



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No: 38/2022

**Present: Smt. Preetha P Menon
Sri. M.P Mathews, Member**

Dated 23rd day of June 2022

Complainant

Rajasree Nandi,
Residing at 2D,
Chandrasekhar, Dharamvir,
Enclave, Panampilly, Nagar,
Ernakulam-682014.

Respondents

1. Jain Housing & Construction Ltd
Having Registered office at
No. 98/99, Habibullah Road, T Nagar,
Chennai-600017.
(Represented by it's
Managing Director Sandeep Mehta).
2. Sandeep Mehta,
Managing Director,
KGEYES Kavary, Flat No. 1, Door No. 1,
1st Floor, Crescent Street, ABM Avenue, R A Puram,
Chennai-600028.



The Complaint came up for final hearing on 27/05/2022. The Counsels for the Complainant Adv. Aysha Abraham and the Counsel for the Respondents Adv. George Cherian appeared for the virtual hearing.

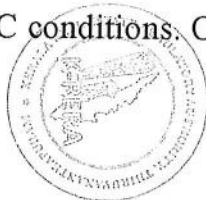
ORDER

1. The case of the Complainant in the above complaint is as follows: The Complainant is an allottee of the project named 'Tuffnell Gardens', Kakkanadu, Ernakulam who approached the Respondents, intending to purchase an apartment after seeing their advertisements in which the offer was "apartments in the said project having 8 blocks with 152 flats in each block on 8 acres of property with State-of-the-art living facilities" and the total project would be a township with impeccable design and stylish planning. The Respondent/Builder was willing to help the Complainants with the paperwork for loan from Punjab National Bank who offered a 10/90 scheme under which the Complainants had to pay only 10% upfront and 90% would be disbursed by the Bank.

2. Accordingly, the Complainant and her sister paid an amount of Rs.1,00,000/- each on 24/09/2016 and again made another payment of Rs.403,962/- by cheque dated 01/11/2016. On 08/11/2016, the Complainant entered into an agreement for sale of flat No.4065 in the 4th block on the 6th floor. The Respondents helped the Complainant with the paper work for LIC Housing Finance Ltd. and obtained a housing loan for the apartment and disbursed an amount of Rs.36,80,000/- on 01/12/2016. The sister of the Complainant was not able to get a housing loan and therefore dropped out the amount paid by her and was adjusted to the payment of the Complainant. As agreed the Complainant paid an amount of Rs.5,03,962/- as per cheque dated 01/12/2016. As per the agreement, the Respondents agreed to complete the construction as per the specifications given in the brochure as well as in the agreement and handover possession

within one month after receipt of entire payment. But by collecting the said amount they have not completed the construction as agreed with the Complainant. The complainant directly and by mail communication, contacted the Respondents to complete the construction and to get the flat transferred with Occupancy certificate. The Respondents were reluctant even to give any explanation about the probable date on which they can handover the flat and other common amenities including car park and instructed the Complainant to make the balance payment of Rs.2,51,696/- at the time of handing over of the project. The Respondents have not given possession of the apartment nor they entered into a sale deed with the Complainant. The Complainant further submitted that the project is still not completed though the builder, in violation of law and in collusion with the Municipal Authorities received occupancy certificate dated 07/10/2020.

3. The Complainant further submitted that when some of the buyers approached the Hon'ble High Court of Kerala with a writ petition where the builder produced certain documents pertaining to Environmental Clearance (EC) which clearly makes the entire construction illegal and Fire NOC clearly points out that the building will not be safe as it does not have some of the structural requirement for the Fire NOC. Another building of Jain Housing was demolished for violation of CRZ norms on the orders of the Hon'ble Supreme Court and the Complainants feel that similar fate awaits this building as well. From the report of the joint committee formed as per the direction of the NGT, it is established that the Construction commenced without the mandatory 'Consent to Establish' from the Kerala State Pollution Control Board, the EC was applied for, after the commencement of the construction, and without disclosing the same, the EC was obtained. The builder declared that the Project is 1,39,885.78 while the 2016 regularization Permit showed an area of 1,92,637.80 sqm. The Respondent/builder violated EC conditions. On the complaint made by one



