



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaints No. 178/2020, 43/2021, 44/2021, 51/2021 & 99/2021

Dated 20th July 2021

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

Complainants

1. Mr. Abhraham Joseph & : Complaint No.178/2020
Dr. Gibu Abraham Joseph
Andoor, MRA-211,
Thampuramukku, Vanchiyoor P.O,
Thiruvananthapuram-695035.
2. Thomas K Thomas & : Complaint No.43/2021
Asha Thomas
Kuzhuvommannil House,
Thelliyoor P.O, Mallapally,
Pathanamthitta-689544.
3. Valsamma Jose & : Complaint No.44/2021
Jose Vargheese
Chirayil House, Pakkil P.O,
Pallom, Kottayam-686012,
4. Ajith Kumar K.R & : Complaint No.51/2021
Vasantha Devi Ajithkumar,
Knicheril House, Veloor
Kottayam (Now residing at
Flat No.104, Gloria Grace E
Bhavdan, Pune-411021.

5. Vijayan Keshavan & Saradamma Sreelatha Vijayan, 'Chaithanya' Union Club Road, Kottayam-686001. : Complaint No.99/2021

Respondents

1. M/s Hoysala Projects Pvt Ltd.
Office No.104, Ground Floor,
Infantry Techno Park, Infantry Road,
Bangalore-560001.
Represented by its Managing Director
2. T.S Satheesh
Managing Director
M/s Hoysala Projects Pvt Ltd.
R.K.Chambers, Opposite to Metro Pillar
No.484, Edapalli, Mamangalam Road
Kochi-682025.

(By Adv.Ranjith Kumar S)

COMMON ORDER

1. - As the above three complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.
2. The Complainants in the above cases have booked their respective residential apartments in the real estate project named "Hoysala First" by M/s Hoysala Projects Pvt Ltd. Thirunakkara, Kottayam, developed and constructed by Respondents. All of them had entered into agreements for sale and construction with the Respondent. The copies of said agreements are produced by the Complainants in all the complaints. But the project

was getting stalled and there is uncertainty in the completion of the project as agreed to the Complainants. The completion date was unilaterally extended by the builder many times and fact remain same as on date that Complainants have no idea when Respondent is going to handover flat with subsequent documents required to occupy the flat. The flat owners have met the Respondents individually and collectively several times but always offered false promises of completion date. Till now the Respondents have not fulfilled their promises. The relief sought by the Complainants is to direct the Respondent to complete the construction and deliver possession with all the amenities and facilities as promised in the agreement and also for Compensation of delay in completion of the project. **Exts.A1 to A5** were produced from the part of the Complainants.

3. The Respondents filed objection in Complaint No. 178 only in which it is stated as follows: The Complainants till date have paid an amount of Rs.43,00,000/- (Rupees Forty-Three Lakhs only) out of the total sale consideration payable as per the Agreement being sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) on various dates. The Complainants are well aware that the said Apartments in the project has been offered to be sold to the Complainants at a discounted price as compared to the prevailing market price, further as on date the Respondent has already completed about 75 to 80% of development works in the project and the payments as mentioned under the agreement are construction linked and the Complainants have made the payments based on the completion of the construction of the project and the Respondent has not raised any demand notes in excess of the work completed nor has collected any excess amounts towards the sale of the Apartment. The complainants misrepresented that the date of the completion as per the

agreement was, on or before 05/08/2016. As per clause 23 of the Agreement, it was agreed between the Complainants and the Respondents that possession of the said Apartments shall be delivered within 42 months from the date of Agreement. Though the Respondents had made arrangements for funds required to take up the development works in the project, the inflows from the sales were also anticipated to aid the same, due to volatile market conditions prevailing at that point of time, the Respondent was unable to sell the Apartments in the project and there was a resultant financial crunch, which affected the development. The Respondent further submitted that in November 2016, the Government of India demonetized the currency in circulation due to which there was large scale disturbance in cash flow and due to its cascading effect for a further period of one year, since all the labour payments were required to be made in cash on day to day basis to the labour contractors as well as the labourers engaged in the construction work in the project, and till the time when the cash flows were regularized, the construction work came to a severely hampered resulting in delay in the development work in the project. The development of the work has not been delayed deliberately but on account of the general downturn of the market, due to reasons like demonetisation, severe flooding which affected Kottayam district at large in the years 2018 and 2019, which resulted in delays and shortage of construction material and other similar reasons due to which the construction has been delayed, which cannot be attributed as wilful default on the part of the Respondent. The Respondents further submitted that the Agreement which is entered into with the Complainants provides for extension of time in case of any reasons beyond control and the aforesaid circumstances clearly falls within the category of such reasons, due to which the development work in the

project came to be hampered and got delayed. As per clause 23 of the Agreement the delivery of Apartment is subject to acts of god like earthquakes, fires and floods, Government orders, restrictions, controls, delays by reason of war, civil commotion due to any notice, injunction, stay or other court order or other disturbances, availability of material like cement, steel and other essential items for the construction, change in law or such other events beyond control of the developer and it is also subject to the receipt of completion certificate, occupancy certificate from the concerned Authorities and electricity, water and sanitary connections from the respective departments / authorities. In such events the developer shall be entitled to a reasonable extension time of six months for the delivery. In such circumstances the purchaser shall not be entitled to claim any damages or losses against the developers / promoters.

