



**REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 59/2022

Present : Smt. Preetha P Menon, Member

Sri. M P Mathews, Member

Dated 12th July 2022

Complainant

Sreekanth P B
Panackal House,
Pala P O- 686575
Kottayam

Respondent

1. Confident Project India Pvt. Ltd
Confident House,
Bangalore Municipal Corporation Door No. 65/4,
Seattle Towers No. 4, BTM Ring Road,
1st Stage BTM Layout, Bangalore-560068
Represented by its Managing Director Mr. Joseph T A
Theruvparambil House, Kumbalangi P O-682007



2. Avior Owners Association

Confident Avior, Chenkkottukonam

Thundathil- 695581

Represented by its President & Secretary.

The Complainant and Respondent attended the virtual hearing on
26.05.2022.

ORDER

1. The facts of the case are as follows:- The Complainant is an allottee in the Project "Confident Avior" developed by Confident India Pvt Ltd. The Complainant submitted that in order to waive off the complainant's interest claim on the pre-invested money of Rs.7,78,225 from 15 October 2013, the Respondents promised the Complainant that they will allot a car parking slot on the basement floor as per the complainant's choice and selection at the time of booking of apartment in Confident Avior. As promised, the Respondents allotted the car – parking slot No. BF-49 at the basement of the Apartment on 16 July 2020 after some communications and meetings, the same was confirmed through an email dated 16/7/202 as per clause 11 of the Sale Agreement that is regarding the terms and conditions pertaining to the car parking slot allotment. On 12/2/2021 (Association formation day) due to the interference of owners panel (Current Association management committee), the Respondents discarded the above said allotment and through a lot system without the complainant's consent and allotted the parking area to another apartment owner named Mr. Sandeep Sadan on 12/02/2021. Thereafter, the Complainant intimated all the other apartment owners that the allotment made to the Complainant was confirmed much



before the present system and this action is a violation of clause 11 of the sale agreement regarding parking slot allotment in the above said project by the Respondent and Avior Owners Association. The relief sought by the Complainant is the re-allotment of BF-49Car parking slot to the complainant's apartment number 201-B with an amount of Rs5000 as case expense or else, both the Respondent and compensation.

2. The 1st Respondent filed Objection/Counter-Statement and submitted that the Complaint is not maintainable either in law or on facts of the case. The Complainant had suppressed the important material facts and filed the Complaint to harass and defame the Respondent. The allegations against the Respondent are false, baseless, and unfounded. The Complainant is not entitled to any relief prayed for in the complaint. The project was undertaken by the respondent, named 'Confident Avior' at Chenn Kottukonam, Ayirooppara Village which was inaugurated on 15.04.2018. The Occupancy Certificate was received on 08.03.2021 and the project was handed over to the Residents Association on 12.02.2021. Thereafter the builder left the premises. The Complainant and his wife had booked Flat No. 201 B in Block B of Confident Avior. The Complainant had booked a flat, initially, in another project of the same respondent, Confident Gold Coast in 2013 and swapped to Confident Avior in 2015. The averment in the Complaint that the 1st Respondent promised to allot a carpark slot in the basement as per the Complainant's choice is completely false and hence denied by the Respondent. The Respondent never preferred any such assurance to the complainant as falsely revered. As per clause 11 of the agreement dated 16.11.2015 executed and signed by the Complainant and the 1st Respondent "Truss covered car parking or open car parking in the ground as per availability shall be provided and the same shall be provided and the same shall be chosen under a draw of lot



system". It also provides that the allocation of the parking slot shall be feasible only on the date of the Residents Association's formation. The location, position and sizes of the parking slot may vary particularly due to the positioning of the columns and/or stairway/structure etc. The car parking slots are being allotted by the way of lots in the Residents Association meeting. The Respondent submitted that as per Clause 11 of the Agreement dated 16/11/2015, "The consent of the First Party is deemed accorded in context to the allotment of the appropriate parking slot/facilities for physically handicapped/medically challenged co-owners/initial investors if any by the second party." But as a special case, the Respondent planned to reserve a car parking slot in the basement for the Complainant. The Car Park number is not mentioned in the Agreement. The Respondent reserved some car parking slots for its few clients in special conditions like medically challenged or initial investors as the case may be and in the Resident's Association formation meeting held on 12.02.2021. The email about the said reservation was intimated to the association, but the Association rejected the same saying that the Respondent cannot be given special allotments and that everyone should be treated equally. Thus, the Respondent cancelled all special allotments to the selected owners and decided to apply the lot system to a total of 144 owners. This matter was intimated to all the owners by email dated 12.02.2021. The Email message sent to all 144 owners read as "The Confident Group management is cancelling all special allotments, any commitments were given to the owners stand cancelled and all the total 144 car parks will go into the lot system." "No grievances to this effect shall be accommodated. This is the final decision of the Management." On the said date(12.02.2021), Residents Association Meeting was held at 6 pm and the car park allotment was done through the lots. As per the lots, the Complainant got car park no. BF 3 in the basement floor, the same was



