



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos. 7/2022

Present: Sri. P H Kurian, Chairman.

Dated 8th October, 2023

Complainant No. 7/2022

Lesly Philip Abraham
ParavilaPuthenVeedu,
Engappuzha, Puthupady P O
Kozhikode
[By Adv. V. Premchand]

Respondents

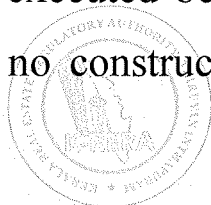
1. M/s Prithvi Housing,
Registered Office at
TMC 31/211 A, YMA Road,
South Thripunithura,
Kochi, Ernakulam- 682301
2. Suresh Ayyappan,
Vazhakalayil House,
Kaduthuruth, Kallara South P O,
Kottayam-686611
[Adv. Reji George]



The Complaint came up for hearing on 10/04/2023 and was reserved for order. The Counsel for Complainants and Counsel for the Respondents attended the hearing physically.

ORDER

1. The facts of the Complaint are as follows-The Complainant is the allottee in the Villa Project called 'CALADIUM' situated at Ernakulam developed by the Respondent/ Builder. The Complainant was desirous of purchasing luxurious villa in the said project for which the Respondents were also ready to arrange home loans. The Complainant booked Villa No 4 from the project. But later on, it was informed that Villa No 5, which is of the same design as Villa 4, and the owner of Villa 5 wanted to sell the same. It was informed that it would be easier and time-saving to complete the said villa rather than constructing a new villa from scratch, which is time-consuming. A loan amount of Rs. 44,55,000/- was sanctioned from the Axis Bank and disbursed in the Complainant's name which was paid to Mr. Jayashankar (owner of Villa No. 5, who is not a party in this Complaint) for the clearance of his dues as demanded by the Respondents. Further, an amount of Rs. 1,47,346/- was also paid to Mr. Jayashankar by cash to completely settle all his dues and the sale deed was registered in the name of the Complainant. Later on, an agreement dated 20-12-2013 was executed between the Complainant and Respondent. But then, no construction was carried out on the



property and the respondents requested more time for completing the villa. The Respondents ought to have completed the construction by 20/12/2014. It was submitted that even now the Villa is not completed and they have neither abandoned nor dropped. Now the Respondents are estopped from contending that the Project has been discontinued due to non-payment of funds from the Complainant. The Complainant submitted that as long as the project in question is not dropped or the money received by the Respondent has not been returned to the customer on the date of commencement of the Act, the project advertised by the Respondents can only be treated as an ongoing project and is not registered under the Act, 2016. The Complainant submitted that the Bank has initiated recovery proceedings against the Complainant for non-payment of loans. The Complainant paid Rs. 3,98,441/- towards EMI with Interest to Axis Bank up to 10/03/2015. The Complainant had filed a private complaint and also moved a Complaint in Consumer Disputes Redressal Commission, Thiruvananthapuram as CC 88/2017, and the same has been withdrawn. The Complainant was made liable to pay money which was sanctioned in his name without getting a Villa as promised and agreed upon by Respondents in his name. The Respondents who advertised, promised, and agreed to hand over a Villa in the Villa Project consisting of 23 villas in a gated colony have cheated and misappropriated more than Rs. 52,00,000/- from the Complainant. Even now the villa project is not complete



and two partially built houses are in existence. According to the Complainant, after launching the project, Respondents without completing the construction of the villa misappropriated the funds. Even assuming that the villa Project is stopped or kept in abeyance, as per the Complainant, it is an admitted fact that the respondents have received consideration directly from the Complainant and through the Bank, and the Respondents are bound to return the amount misappropriated and received with the commercial rate of interest. The Reliefs sought by the Complainant is to direct the Respondent to return an amount of Rs. 73,63,658/- received from the Complainant towards the advance together with interest @18% p.a and to declare that under Section 18(1) Respondents are bound to return the said amount with interest @18%.

