



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

Complaints No. 58/2021 & 113/2021

Dated 6<sup>th</sup> October 2021

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

**Complainants**

1. Kannur Heights Apartments Owners : Complaint No: 58/2021  
Association, Represented by its President  
Aarat Road, Kannur- 670001  
Kerala.
2. Suraj Kumar Sumithran : Complaint No: 113/2021  
Supalitha Nilayam  
Onden Road, Kannur  
Kerala-670001

**Respondents**

1. K.V Subha  
SivaSakhthi  
Kakkad P.O,  
Kannur-5, Kerala-670005
2. Dinup Swaraj  
SivaSakhthi  
Kakkad P.O,  
Kannur-5, Kerala-670005
3. Ms. Shabana Sivaraj  
SivaSakhthi  
Kakkad P.O,  
Kannur-5, Kerala-670005  
(Respondents are legal heirs of C.P Sivaraj  
Developers & Promoters of Kannur Heights Apartment)



The above Complaint has come up for hearing today. The Counsel for the Complainant, Adv. S.Reghukumar and Counsel for the Respondent, Adv M.Kishore Kumar attended the virtual hearing today.

### **ORDER**

1. As the above two complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in both the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No: 58/2021 filed by the Association of allottees is taken as leading case 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 Complaint are as follows: The Kannur Heights Apartment was developed and managed by Dubai based Planet International Holdings wholly owned by Sri. C.P Sivaraj. The brochure containing salient features of the Project was widely circulated in UAE as well as in India. The building permit for the Project was obtained for construction of multi-storeyed apartment building called Kannur Heights consisting of 87 exclusive apartments with car parking facility and common facilities. The Project was partially completed in 2009 and the flats have been registered in the names of registered Allottees of the flats during this 11 years period. However, three out of 87 apartments are still lying unregistered. Fascinated by the brochure, interested persons working abroad and herein came forward to purchase apartments and the promoter had executed agreement for sale as well as agreement to construct residential apartments with each and every such individual to buy the apartments. As per the agreement several features were included in the standard features of



the apartments. But some of the facilities were not provided in the apartments at the time of handing over of possession. Some features provided in the agreement were provided partially or in an incomplete form too. As per the approved permit and plan, the total extent of land committed by builder was 88.31 cents in Re-Survey No. 35 and 38 ward 2 Block 1 of Kannur 11 amsom, Kanathur desam of Kannur Taluk by virtue of registered Sale deed No. 4041/06 and 4042/06 of the SRO's Office, Kannur. However, while transferring the undivided share of land to the allottees, the builder has considered only 82 cents of total land area and set apart 6.35 cents of land for his personal benefits and later transferred to his son by virtue of registration deed as gift. The said transfer of land as gift deed to the son of the developer who is a third party without written consent of two third allottees, except the promoter, and without the prior approval of the Authority is against Section 15(1) of Real Estate (Regulation and Development) Act, 2016 and is liable to set aside. The developer of the apartments had collected separate amount towards covered car parking spaces from 60 allottees. But no allottees was specifically allotted car parking space in the conveyance deed document. While there are 87 apartments in the project, the total number of covered car parking space provided is only 40 which is another example of the criminal connivance of the developer. Most of the allottees were unaware of this mal practice at the time of registration of the apartments which is against the Section 17(1) of the RERA Act 2016. The reliefs sought by the Complainants are to direct the Respondents to provide the facilities mentioned in the agreement as promised in Annexures A1 and A5 and to direct the Respondents to execute an additional sale deed to all Allottees for an undivided share of land out of the total land of 88.31 cents as committed in the annexure A2 permit and A3 approved site plan and to direct the Respondents to unconditionally surrender by revoking the gift deed No. 2160/2016 dated 16/07/2016 admeasuring 6.35 cents of land in the name of Developers son which was executed in violation of Section 15(1) of RERA Act,2016, to direct the Respondents to submit the original land documents



(4041/2006 and 4042/2006 of SRO, Kannur) and to direct the Respondents to hand over possession and execute the sale deed in respect of flat No 7D and 10F in block 2 with all the amenities, as agreed to the Complainant in Complaint No. 112/2021. The documents submitted by the Complainants are marked as Exhibits A1 to A7.