informed to him on 15.02.2021 through email and the 1st Respondent issued an allotment Letter dated 15.02.2021 to the Complainant and he collected the same from the office. On accepting the Allotment Letter dated 15.02.2021 from this Respondent, the Complainant started parking his vehicle in the allotted Car Park No.BF 3 for more than one year and then suddenly claimed to the owner of the Car Park no.49 (Ms. Anishka Sandeep) showing the first mail sent by the Respondent dated 16.07.2020 that the Car Park No:49 reservation. The Complainant even threatened the real owner of car park No.49 that he would shift his vehicle to Car Park No.49. The Complainant blocked her car by parking his bike so that she could not take out of her vehicle. The owner of the Car Park No.49 filed a Complaint dated 03.02.2022 at the Pothencode Police Station. The Police summoned the complainant and warned him not to repeat such acts and he agreed on the same also.

3. The Respondent submitted that the Car Park slot No.BF 3 which was allotted to the Complainant and the other slot No.BF 49 which he is claiming now is on the same basement floor and is just 6 slots apart. It is submitted that the Complainant had filed another Complaint before this Authority against the Respondent (Case No:03/2021) and that was withdrawn by the Complainant itself. If he had any Complaint regarding the allotment of the parking slot, he would have raised it in the previous Complaint. The Complainant is creating all sorts of troubles in the complex as he refuses to abide by the Rules and Regulations of the Association and he had created a lot of issues with the Residents Association. He refused to pay the maintenance charges and hence the Association refused to extend its services to the Complainant. In this regard, the Complainant submitted a Complaint to the Health Department also and they have inspected and warned him to pay maintenance and to abide by the Rules and Regulations



of the Association. The project Confident Avior has 144 owners and it is only the Complainant who is creating problems in the premises. The Complainant made it a habit to unnecessarily submit false and baseless Complaints to various Authorities against the Respondent. Right from the beginning, the Complainant had always been in a confrontational and hostile mode with the Respondent for various petty and unwanted reasons. There is absolutely no merit in the contentions raised by the Complainant and hence the same is to be rejected. The Complainant is not entitled to any relief prayed for in the Complaint. The Respondent prayed that the Complaint may be dismissed with the cost to this Respondent.

4. The Complainant filed a replication to the objection filed by the Respondent. The Complainant submitted that the cause of action for this Complaint arose on 12/02/2021 and as per the Complainant it could be included in the earlier Complaint No. 3/2021 as it was submitted on January, 2021. The Respondent is trying to confuse the Authority and it was prayed to reject the counter statement. The Complainant swapped the project as the Respondent delayed in getting the building permit for the earlier project. The Complainant submits that no allottees have the right to interfere with other allottee's special all allotment. The non-acceptance mail was send to the Respondent for the cancellation mail of parking allotment. The point No 8 is rejected as the Complainant had not received any letter regarding the allotment. It was submitted that the last hearing in C.3/2021 was on 22/7/2021 and the Authority instructed the Respondent to handover all the amenities mentioned in Complaint No. 3/2021 in the presence of all allottees through a meeting. As per the order, the Respondent is supposed to arrange the meeting after 22/07/2021 and it is confirmed that no such meetings happened in Avior premises after the said date. It was submitted that the document prepared by the 1st Respondent



for the case 3/21 is a fabricated one and the representatives of the owner's association signed the document without informing to other 142 members of the association. The Complainant also submitted that the President of the association is legally not a member of the association as per LSG site details. The Complainant requested to reopen the said case as the facts of the case still exist except the KWA connection and to add the association as the second Respondent.

5. The 1st Respondent filed an additional objection/additional counter statement and submitted the Complainant first booked a flat at another project of the same Respondent, named 'Confident Gold Coast' in 2013 and he later swapped to 'Confident Avior' in 2015. The Respondent, as a special case, had given a special rate of Rs 2900/- per Sq. Ft to the Complainant considering he had booked earlier in Gold Coast project. This was when similar clients of Confident Avior were charged at Rs 3100/- per Sq. Ft. Further, the complainant chose a front-facing apartment, for which the Respondent charged other clients, additional Rs 50/- per Sq Ft. and Rs 15/- per Sq. Ft. as floor hike charge for 2nd Floor, thus the Respondent again gave an additional discount of Rs 65/- per Sq Ft. for the 2nd Floor. These were communicated to the complainant via email dated 24/08/2015 by the Respondent. It is further submitted that this Respondent by Email dated 24/08/2015 had intimated to the Complainant about the final price Rs 2900/- per Sq Ft. if he wanted to swap to Avior from Gold Coast to which the Complainant replied by email dated 24/08/2015 instructed to go ahead with Confident Avior Apartment No.201, Road facing View. Thus, the Complainant agreed and accepted the rate offered by the Respondent and signed document no. 1 on 16/11/2015. The total sale consideration for the apartment bearing No. B201 of the complainants reflected in the agreement dated 16/11/2015 is Rs 43,68,588/- which includes all the