of the Homebuyers, the MoEF & CC inspected the construction site and found most conditions of the EC to have been violated and they never filed the mandatory reports and found the Builder to be a Habitual Offender. The District Collector has confirmed that the building is constructed on paddy land where construction is prohibited under the Kerala Conservation of Paddy Land and Wetland Act, 2008. The Respondent/builder had filed W. P (c) 9816 of 2021 in which it states that Tower No. 4 was being completed in the year 2015. Thereafter, in Para 14 of the WP, it was clearly admitted by the Respondent/ Builder that the date of completion as declared with the Municipality is 23.03.2020. In the light of this averment made on oath before the Hon'ble High Court of Kerala, the 'Partial Occupancy' granted on 26 July 2016 is absolutely illegal and in the light of the report of the Joint Committee, the 'Occupancy certificate' granted to Block 4 of the project 'Tuffnell Garden' is absolutely illegal. When the Respondents induced the Complainants to part with their hard-earned money, the Respondents knew that the project did not even have a permit leave alone the illegalities on which the buildings were built. In any case, the Complainants are unwilling to put their life or that of their family members at risk by entering a building that does not have the minimum required Fire Safety measures. Even assuming the Municipality or other state Authorities grant them the permissions based on any 'technicality', the Complainants are unwilling to move into an apartment that is known to be a Fire Hazard. The copies of agreement for sale dated 08/11/2016, Payment receipts, statement of loan account, Order of National Green Tribunal are the documents produced from the part of Complainant. The Complainants prayed for a relief to get refunded an amount of Rs.47,87,924/- along with interest @ 14.30% which is the prime lending rate of SBI plus 2% from the date of payment to the date of actual repayment and to allow the cost of the proceeding.



4. The Respondents submitted the written statement contending that the Complaint is not maintainable as this Authority has no jurisdiction to entertain this complaint in view of Sec18 of the Act,2016. The Authority can take cognize only when the promoter fails to complete or is unable to give possession of an apartment or building in accordance with the terms of the agreement for sale and that the allottee wishes to withdraw from the project. In this case there is no construction agreement and only sale agreement. The Complainant has filed complaint before the State Consumer Commission with a prayer for completion of amenities in the 'Jains Tuffnell Garden' and consequential reliefs. The Respondents further submitted that along with other Allottees the Complainant was also offered possession of apartment No.4065. But the Complainant has not taken possession of her apartment. The Complainant has also not paid for the registration, stamp paper and statutory registration fees. The Block No.4 of the said project was completed as on 25/05/2013. The Respondents alleged that while the 1st Respondent builder was trying hard to obtain the statutory sanctions, the complainants and other allottees were trying to stall the same by filing false cases before the Hon'ble High Court of Kerala and the Kerala State Human Rights Commission, Thiruvananthapuram by impleading all the statutory Authorities and scaring them from processing the application and granting the necessary approvals. The Respondents submitted that since the two towers 4 and 5 were in the completed stage, after site inspection and since due to non-availability of Fire NOC, the Municipality numbered GF + 2 Floors and the respondent obtained the partial occupancy certificate dated 26.07.2016. The allottees approached the Hon'ble High Court of Kerala by filing writ petition No. 26935/2019. The Hon'ble High Court of Kerala on 23/01/2020 cautioned the petitioners that if they are proceeding with this writ, the same will be dismissed with compensatory cost and hence the counsel for the petitioners sought permission to withdraw the writ petition



and accordingly the writ petition was dismissed as withdrawn. Further, the allottees through the very same counsel again approached the Hon'ble High Court of Kerala by filing Writ Petition no. 6581/2020.