3. The Respondents have filed written statement and submitted that the petition is not maintainable either in law or on facts. The contract entered into between the Complainant and the developer late C.P Sivaraj contained an arbitration clause “it is agreed between the parties that any dispute arising amongst the parties regarding the terms, definitions, meaning, purport and conditions of the agreement shall be referred to arbitration in conformity with the provisions of the Arbitration and Conciliation Act,1996.” The apartment was completed on 31-07-2009 as borne out by the certificate of occupancy issued by the Kannur municipality. The Complainant did not raise any objection so far regarding the lack of features alleged to be offered by the late developer C.P Sivaraj. Therefore, the rights of the Complainant if any is lost by the law of estoppel. It is also submitted this Authority has no jurisdiction to consider this application, since the Project has been completed on 10-07-2009 and date of occupancy was set as 31-07-2009 by the certificate issued by Kannur Municipality. It is submitted the Real Estate (Regulation and Development) Act 2016 came into force on 01-05-2017. Section 3(2)(b) of RERA Act stipulates the exemption for the registration of the building under the Act as “Where the Promoter has received completion certificate for Real Estate project prior to the commencement of the Act, need not to be registered under this Act”. The RERA has no application on completed Projects and this is to be decided as a preliminary issue. The Respondent also quoted Hon’ble Supreme Court decision in CIT Vs Vatika Township Pvt Ltd (2015) held that a new litigation ought not to change the character of past transaction carried out upon the faith of the then existing



law. Therefore, the act being a substantial new legislation ought to operate prospectively only.

4. It is further submitted the Respondents are not the developers of the Project. Sri, C.P Sivaraj, who is the sole developer of the Project passed away on 26/06/2020 and the Respondents are wife and children of the late C.P Sivaraj. There is no privity of contract between the petitioners and these Respondents. The claim of petitioner even against late C.P Sivaraj is barred by law of limitation. It is also submitted with respect to the relief sought in this Complaint, the Petitioner had already filed a suit before the Hon'ble Munsiff Court, Kannur as O.S No.165/2015. The said suit was dismissed on 14-09-2017. Against the said decree and judgment, the petitioner already preferred an appeal before the Sub Court of Kannur as A.S No. 105/2017 and the same is pending. By suppressing these facts, the petitioner pleaded that no case is pending before any other Court. It is also submitted the prayers sought by the Complainants is made without any basis and has no legal footing and is not legally maintainable as the documents and entire property was handed over to the owner's association since 01-01-2013. Hence it is submitted by the Respondents to dismiss the Complaint with costs to the Respondents. The Complainants have filed rejoinder also along with documents denying all the allegations and averments in the written statement filed by the Respondents. The document submitted by the Respondents are marked as Exhibit B1.

5. Heard both parties in detail and examined the documents submitted by them. The issue of maintainability was heard as preliminary issue as desired by the parties. After hearing and perusing the documents submitted by the parties it is found that the project was completed in the year 2009 and Occupancy Certificate was obtained on 29.08.2009 itself prior to commencement of the Real Estate (Regulation & Development) Act 2016. As per the judgement dated 11.11.2021, passed by the Hon'ble Supreme Court of India in M/s Newtech



Promoters & Developers Pvt. Ltd Vs State of U P & Others, “From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.” Hence, in the light of the said judgement of the Hon’ble Apex Court, this Authority cannot entertain the complaints pertaining to projects that has already been completed or to which the Occupancy Certificate has been granted prior to commencement of the Act 2016.

6. The Complaint is dismissed. No costs


Sd/-  
Smt. Preetha Menon  
Member

Sd/-  
Sri M.P Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order/



  
Secretary (Legal)

## APPENDIX

### Exhibits on the side of the Complainants

- Exhibit A1 : The Brochure containing salient features of Project
- Exhibit A2 : Copy of building permit No.E3.B4.538/06.
- Exhibit A3 : Copy of approved site plan.
- Exhibit A4 : The copy of sale deed dated 06-08-2014
- Exhibit A5 : Copy of construction agreement dated 13-07-2007
- Exhibit A6 : Copy of gift deed No. 2160/2016 dated 15-07-2016
- Exhibit A7 : Copy of photos showing pathetic condition of the Project

### Exhibits on the side of the Respondents

- Exhibit B1 : Copy of Occupancy Certificate dated 31-07-2009 issued by Kannur Municipality.