2. The Respondent filed written statement and submitted that the Complaint is not maintainable before the Authority and does not have the jurisdiction to entertain the Complaint. The Complaint is filed on the basis of the agreement dated 20.12.2013. The Construction period was 12 months from the date of entering the agreement that ends on 20.12.2014. The development works were delayed due to the delay in payments by the allottees as per their payment schedule. The Respondents were unable to continue with the project due to the non-payment of funds by the allottee and they abandoned the project before the Act came into force. The Respondents submitted that they are not



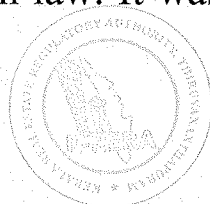
liable to register the project with RERA under section 3 of the Act, 2016 as the project was abandoned even before the Act came into force and no villa was offered for sale thereafter. The Act is applicable only in the case of projects that which ongoing on the commencement of the Act and for which the completion certificate has not been issued. Moreover, the Complainant had filed several complaints in other forums with the same reliefs and told that the Respondents have committed fraud and cheated the Complainant. The Complainant had paid the purchase amount to Mr. Jayashankar and not paid any amount to the Respondent Company. As per the agreement dated 20.12.2013 the Complainant is bound to pay an amount of Rs 23,34,000/- for the construction which was not paid to the Respondents and without any payment, the Respondents were not able to proceed with Construction. Due to the non-payment, the agreement dated 20.12.2013 was rescinded by the Respondents, and the construction of the villa was stopped. Therefore, there was no agreement between the Respondents and the Complainant when the Act came into force. New legislation ought not to change the character of past transactions carried out upon the faith of the then-existing law. For this reason, also, the Complaint is not maintainable.

3. The Respondent also submitted that the partnership firm of the Respondent Company was subsequently dissolved by the Partners by executing a deed of dissolution dated



01.04.2018 and the firm is no more doing any business. The Respondents denied all the averments and allegations in the Complaint. The delay in completing the construction of the villa has happened not due to any negligence on the part of the Respondents, but it happened only due to the failure on the part of the Complainant to make payments as per the payment schedule quoted in the agreement. The Respondents are not liable for the loan repayments made by the Complainant as it is based on the loan agreement executed between the bank and the Complainant herein. It was submitted that there were contradictions in the Complaints and reliefs prayed by the Complainants in other forums also. Therefore, it is clear that the Complainants do not have any consistent case. Further, the Complainant has not stated in the present Complaint how he calculated the damages at Rs. 73,63,658/-. The various prayers made by the Complainant are vague and not specific. There is no cause of action for filing the Complaint against the Respondent. The Complainant is not entitled to get any relief claimed and prayed to dismiss the Complaint with cost.

4. The Respondents filed I A 114/2022 and prayed to hear the question of jurisdiction of the Authority to decide the said Complaints as well as maintainability of the Complaints as preliminary issue. The Complainants filed reply to the I A and submitted that the entire contentions raised by the Respondents are unsustainable in law. It was raised to avoid and prolong the



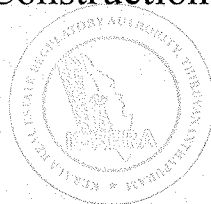
relief that the Complainant is entitled to get under the provisions of the RERA Act. Even assuming that the partnership was dissolved, does not dilute or vanish the legal liabilities created by the firm and the partners therein. The Respondent cannot be allowed to wriggle out of the commitment and liability in relation to the project which the Respondent Company initiated. There is no documentary evidence produced by the Respondent to show that they had obtained the permit from the local authority with regard to the development of the property. There is no evidence to show that the project was discontinued by informing the customers and the local Authority. Moreover, the project was commenced before the RERA Act came into force and will automatically be treated as an ongoing project under the provisions of the Act. The proviso to Section 3 of the Act, 2016 shows that, the project for which completion certificate has not been issued can only be termed as ongoing projects. The contention taken by the Respondent regarding the abandonment of the project is a statement that cannot be allowed to raise going by the scheme and provisions of the Act. The Complainants submitted that the present Complaint is perfectly maintainable in law and the application is liable to be dismissed.