5. The Respondents further submitted that the then Thrikkarkara Grama Panchayat had issued a construction NOC A4-1/2000 dated 31.08.2006 for developing the property in the name of landowners. The plan approved was for 8 blocks of G + 19 floors with 2 level car parking, common area facilities, and a total of 1217 units. The Kerala Municipality Building Rules extended to Thrikkakara Grama Panchayet on 06/11/2006. It was also submitted that before the Municipality Building Rules came into force, builders started construction in the terms of the NOC plan. No prior permission is required for any construction in Panchayat areas. Since the construction was made in terms of the NOC, KMBR Rules are not applicable. Thrikkakara Grama Panchayat issued a certificate No. A1-1/08 dated 09.09.2008 to the builder that the NOC is in compliance with the terms of Circular No. 23548/RD2/08/LSGD dated 03.04.2008. Due to the pendency of a number of cases filed by the allottees, Fire & Rescue Department has not acted upon the circulars issued by the State of Kerala in giving Fire NOC and Occupancy Certificate. Finally, due to the persistent follow-up and on the aforesaid circulars, the department of Fire & Rescue services issued certificate of approval on 06/08/2020 certifying that all rules and norms pertaining to Fire Safety Arrangement are satisfied in the project Jain Tuffnell Garden. Then the Thrikkakara Municipality also issued the Occupancy Certificate 07/10/2020 for the project. Hence the Complainants have no bonafides and approached this Authority with unclean hands and the compliant is liable to be dismissed with compensatory costs to the Respondents. Copies of Completion Certificate dated No. 25.05.2013, Partial Occupancy Certificate dated 26/07/2016, copy of Order dated 26935 of 2019 in Writ Petition No. 23/01/2020, copy of Certificates issued from



Thrikkakkara Grama Panchayat dated 31/08/2006 & 09/09/2008, Fire NOC dated 06/08/2020 in the name of the Promoter, Occupancy Certificate dated 07/10/2020, copy of E-mail communications and summons from Consumer state Commission are the documents produced from the part of Respondents.

6. We heard the learned counsels on either side, gave careful consideration to their submissions, perused the material documents available on record. After detailed hearing and perusal of pleadings and documents submitted by both the parties, following points were came up for consideration:

1) Whether the Respondent/Promoter failed to complete or unable to hand over possession of the apartment to the Complainants in accordance with the terms of the agreement for sale or duly completed by the date specified therein or not?

2) Whether the Complainants herein are entitled to withdraw from the project at this stage and claim a refund of the amount paid with interest as provided under Section 18 (1) of the Act 2016 or not?

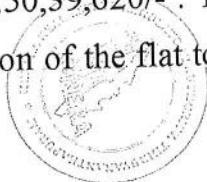
3) What order as to costs?

7. Points No. 1 & 2: - The relief sought in the Complaint is for direction to refund the amount paid by the Complainant along with interest as provided under Section 18(1) of the Real Estate (Regulation & Development) Act 2016. Section 18(1) of the Act 2016 specifies that "If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw



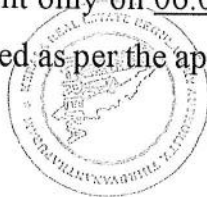
from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act-Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” As per Section 19(4) of the Act 2016, “the allottee shall be entitled to claim the refund of the amount paid with interest as such rate as may be prescribed, if the promoter fails to comply or is unable to give possession of the apartment, plot or building as the case may be, in accordance with the terms of the agreement for sale”. It is obvious that Section 18(1) is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession.

8. The documents produced from the part of the Complainant are marked as Exbts.A1 to A5 and the documents produced from the part of the Respondents are marked as Exbt.B1 to B7. While going through the documents it is seen that there is an agreement for sale of flat which is marked as Exbt.A1. As per the said agreement, the Respondents offered to sell Flat No.4065 with an extent of 332.98 sq.ft build up area and 231 sq.ft of common area in the 6th floor on the 4th block for a total consideration Rs.50,39,620/- . The Respondents also undertaken to “hand over the possession of the flat to the Complainant within one months after



receipt of the entire amount due from the allottee”. It was also stated in the agreement that “the promoters have completed the construction in all respects and is now ready for occupation and obtained necessary completion certificate from the Chartered Engineer/Registered Valuer.”

9. In the Completion Certificate dated 25.05.2013, produced and marked as Exbt. B1, it is certified that “construction of the residential project “Jains Tuffnell Park Block 4” has been completed as per the approved plan and NOC No. A4-1/2000 dated 15.05.2013” which lacks clarity in the name of the project, date mentioned etc. The copy of Partial Occupancy Certificate dated 26.07.2016 produced by the Respondents cannot be acceptable because the Partial Occupancy certificate issued only for some floors of a high-rise building cannot be considered as the ‘Occupancy Certificate’ (mentioned as ‘Completion Certificate’ in the Act 2016) proclaiming completion of the real estate project as envisioned under the Real Estate (Regulation & Development) Act 2016 and the corresponding Rules 2018 which has been made clear many times by the Authority through earlier orders. But in the final Occupancy Certificate dated 07.10.2020 produced by the Respondent and marked as **Exbt.B6** the details of permit are shown as TP. 959/12 /Reg/2016/17 dated 15.06.2016 and the date of completion is written as 23.03.2020. **Exbt. B1** Completion Certificate of the Chartered Engineer show that the project/Block 4 was completed before 25.05.2013 itself. Surprisingly, the partial occupancy certificate issued for one or two floors of the building, shows that the date of completion is 30.06.2016 and the **Exbt.B6** final Occupancy Certificate dated 07.10.2020 states that the date of completion is 23.03.2020. The copy of Final Fire NOC produced by the Respondents are marked as **Exbt.B5** is issued by the Fire department only on 06.08.2020. So, it is to be concluded that the project was completed as per the approved plans only by 07.10.2020,