4. The Respondent denied the claim of the Complainants seeking compensation by way of levy of interest calculated @ 18% which is not in accordance with the provisions of the Rule 18 and hence cannot be entertained. The complainants have already accepted that there will be extension of the end date due to reasons beyond the control of the Respondent, the Respondents will not be bound to pay any compensation under such unstable and hard market conditions wherein the foremost aim is to survive and complete the project and handover it to the Allottees of the project. The Respondent further stated that the building permit for the project was expired on 31/08/2019, an application for renewal of the building permit was submitted by the Respondent on 01/07/2019. But due to the unavoidable reasons the Respondent was unable to obtain the revised building permit till date and is perusing the same to obtain the renewal at

the earliest, so that the development work could be resumed. The Respondent has obtained a Recommendation Letter dated 15/06/2020 from Kottayam Municipality to Town Planning Authority in this regard and a revised building permit is expected to be obtained shortly by the Respondent. The Respondents sold about 20 Apartments out of 82 Apartments, has collected about 8.20 Crores from the Allottees, while having spent about 20.00 Crores towards the development of the project and the remaining outstanding from the Allottees is about 1.54 Crores and the value of the unsold inventory is about 28.00 Crores. The money requires for the completion of development work being about 6.84 Crores, is proposed to be raised by the Respondent by itself and complete the development work in the project within 12 months from the date of renewal of the permit for construction being granted by the concerned Authority. The Respondent has filed application for the Registration of the project on 29/09/2020. **Exts.B1 to B6** are the documents produced from the part of the Respondents.

5. During the hearing, as it is found that the Project in question is an ongoing project registerable under Section 3 of the Real Estate (Regulatory and Development) Act 2016, the Authority issued Show Cause Notice to the Respondent in connection with such a mandatory provision of law. Only after getting the Show Cause Notice, the Respondent submitted application for registration of the said Project. After hearing both parties, the Authority, as per its Interim Order dated 9th December, 2020 directed the Respondent to convene a joint meeting with all Allottees and was also thereby directed to file an affidavit with clear affirmation regarding the

completion of whole project in all respects as committed/ promised to the allottees, and also to produce work schedule showing milestones to complete each work. The Respondent in compliance of said Order passed by the Authority, a meeting was convened on 02/01/2021 and the minutes of the said meeting was also produced and the same is marked as **Exbt. B1**. During hearing on 23/02/2021, the Respondents submitted that he is ready to file an Affidavit detailing the work schedule for completion and also decided to open a designated account for the project and inform the details to the Authority and the Complainants, indicating amounts available in the account to continue with the project. As submitted, the Respondent filed an Affidavit on 23/04/2021 which is marked as **Exbt. B2**, the Respondent has undertaken that they will complete the whole work of the project by 31/03/2022. The Respondents also submitted detailed statements regarding money required to complete the works, work schedule, statement showing completed works and source of funds required to complete the project, which is marked as **Exbts. B3 to B6** respectively.

6. On the basis of the confirmations and undertakings by the Respondent as per the **Exbt.B2** affidavit and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions: -

1. The Respondent/Promoters shall complete the entire works of the project "Hoysala First" with all the common amenities and facilities offered to the Complainants in accordance with the agreements executed with them, **on or before 31/03/2022** without fail.

2. The Respondents shall submit before this Authority, the compliance report in the form of an affidavit on or before **03-04-2022** after serving copies to the Complainants.

3. As it is a registered project, the Respondent shall update the status of the same, quarterly in the official website of the Authority.

If the Respondent fails to comply the said directions the Complainant can approach this Authority with an IA.

This order is issued without prejudice to the right of the Complainants to approach the Authority with claims for compensation in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

In the event of any non-compliance of this order by the Respondent, this Authority shall initiate severe penal actions as provided under Section 63 of the Act.

Sd/-

Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman



/True Copy/Forwarded By/Order/

Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 Series : Agreement of Construction and Sale
Exhibit A2 Series : Copies of Receipts for the payments effected to
‘Hoysala First’ project.
Exhibit A3 Series : Copies of E-mail Correspondence with Hoysala
Project.
Exhibit A4 Series : Copy of minutes of virtual meeting with the
Promoters.
Exhibit A5 : Copy of Letter dated 02/03/2020.

Exhibits on the side of the Respondents

- Exhibit B1 : Minutes of the Meeting held on 02/01/2021.
Exhibit B2 : Affidavit submitted by Respondents dated 23/04/2021
Exhibit B3 : Statement of Money required to complete the work.
Exhibit B4 : Work schedule.
Exhibit B5 : Statement of completed works.
Exhibit B6 : Statement of Source of Funds.