5. After hearing the learned counsels on either side, and on the careful consideration of their submissions, and all documents available on record, the Authority has the following



observations. The documents produced by the Complainants are marked as Exhibit A1 to A5. The Complainant produced a sale deed dated 09.05.2014 executed between the Complainant and one Mr. Jayashankar and marked as **Exhibit A1**. **Exhibit A2** is the land tax receipt issued by the local Authority in the name of the Complainant. **Exhibit A3** is agreement for Development dated 20/12/2013 executed between the Complainant and the Respondent for completing the pending works in the villa. **Exhibit A4** the email communication dated 04/10/2017 regarding the payment made by the Complainant to one Mr. Jayashankar. **Exhibit A5** is the account statement of the Complainant. The documents produced by the Respondent are marked as Exhibit B1 to B13.

6. Both parties submitted their argument notes. The Complainant had produced the agreement for Development dated 20/12/2013 executed between the Complainant and the Respondent and a sale deed dated 09/05/2014 executed between Mr. Jayashankar and the Complainant. From the documents produced and arguments submitted, the Authority finds that there were no transactions shown between the Complainant and the Respondents. The payments are made to Mr. Jayashankar who is not a party in this Complaint. The agreement for Development produced only proves the completion of the specific villa on payment of the Construction cost to the Respondents. The



Complainants had not produced any proof showing the same. Hence, there is no question of considering the relief for refund in the Complaint and there is no allottee-promoter relationship seen established. As per Section 2(d) of the Act, 2016 - *An allottee in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer.* As per Section 2(zn) of the Act, 2016- *A real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.* The Authority observes that there is no project plan or development plan/permit obtained from the local Authority or produced by the parties. There is no substantial evidence produced by the Complainant regarding the registrability of the project. For registering a project, there should be an ongoing project as contemplated in the Act. The Act is applicable to the projects that are ongoing on the commencement of the Act and for which the occupancy certificate has not been issued. The



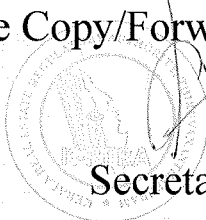
Respondents submitted that they have already abandoned the project much before the commencement of the Act and the partnership had been dissolved which is clear from the **Exhibit B11 & B12**. The payment receipts produced by the Complainants are only the sale deed consideration paid to Mr. Jayashankar who is not a party in this Complainant. The Complainant have failed to establish their case.

7. In the above circumstances, it is found that the relief sought by the Complainants cannot be considered under the Kerala Real Estate (Regulations and Development) Act, 2016, Hence the Complaint is hereby dismissed without prejudice to the right of the Complainant to approach the appropriate judicial forum to get the redressal of his grievance.

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order



Secretary (legal)

APPENDIX**Exhibits marked on the side of the Complainant**

- Exhibit A1: True copy of the Sale Deed.
- Exhibit A2: True copy of the land tax receipt dated 21/07/2014.
- Exhibit A3: True copy of the Agreement for Development dated 20/12/2013
- Exhibit A4: True copy of the email communication dated 04/10/2017 regarding the payment made by the Complainant.
- Exhibit A5: True copy of the account statement.

Exhibits marked on the side of the Respondents

- Exhibit B1: True copy of the Agreement for construction.
- Exhibit B2: True copy of the Sale Deed
- Exhibit B3: True copy of Rectification Deed.
- Exhibit B4: True copy of agreement for development.
- Exhibit B5: True copy of the Sale Deed
- Exhibit B6: True copy of the Complaint CC No. 88/2017.
- Exhibit B7: True copy of the Complainant filed before JFMC, Kolenchery.
- Exhibit B8: True copy of FIR dated 13.10.2017.
- Exhibit B9: True copy of Final Report dated 18.07.2018.
- Exhibit B10: True copy of the objection filed in CC 88/2017.
- Exhibit B11: True copy of the Agreement for dissolution of partnership

Exhibit B12: True copy of the Notice of change filed before the Registrar of firms.

Exhibit B13: True copy of the Judgement in WPC 4918/2020.