



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Dated 17<sup>th</sup> June, 2021**

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

**COMMON ORDER**

**IN**

**Complaint Nos: 4/2021 & 5/2021**

**Complainants**

Jai Joy and Sheetha Jose : Complaint No. 4/2021  
Flat No: 4 D, Amity Landmark  
Bank Jn, Aluva- 683101

Sherin M.P : Complaint No. 5/2021  
Parkjash, Kallukadavu Road,  
Pulinchodu, Aluva- 683101

**Respondent(s):**

1. Mr. K. A. Abdul Salam  
5 B Providence Grove  
Providence Road, Ernakulam
2. Mrs. K.A Sulekha  
5 B Providence Grove  
Providence Road, Ernakulam
3. M.C Abdul Rahman  
5 B Providence Grove  
Providence Road, Ernakulam

4. Mrs. K.A Ramla  
5 B Providence Grove  
Providence Road, Ernakulam
5. Mrs. K.A Shamla  
5 B Providence Grove  
Providence Road, Ernakulam
6. VM.Mohammed Sakhi  
5 B Providence Grove  
Providence Road, Ernakulam
7. M/s.Amity Projects India Pvt Ltd  
City Castle, N.H Bypass  
Thynothil Road, Aluva- 686101
8. Mr. Manoj K Jose  
Kanapli House, DRRA-73  
By Lane Road No-6  
Thottakkattukara, Pincod- 683108
9. Sudhin Ben Cheriyan  
Director, City Castle, N.H Bypass,  
Thynothil Road, Aluva- 686101
10. Noufal K.M  
Director, City Castle, N.H Bypass,  
Thynothil Road, Aluva- 686101
11. Maliakkal Lawrence Sudhil  
Director, City Castle, N.H Bypass,  
Thynothil Road, Aluva- 686101
12. Vakkachan Nedumparambil Nibu  
Director, City Castle, N.H Bypass,  
Thynothil Road, Aluva- 686101

13. Aji Thomas  
Director, City Castle, N.H Bypass,  
Thynothil Road, Aluva- 686101

The above two complaints came up for hearing today. The Complainants, Respondent/Builder and Respondent/Land owners attended the hearing along with the Counsel N.M Madhu.

### **COMMON ORDER**

1. As the subject matter, cause of action and reliefs sought in all the above complaints are one and the same as it is related to the same apartment project developed by the same Promoter, the said Complaints were being 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 facts of the case in Complaint No: 4/2021 is that during the year 2013, the Complainants came to notice the advertisement given by the Respondents that construction of multi-storeyed residential apartments having river view near Federal Bank Junction at Aluva, Ernakulam is nearing completion. On contacting the Respondents, it was conveyed that the said project consists of 59 apartments in 17 floors, with each floor consisting of 4 apartments till 14<sup>th</sup> floor and two duplex houses on the 15<sup>th</sup> and 16<sup>th</sup> floor and a pent house on the 17<sup>th</sup> floor by the name and sign of "AMITY LANDMARK" having various amenities will be completed and handed over to its prospective purchasers by August 2014, in a ready to occupy condition. It was also specifically conveyed that the common amenities in the said project of the Respondents included swimming pool, badminton court,

health club, children's play area, recreational area, club house, WI-Fi, rooftop party area, intercom, 3 lifts, generators, visitor's car parking, centralized gas supply, garbage shoot, clubhouse etc. Thus lured by the assurances of the Respondents, the Complainants entered into agreement for sale dated 06-02-2014 with the Respondents, pertaining to the sale of 750 sq links of the undivided share out of 53.423 cents of property, as well as apartment No: D4 in the 4<sup>th</sup> floor of Block D in the proposed building named as Amity Landmark with a super built up area of 1450 square feet, including right to use the common areas and common facilities together with an independent car parking space, for an aggregate consideration of Rs. 50,00,00/- (Rupees Fifty Lakhs only). As per the terms of said agreement, the Respondents had agreed to complete the construction on or before 31-08-2014 with a grace period of 3 months and to handover the possession to the Complainant. The Complainants were very prompt in making payments as and when demanded by the Respondents. On the date of entering into the agreement, the Complainant paid an amount of Rs 10,00,000/- towards 1<sup>st</sup> instalment of the sale consideration to the Respondent. The Complainant also availed a bank loan of Rs 40,00,000/- from HDFC Bank and was disbursed to the Respondent on 07-03-2014. Thus, the Complainant had paid a total amount of Rs 50,00,000/- as on March 2014, which constituted the entire sale consideration. Towards repayment of the loan, the Complainant was required to pay a monthly EMI of Rs 45,000/- for a period of 15 years. However, there was no progress whatsoever in the construction works after February 2014 and it remained the same as on August 2014, the agreed date of completion of the project. It became obvious that the Respondents were grossly violating the terms of the agreement without initiating any earnest efforts to complete the construction. The Respondent also further demanded 2,00,000/- in the guise of tax and later Rs 3,00,000/- and then an amount of Rs 1,00,000/- from the Complainant and the Complainant has made payment respectively during 17-12-