the date of issuance of final Occupancy Certificate. Hence, the contention raised by the Respondent/Promoter that "the project was completed in 2013 itself" is found to be false. If at all the contention of the Respondents is considered, why didn't they intimate this fact to the Complainant who invested such a huge amount with them and hand over the key and execute the sale deed in his favour?. The Respondents failed to produce before us copies of any such communication with the Complainant. Here, the sale deed is also not seen registered in favour of the complainant till date even after obtaining the Occupancy certificate on 07.10.2020.

10. According to Section 17 of the Act 2016, "(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand-over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate."

But in this case, after obtaining the occupancy certificate on 07.10.2020, no attempt has been done by the Respondent till date to execute the Sale deed in



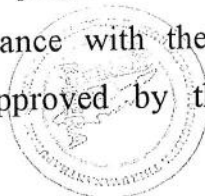
favour of the Complainant and no documents have been placed on record by the Respondent to prove the contrary. So, the said acts of the Respondents amount to clear violation of the above-mentioned provision under Section 17 of the Act 2016. In any case where an allottee is a defaulter in payments or he was not ready to take over possession of the apartment or execution of sale, the Promoter shall have the right to send notice to the allottee demanding balance amount and take possession of the apartment and to pay the registration charges for execution of sale deed, on the strength of Sections 19(6), (10) & (11) of the Act 2016 in which they are specified as duties of allottees. Here, there is no such specific contentions raised by the Respondent and no documents have been placed on record to prove that he had performed his part of the contract successfully.

11. For the reasons stated above, it is evident that the possession of the flats has not been handed over to the Complainant as promised in the agreement and the sale deed has not been executed even after the receipt of occupancy certificate. No documents have been produced by the Respondents to prove that they intimated the completion of the apartments or issuance of occupancy certificate for the project or demanding balance payment/registration charges for the sale deed registration. Hence it is clear that the Respondent failed to hand over possession of the apartment and nothing has been mentioned by the Respondents with regard to non-handing over possession and non-execution of sale deed in favour of the Complainant herein. The Complainant also alleges that the promised facilities have not been completed by the builder till date. At the same time, apart from the Exbt.B1 completion Certificate given by an engineer, and the Exbt.B6 occupancy certificate issued by the local authority certifying that the construction has been completed as per the approved plans/Permit/NOC, and Exbt.A5 a summons issued by the Consumer Commission, nothing has



been produced by the Respondent to prove that the project is completed in all respects with all the common amenities as promised to the Complainant. On the basis of the aforementioned fact and findings, it is found that the Respondent/Promoter has failed to complete and hand over possession of the apartment to the Complainant/allottee as promised and therefore the Complainant/allottee is entitled to withdraw from the project and get refunded the amount paid by him to the Respondent/Promoter along with interest as provided under section 18(1) of the Act, 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainant herein.

12. It is to be pointed out that the contentions and allegations raised by the Counsel for the Complainant with regard to the genuineness of the statutory sanctions and approvals obtained for the project have no significance in this case because the said issues of violations alleged by the complainant are to be considered by the concerned local body which is the competent authority to issue occupancy Certificate and the LSGD Tribunal as well in appeal. According to Kerala Municipality and Building Rules the secretary shall on receipt of the completion certificate and on being satisfied that the construction is in conformity with the permit given, issue occupancy certificate in the form in Appendix H and the Occupancy certificate issued by the Secretary certifies that the work executed is in accordance with the permit and the building is fit for occupation/use. As per the definition in the Real Estate Regulation and Development Act, 2016, occupancy certificate issued by the competent authority permits occupation of building as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity. Section 14(1) of the Act 2016 stipulates that "The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans, and specifications as approved by the competent authorities". Once the



