



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No: 305/2021

Dated 2nd March 2022

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

Complainants

Davis P.V
Pulikken House,
Flat No.6A, Mulberry Home,
Mystic Roase, Lurdpuram,
Thrissur-680005.

Respondents

1. M/s Nithin Michelle Builders and Developers Pvt Ltd.,
(Represented by its Managing Director)
Building No. 12/324-3&4, Mulberry Towers,
Kerala-680006
2. Mr. George John,
Managing Director,
M/s Nithin Michelle Builders and Developers Pvt Ltd.,
Pallickal House, Jubilee ST,
Kuriachira P O, Thrissur,
Kerala- 680006.

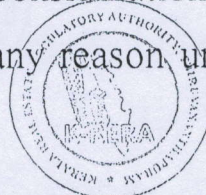


The above Complaint came up for virtual hearing today. The Complainant and Counsel for the Respondent Adv.M.Reghu attended the hearing.

ORDER

1. The Complainant is an allottee of project named 'Mulberry Homes-Mystic Rose' developed by the Respondents located at Chembukavu Village, Thrissur. The project consists of 11 storied apartment complex with 58 flats in 51.18 cents of lands. Based on the advertisement given by the Respondents the Complainant had bought the Flat 6A as per Sale Deed No.5671/1/21 dated 01/03/2021 of Trissur Sub Registry. The Complainant alleged that there are structural defects in the common amenities provided by the Respondent. The reliefs sought by the Complainant is to cure the defects in the car parking area, construction defects and to provide more facilities and equipment's in the gym and children's play ground etc. and to refund of excess amount given as GST by the Complainant.

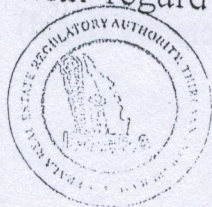
2. The Respondents had filed counter statement and denied the contentions in the Complaint that it is not maintainable either in law or ion facts and is liable to be dismissed. It is submitted that the Complainant had not made the payment towards the sale consideration in time as stipulated in the schedule and without any reason unnecessarily delayed the



payment. The construction of the car parking area was made in accordance with the statutory rules and it is approved by the Authorities after inspection. It is also submitted that all arrangements were provided for gym and playing area in accordance with the Kerala Municipal Building Rules. It is also submitted that the Complainant is using the above facility without paying the maintenance fee for the last one year. The Respondent further submitted that the Occupancy Certificate dated 17/12/2020 was issued after thorough examination of the project by Thrissur Corporation. The issuance of Occupancy Certificate proves the fact that the entire construction of the flat was done only in accordance with Kerala Municipal Building Rules. Hence the above Complaint is not maintainable on that ground itself.

3. The above project is registered under section 3 of the Act vide registration No. PRJ/294/2020. It is seen that the Respondent / promoter has uploaded Form 6 in the website of the Authority.

4. Heard both sides in detail. During the hearing the Respondent submitted that he had already provided children's play ground and Gymnasium to the Allottees and it is not specifically mentioned anywhere in the agreement regarding the space and equipments to be provided in the gymnasium and children's playground. It is observed that the reliefs sought by the Complainant is with regard to the defects in the common




amenities provided by the Respondent / builder and none of the reliefs sought by him will come under the jurisdiction of the Authority. The Complainant can approach the Adjudicating Officer for getting compensation for the alleged defects. During the hearing, the Complainant submitted that he had already approached the Adjudicating officer seeking compensation under section 14(3) of the Act, 2016. Section 14(3) of the Act stipulates that *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

5. In view of the above facts, the Authority has no jurisdiction to entertain the above Complaint. Hence the Complaint is dismissed.

No Order as to costs.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/

Secretary (legal)