2015, 06-03-2017 and 09-05-2018 to complete the entire construction of the apartment project at the earliest. Thus, the Complainant has paid a total amount of Rs. 56,00,000/- towards sale consideration of the flat. The Complainant is highly aggrieved by the non-compliance of the terms of agreement by the Respondents in terms of common amenities and the constructions so far made are not in accordance with the advertisements or prospectus made by the Respondents. The Complainant also approached Permanent Lok Adalat on 30/11/2018 seeking relief through an amicable reconciliation with the 7<sup>th</sup> Respondent in relation to building completion but due to the fact that Permanent Lok Adalat don't have any jurisdiction in a dispute relating to real estate in the wake of establishment of Real Estate (Regulation and Development) Act, 2016, the PLA Court closed the file advising the Complainant to approach relevant court of justice. The Complainant submits that the project was not completed on the date of commencement of the Real Estate (Regulation and Development) Act, 2016 as well as on its implementation on 31<sup>st</sup>. The Complainants allege that poor quality truss work is weak enough to fall down in the event of strong winds and corrosion of the frames with high-risk fatality for the occupants, pedestrians and vehicles since the building stands right in the midst of the busy town. No enough roof extension/roof gutter to prevent the water falling directly on building walls and water is flowing all the way down to balconies and wetness seeping into interior walls. It is also alleged that the car parking space is not enough for the allottees and visitor's parking is not provided as promised. No waste disposal system is provided and insulators are not installed in the building. No proper arrangements for firefighting and no space around the building for a fire engine to go around the building, as the car parking shelters put up around the building. Due to this reason itself, badminton court and children play area are not feasible. No roof top party area provided as promised. No intercom/wi-fi are provided. Fire NOC is not obtained and Municipality numbering is not yet done. No provision for domestic electricity/water

connections and centralised gas supply. The constructions are not in accordance with the advertisements or prospectus given by the Respondents and against the sanctioned plan and specifications approved by the competent authorities.

3. The reliefs sought by the Complainants in this case are to direct the Respondents to complete the construction of the apartments and to pay interest for the sum of Rs. 56,00,000/- till the date of return, to direct the Respondents to pay appropriate interest for the said amount as compensation, to direct Respondents to take necessary steps to complete the statutory registration of the apartment immediately and to handover legally, to direct Respondents to complete the statutory registration of the apartment project under Kerala Real Estate Regulatory Authority, to direct the Respondents to provide compensation for the loss of common area on the 17<sup>th</sup> floor, to compensate for common areas as the Respondents have changed their plan and to direct the Respondents to provide parking space under the building, direct the Aluva Municipality to review the Engineer's report and to rectify the flaws.

4. The case of the Complainant in Complaint No: 5/2021 is that M/s Amity Projects India had contacted her in November 2010 to sell their apartment and the Respondents had promised the Complainant that they shall transfer the undivided share in property having an extent of 53.423 cents with 3-bedroom apartment with 2 balconies in 14<sup>th</sup> floor having 1710 sq ft and other amenities. The Respondents promised that the apartment will be handed over by 31<sup>st</sup> March 2012 in a ready to occupy condition. Much to the shock of Complainants there was no progress in construction works. The Complainant has paid Rs. 53,00,000/- to the Respondents by different dated cheques one year prior to the scheduled date of handing over and Rs. 3,00,000/- later in 2014. Even though the construction was not

fully completed, the Complainant had to occupy the apartment which was in an unfinished stage. Respondents are now taking advantage of this claim from their responsibilities of constructing and completing the apartment as promised. The Complainant also points out that another allottee filed a case in PLA and PLA Court appointed Expert Engineer Commission to assess the Complaint and construction defects. Copy of said Commission report is produced. The Report clearly shows the poor quality of truss work which is weak enough to fall down in the event of strong winds and is in a high-risk fatality for occupants, pedestrians and vehicles passing since the flat stands right in the midst of busy town. When the Complainant booked the flat, 3 lifts as promised was not installed. When the Complainant went to see her flat, it was a real shock to her as there was one big balcony missing in her flat. When the Complainant filed a case for cheating, the Respondents assured that they would make changes in the completion plan and provide another space in the building. The reliefs sought by the Complainant in this case are for directions to the Respondents to complete the constructions as promised in Annexure 1,2 &4 within the time limit prescribed by this Authority and to pay interest for the sum of Rs. 56 lakhs from 08.03.2011 till date of return, to provide a suitable place instead of the missing balcony promised in the agreement, to provide 2 car parking spaces under the building as agreed, to provide garbage chute and water purifier in the kitchen, to provide teak door by replacing the plywood door, provide coloured closets and basins, to make good the damage caused in the bedroom wall by the installation of one elevators, to close the gap in the bathroom tiles and skirting tiles, close the hole in the balcony to prevent entry of some civets, to paint the bathroom ceiling and adjacent wall, kitchen door, to provide door to the fire exit stairs and provide extension roof for fire exit to prevent the rain water from rushing to the front door, to complete the registration before this Authority. The Complainant produced