occupancy certificate is issued by the local body, it is to be confirmed that the section 14(1) stands complied with and it presupposes that all the required statutory approvals and sanctions such as Fire NOC, Environmental clearances, etc. have been obtained. Here, Copy of Fire NOC dated 06.08.2020 obtained for the project is also produced by the Respondent which is marked as Exbt. B5. In the reply arguments, the learned counsel for the Respondent/Promoter also pointed out that the allottees approached the Hon'ble High Court of Kerala through writ petition No. 26935/2019 regarding the veracity of sanctions obtained for the construction and the Hon'ble High Court of Kerala on 23/01/2020 cautioned the petitioners that if they are proceeding with that writ, the same will be dismissed with compensatory cost and subsequently the petition was dismissed as withdrawn. The copy of said order is produced and marked as Exbt.B3.

13. With respect to the payments made to the Respondents, the Complainant has produced Receipts of payments for an amount of Rs.11,07,924/- made to the Respondents which are marked as Exhibits A2 Series and statement of loan account which is marked as Exbt.A3 series. Anyhow, the Respondents have not raised any objection on the said documents. Details of payments made, as confirmed by the Authority based on the above documents are as detailed below:

<u>Date</u>		<u>Amount</u>
26/09/2016	-	Rs.1,00,000/-
26/09/2016	-	Rs.1,00,000/-
01/11/2016	-	Rs.4,03,962/-
01/012/2016	-	Rs.5,03,962/-



Loan disbursed by LIC Housing Finance Ltd- Rs.36,80,000/-

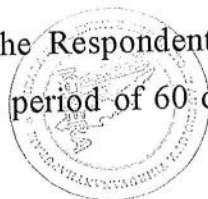
Total - **Rs. 47,87,924/-**

14. Hence, the Complainant herein is entitled to get the refund of the above-mentioned amount along with interest and the Respondent is liable to refund the amount to the complainant along with the interest according to section 18(1) of the Act, 2016. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The Complainant had claimed refund of Rs.47,87,924/- paid by him along with interest at the rate of 14.30% per annum from the date of each payment to the date of actual repayment. Hence it is found that Respondents 1 and 2 are liable to pay Rs.47,87,924/- along with 14.30 % (12.30 current BPLR rate +2) simple interest from the date of each payment as scheduled above.

15. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions:

1) The Respondents No. 1 & 2 shall return the amount of Rs. 47,87,924/- to the Complainant along with interest @ 14.30% simple interest per annum from the date of each payment as per the payment schedule above, till the date of realization.

2) If the Respondent fails to pay the aforesaid sum as directed above within a period of 60 days from the date of receipt of this



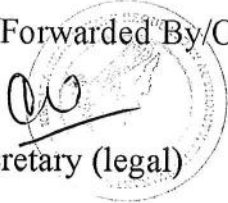
order, the Complainant is at liberty to recover the aforesaid sum from the Respondents 1 & 2 and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Both parties are directed to bear their respective costs.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. M.P. Mathews
Member

/True Copy/Forwarded By/Order


Secretary (legal)

EXHIBITS

Documents Produced from the part of the Complainants.

- Exhibit A1 - True copy of agreement for sale dated 08/11/2016.
Exhibit A2 Series - True copy of Payment receipts.
Exhibit A3 Series - True copy of statement of loan account.
Exhibit A4 - True copy of Order of National Green Tribunal.
Exhibit A5 - Summons from the Consumer state Commission.

Documents Produced from the part of the Respondents.

- Exhibit B1 - True copy of the Completion Certificate dated No. 25.05.2013
Exhibit B2 - True copy of the Partial Occupancy Certificate dated
26/07/2016.
Exhibit B3 - True copy of the Order dated 26935 of 2019 in Writ Petition
No. 23/01/2020
Exhibit B4 Series - True copy of Certificates issued from Thrikkakkara Grama
Panchayat dated 31/08/2006 & 09/09/2008
Exhibit B5 - True copy of the Fire NOC dated 06/08/2020 in the name of
the Promoter.
Exhibit B6 - True copy of the Occupancy Certificate dated 07/10/2020.
Exhibit B7 - True copy of E-mail communications.