court of Kerala in WP No. 23127/2007 and petition was allowed. The Local Self Government, Maradu Municipality



filed W. A No. 199/2013, the same was finally allowed in favour of the first Respondent as per the judgement dated 02/06/2015. And the building numbers were allotted to the apartments in Jains Coral Cove on 13.07.2017. The Complainant and the other Allotees were aware about the pending litigations. The allegations that the Respondents had not completed the flat as promised is false and hence denied. The Respondents further submitted that the Complainant has no cause of action against the Respondents in the facts and circumstances of this case. The Complainant has suppressed material facts. None of the prayers in the complaint are allowable. The prayer sought by the Complainant is legally unsustainable in the facts and circumstances of the case. The Complaint is bereft of any bonafide and an abuse of the process of this Hon'ble Authority. Hence the Complaint may be dismissed with compensatory cost of the Respondents.

8. The above Complaint was filed before the Authority by Ullathil Achu, who was an allottee of the Jain Coral Cove Project. The prayer was for registration of the Project u/s 3 and consequent reliefs under the Act as stated above in the Complaint filed on 18/11/20. The case was taken up on 25/02/21 and it was found that the notice to the Respondents had returned unserved. The Counsel for the Complainant attended and it was ordered to repeat notice on the fresh address to be served by the Complainant. The case was posted to 25/03/2021 and since the notice to the Respondents were not served it was ordered to repeat the notice. On 20/07/21, both the counsels attended and time was granted to the Respondent for filing counter. On 08/09/21, the counsel for the Complainant attended but the respondent was not present. The case was finally heard on 22/12/21. Both parties were heard in detail and the documents produced by them have been examined carefully. After hearing, the following issues came up for consideration of the Authority:

- 1) Is the above complaint maintainable before the Authority?



2) Whether the Complainant is entitled to get the reliefs sought by him?

Issue No 1&2

9. Three petitions were filed by the allottees of the Project in question before the Adjudicating Officer of this Authority as CCP No. 32/2020,33/2020 and 59/2020 against the respondents 1 & 2 wherein all the petitions were taken up together for orders by treating CCP 32/2020 as a leading case, in which it was found by the Adjudicating Officer that the said petitions filed u/s 31 r/w Sec 71 of the Act were not maintainable either in law or on facts and were dismissed. Then the petitioners approached the Honourable Real Estate Appellate Tribunal, Ernakulam under REFA No. 10,11& 12 of 2021 against the said order of the adjudicating officer. The main relief sought by the appellants was for a refund of the whole amount paid by them for the apartment units which they took possession of, or got conveyed as per title deeds, under sec 18 of the Act. There was another claim for monthly rent also from the date on which possession was taken. The legal issues to be resolved in this case according to the Appellate Tribunal were a) whether the project in question or the apartment project in which the appellants purchased the apartment units, can be considered to be an ongoing registrable project as meant under Sec 3 of the Act? b) whether the claim for return of consideration or for monthly rent is sustainable?

10. The Appellate Authority in its order dated 23/04/2021 found that *“the apartment units in question cannot be said to be an ongoing project and that the Act is not applicable to the apartment units in question, that the claim of the appellants for return of the amount of consideration and for monthly rent cannot be entertained under the Act and that the appellants can very well agitate their cause and enforce their legal rights before the right forum.”* The Appellate Tribunal also found that



“the claim for return of consideration for compensation or for any other relief under the Act cannot be entertained by the Real Estate Regulatory Authority or Adjudicating Officer or the Appellate Tribunal. The claim of the Appellants under the Act can be entertained, adjudicated and decided only if the provisions of the Act are applicable to the Project. There is no doubt that the Appellants can agitate their cause and enforce their civil rights before the right forum. The Hon’ble Supreme Court has already constituted a committee headed by a former Judge of the High Court of Kerala with the object of rehabilitating the consumers who lost their apartment units due to the demolition of the Project as ordered by the Hon’ble Supreme Court. What is being paid to the consumers is the amount inclusive of the actual amount of consideration paid by them. This was made clear by the Hon’ble Supreme Court. The Hon’ble Supreme Court has also made it clear that the proceedings before the Supreme Court or the payment of compensation as recommended by the committee would not in any manner affect the civil rights of the consumers including the appellants to approach the right forum under the law. The finding of the Appellate Tribunal will not in any manner affect the rights of the appellants and other consumers for agitating their cause and enforcing their civil rights before the right forum. As rightly observed by Appellate Tribunal, the Appellants cannot claim the relief under Section 18 of the Act, firstly for the reason that the Act is not applicable to the project, secondly for the reason that the claim cannot be entertained under Section 18 of the Act, the Appellants can very well claim compensation including the amount of consideration paid by them, before the right forum. The whole Project happened to be demolished by operation of law. The Hon’ble Supreme Court has found that it was an illegal construction. There is no doubt that the Appellants and others were cheated by the Respondents. If they were aware of the illegalities in the Construction, the Appellants and others would not have purchased or agreed to purchase the apartment units constructed in violation of the law. So, it was clear that the civil rights of the Appellants cannot in any circumstances be denied, or that they can agitate their cause and enforce their right



before the right forum, subject to the other laws covering such claims, like the law of limitation."

11. After hearing both the parties in detail and considering the above-mentioned common order dated 23/04/21 passed by the Hon'ble Appellate Tribunal, this Authority has also come to the conclusion that the Project in question is not a registerable Project as per Section 3 of the Real Estate (Regulation & Development) Act, 2016 and above complaint is not maintainable before this Authority. Hence, this Authority cannot grant any of the reliefs sought for by the Complainant. As directed by the Appellate Tribunal the complainant can very well agitate his cause and enforce his legal rights before the right forum.

Dated this the 30th December of 2021

Sd/-
Sri M.P Mathews
Member

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



[Handwritten Signature]
Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of Power Attorney
- Exhibit A2 : Copy of Agreement for Sale of Flat No. 14 C dated 26.03.2007
- Exhibit A3 : Copy of Memorandum of Agreement dated 26.03.2007
- Exhibit A4 : Copy of Sale Deed dated 30.03.2007
- Exhibit A5 : Copy of the Affidavit of Declaration signed in August 2017
- Exhibit A6 : Copy of receipt dated 31st July 2018 for extra work.
- Exhibit A7 : Order of the Hon'ble Supreme Court dated 25 October 2019
- Exhibit A8 : Copy of the Order of the Hon'ble Supreme Court dated 22November,2019.

Exhibits on the side of the Complainants

- Exhibit B1 : Copy of the completion certificate dated 25.06.2010 issued by the Chartered Engineer.
- Exhibit B2 : Copy of the common order of Hon'ble Adjudicating Officer of Kerala Real Estate Regulatory Authority, Thiruvananthapuram
- Exhibit B3 : Copy of the common order dated 23.04.2020 of Hon'ble Kerala Real Estate Appellate Tribunal, Ernakulam.
- Exhibit B4 : Copy of the KWA water bill dated 09.02.2018.