several photographs and other documents including drawings and floor plans to prove her allegations.

5. The Respondents No.1 Land owner and Respondents 7 & 8 have filed Objections in Complaint No.4/2021 and all the Respondents together filed a statement of objection in Complaint No. 5/2021. The Respondent No:1 submits that the role of 1<sup>st</sup> Respondent as well as other title holders of the property are so limited that their obligation is to transfer the undivided share upon the completion of the work of the apartment. He submits that he is also eager to get the works completed as then only he can also occupy the apartments set apart to him as his share. He is staying in a rented property since 1998 he has been eagerly waiting for the completion of the project to move into own property which is along desired wish for him and his family. The consideration for the title holders for transferring the undivided share in the property is the apartments set apart to them. It is specifically provided in the sale agreements with the purchasers that undivided share would be transferred only on completion of the works of the project. So, the obligation of the Land owners to execute the sale deeds comes only when the works are completed. He also points out that so far 8<sup>th</sup> Respondent, the builder has not informed him regarding the execution of sale deed. The Respondent No: 7 & 8 has submitted in the Objection that the dispute raised in the above Complaint will not come under the jurisdiction of this Hon'ble Authority. The apartment was occupied by the Complainants during 2015 & 2016. Amity Landmark is one of the projects which had been completed successfully without any complaints. The Complainants have occupied their respective Apartments during 2015 and 2016. They started residing there only after convinced that all the amenities and facilities are provided. The present complaints after a period of five years are therefore not maintainable. It is also stated by the Respondents that the poor quality of truss work mentioned in the



complaint are not correct. Truss work on the top of the building has been done by the Respondents for the elevation of the building and it is neither an amenity nor part of the specifications in the agreement and the same is constructed using quality materials. With regard to the space around the building for car parking, it is submitted that the same has been provided as per the approved plan and building permit. It is also submitted that during 2015, one of the Complainant Sherin M.P and other customers held a meeting in the office of Respondents. As per the decision taken by them, they instructed not to collect any amounts from the allottees and they took over the collections from the customers and directed these Respondents to do any works only as per their directions. The Complainants agreed that a sum of Rs. 2 crores will be collected from the customers and handed over it to the Respondents to complete the works. However, they were not able to collect such amounts and only an amount of Rs. 39,00,000/- was collected and handed over to Respondents. Therefore, the Respondents were unable to do anything to complete the constructions in accordance with the originally approved plan. It is also submitted that regarding the delay other than stated above, during 2018 August there was a flood throughout Kerala. The entire area in Aluva was affected with flood. The entire ground floor was under water for a period of almost one week. Thereby all the equipment's, materials including generator, transformer, fire equipment's etc. were destroyed due to the calamity. The Respondents suffered all such loss and restored the same by spending huge amounts themselves. Thereafter the building itself was inaugurated during March 2019. It is also submitted by the Respondents that the Complainants are not making any payment for electricity charges after 2018 and the consumption charges are paid by Respondent till date without fail. The Respondent also submits regarding the concern of Complainants in penthouse in the 17<sup>th</sup> floor that, consent has been given by the Complainants for variations and modifications and after giving consent, the Complainants cannot make objections illegally. The

allegation that amenities are not provided is false. The Respondents have produced photographs showing amenities provided. They produced documents to prove that they have obtained fire NOC, consent to operate from Pollution Control Board and all other documents necessary for issuance of Occupancy certificate. The Respondents pray that Complainants are suppressing material facts and misleading this Authority with false averments and therefore the complaint is liable to be dismissed with costs.