facilities. At this juncture, it is submitted that the respondent reserves the car parking slots for its few clients in special conditions like medically challenged or initial investors case to case and in the resident's association formation meeting held on 12/2/2021 the Respondent intimated to the owners by an email about the said reservation, but the association rejected the same saying that this respondent cannot do any special allotments and everybody should be treated equally. Therefore, the respondent cancelled all special allotment to selected owners and decided to apply a lot system to all the total 144 owners, this matter was intimated to all owners by email dated 12/02/2021. On the said date 12/02/2021, the Residents Association meeting was held at 6 PM on the car park allotment was done through the lots. The complainant got the car parking No.BF3 in the basement floor, the same has been informed to him 15/02/2021 through email and the first respondent issued an allotment letter dated 15/02/2021 to the Complainant. On accepting the allotment letter dated 15/02/2021 from the Respondent, the Complainant started parking his vehicle in allotted car park No. BF 3 for more than one year and the on a fine day he suddenly claimed to the owner of the car park No. 49 Mrs Anushka Sandeep) showing the first mail sent by the respondent on 16/07/2020, that the car park No.49 is his car park. There is no Bonafede on the part of the complainant and he makes false claims with vested interest so as to harass others.

6. Heard both the parties. The documents produced by the Complainant are marked as **Exhibit A1 to A9**. The documents produced by the Respondent are marked as **Exhibit B1 to B9**. The project Confident Avior is a registered project under the Act, 2016 with registration No. K-RERA/PRJ/TVM/096/2022.



7. The Agreement dated 16/11/2015 executed between the Complainant and the 1st Respondent is produced by the Respondent and marked as **Exhibit B1**. The agreement is for the purchase of an apartment bearing No. B201 of the building name 'Confident Avior B' as described in schedule C of the agreement which is reproduced below

"Apartment bearing Number B201 admeasuring 120.82 Sq. mt/1300 Square feet super built-up area on the second floor, in the building complex known as CONFIDENT AVIOR B in the land described in the 'A' Schedule including share in common areas like staircases, lifts, ducts, entrance lobby, terrace, and common hall concealed piping, electric wiring and one covered/Tress work cark parking space".

It is clear that the Complainant was offered a covered car parking and the total consideration payable for the Apartment as described in Schedule C is Rs. 43,68,588/-.

8. In the prescribed agreement for sale under Rule 10 of the Kerala Real Estate(Regulation and Development) Rules,2018, the total price is based on the carpet area of the apartment. Price for garage/closed parking can be specified under the heading 'TERMS' point number 1.2. The Complainant has been provided a car parking space as per the agreement and he has no right to claim the location subsequently allotted to him based on the correspondence he had with the promoter. As per Sec 14(1), the 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. Any car parking space allotted/sold to the Complainant based on the sanctioned plans and the agreement has to be accepted by the Complainants, as no specific



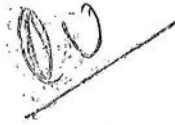
location is mentioned in the agreement. As per sec 11(4) (a) of the Act, 2016, the promoter shall be responsible for all the obligations, responsibilities, and functions under the provisions of this Act or Rules & Regulations made there under or to the allottees as per the agreement for sale.

9. The grievance of the Complainant cannot be considered as part of the obligations referred above under the agreement executed and hence the Complaint is dismissed.

Sd/-
Smt. Preetha Menon
Member

Sd/-
Sri M.P Mathews
Member

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits produced by the Complainant

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| 1. Exhibit A1- | True copy of Email confirmation of car parking allotment |
| 2. Exhibit A2- | True copy of Basement Car layout forwarded by Confident Group |
| 3. Exhibit A3- | True Copy of clause 11 of Sale agreement |
| 4. Exhibit A4 series- | True Copy of Payment receipt. |
| 5. Exhibit A5- | True Copy of Payment receipt of Rs 6,78,225/- out of 778225/- |



6. Exhibit A6- True copy of Electronic acknowledgement of BF - 49 allotment to the complainant by Mr. Radhakrishnan - President of the management committee. - Whatsapp
7. Exhibit A7- True Copy of association inference on car parking slot.
8. Exhibit A8- True copy of the document submitted in Complaint No. 3/2021.
9. Exhibit A9- True copy of mail communication showing payment made for car parking.

Exhibits produced by the Respondent

1. Exhibit B1- True copy of the sale agreement dated 16.11.2015.
2. Exhibit B2- True copy of the email dated 16-07-2020.
3. Exhibit B3- True copy of the email dated 12-02-2021.
4. Exhibit B4- True copy of the photos of car park allotment.
5. Exhibit B5- True copy of the email dated 12-03-2021.
6. Exhibit B6- True copy of the complaint given by Mrs. Anishka to Pothencode Police Station
7. Exhibit B7- True copy of the car park plan of basement floor.
8. Exhibit B8- True copy of the withdrawal email from Mr. Sreekanth
9. Exhibit B9- True copy of the email dated 24/08/2015.