6. After hearing the Complainants, the Respondent/Promoter and the Respondent/Land Owner in detail and examining the documents produced, we understood that the works of common amenities offered to the allottees are yet to be completed in the project, sufficient parking spaces are not yet allotted, and the registration of sale deeds are still pending. The Land Owner also agrees to the contentions of the Complainants as to the non-completion of the project. From various complaints came before us against this Respondent/Promoter, the Authority seriously noted their habitual practice of starting new projects in the guise of some new companies/firms without completely honouring the promises given to the allottees of their earlier Projects and by simply neglecting the complaints of such previous allottees. It is common in most of the cases, the allottee, who paid his/her life-time savings for a roof over the head, is compelled to take possession of unfinished flat in an incomplete project only due to his/her helplessness and in trust of the Promoter's promises to complete it at an earliest. The Promoters, who are well aware of the consequences of occupying a flat in such a high rise building without getting the final Fire clearance from the Fire & Rescue Department and Occupancy Certificate from the local authority, compel the allottees to take possession and occupy the building without even finishing the works. Undoubtedly, it is the responsibility of the Promoter to secure all the statutory clearances on time for the

real estate projects. Here in this case, it is clear that the Respondents/Promoters have grievously failed in complying with the statutory formalities and honouring the promises given to the Complainants. To strengthen the allegation of the Complainants regarding failure of the Promoters from adhering the plan sanctioned by the local authority, the copy of the letter [Exbt- A5], which was sent in 2019 by Regional Fire Officer, Ernakulam to the Respondents listed out 7 (seven) irregularities found out by the department on inspection and 1<sup>st</sup> among them specifically mentions that the construction of floors 15,16 & 17 is in deviation of the sanctioned plan. After allotting flats to allottees, how could the Respondents/Promoters deviate from the sanctioned plan without getting previous written consent of 2/3<sup>rd</sup> of allottees? Such an act from the part of the Respondents/Promoters amounts to clear violation of provisions of Real Estate (Regulation & Development) Act, 2016. Anyhow the Respondents/Promoters submitted copies of Fire NOC dated 27.07.2020 which is valid for One year from the date of issue and Consent of Pollution Control Board to operate. The copy of the Inspection Report dated 10.01.2019 submitted by an expert Commissioner before the Consumer Permanent Lok Adalath, Ernakulam in OP 289/2018 filed by one of the Complainants also supports the allegations raised by the Complainants in which all the shortfalls are listed out in detail including the reduction of common area and balconies and poor quality of works and materials. The arguments of the Respondent/Promoters that these Complainants move against them on certain animosity and make complaints before various authorities which caused delay in obtaining statutory clearances for the project, 2 balconies shown in the agreement is a typographical mistake, etc. are merely senseless and not acceptable. The Respondent/Promoters' claim that they obtained consent from the Complainants for deviation from the approved plan on the strength of a clause in the agreement for construction cannot be acceptable. The written consent of 2/3<sup>rd</sup> allottees of the whole

project is necessary in this regard. Section 14 (1) of the Real Estate (Regulation & Development) 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. (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartments, plot or building, as the case may be, the promoter shall not make—

- (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

- (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.” As it is observed that the Respondent/Promoters have violated the provision under Section 14(1) of

the Act, the Authority decided to issue a separate Show Cause Notice to them in this regard.

7. During the final hearing, the Respondent/Promoters assured that they will solve all the issues and complete and hand over the project as early as possible within the period prescribed by this Authority. On the basis of the above facts and findings and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows:

- 1) The Respondent/Promoters shall complete the entire works of the project “Amity Landmark” with parking spaces, essential services such as permanent water & electricity connections and all the common amenities and facilities offered to the Complainants in accordance with the agreements executed with them **within 6(six) months** from the date of receipt of this order;
- 2) The Respondent/Promoters shall make sure that all the statutory clearances including Occupancy Certificate are procured for this Project within the said period;
- 3) The Complainant in Complaint No. 5/2021 shall be provided with an alternative suitable space in place of the missing balcony;
- 4) The Respondent/Promoters shall enable formation of Association of allottees in the project and register it as provided in the Act;
- 5) The Respondent/Promoters shall register sale deeds to the Complainants and hand over possession of common areas and all the documents pertaining to the Project to the Association formally and get it acknowledged.

The Compliance report in the form of an affidavit shall be submitted by the Respondent on or before 17/12/2021. 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.


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.

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 : True copy of agreement for construction produced by the Complainants
- Exhibit A2 series : True Copy of Sale deed executed with the Respondent
- Exhibit A3 series : Brochure published by Respondents regarding Apartment Project- Amity Landmark
- Exhibit A4 series : Expert Engineer Commission report submitted before PLA Ernakulam
- Exhibit A5 : Copy of the letter from Fire Department, Ernakulam

### **Exhibits on the side of Respondents**

- Exhibit B1 series : Photographs showing the lobby and common area of the Project and amenities
- Exhibit B2 : Photograph showing car parking of the Complainant
- Exhibit B3 : Photograph showing waste disposal of the Complainant
- Exhibit B4 : Copy of Fire NOC
- Exhibit B5 : Copy of consent to operate from Pollution Control Board