



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos. 8/2022

Present: Sri. P H Kurian, Chairman.

Dated 8th October, 2023

Complainant No. 8/2022

Thomas stephen,
Kayalakkal House,
Elavanthitta P.O,
Pathanamthitta
[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

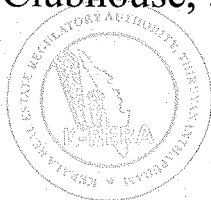
The Complaints came up for hearing on 10/04/2023 and was reserved for orders. The Counsel for Complainants and Counsel for the Respondents attended the hearing physically.

ORDER

1. The facts of the Complaint are as follows-The Complainant is an allottee of the Villa Project called 'CALADIUM' situated at Ernakulam being constructed by the Respondent/ Builder. The Complainant was desirous of purchasing luxurious villas in the said project for which the Respondents were ready to arrange home loans too. The Respondents themselves arranged housing loan for the Complainant from Bank, for Rs. 52,00,000/-. Thereafter, contrary to the assurance by Respondents, both orally and documentary, no construction was carried out in the property. At the same time, the Respondents had received the amounts in advance from the petitioner directly and also from Axis Bank, promising that they will complete the project and deliver the apartment in short time. On finding that not even 1/3rd of the amount given to Respondents were not utilized to complete the Construction of the villa, even after stipulated period, the Complainant asked Respondents to stop further construction of villa. This was done on realizing that Respondents instead of



utilizing the amount had squandered and misappropriated the huge amount of money paid by him by way of Bank Loan and directly. Even now the Villa project is not completed. They have neither abandoned nor dropped by the name "CALADIUM". Now they are estopped from contending that the Project has been discontinued due to non- payment of funds from the Complainant. As long as the project in question is not dropped or the money received has been returned to the customer on the date of Commencement of the Act, the project advertised by Respondents can only be treated as an ongoing project. For the purchase of land and construction of the Apartment, loan was sanctioned by Axis Bank for Rs. 52,00,000/-. The Respondents were paid Rs. 37,74,391/- through bank and another Rs. 10,10,304/- was paid by way of different cheques. The Complainant also paid Rs. 2 Lakhs as booking advance on 15/05/2012 by way of cheque. The Axis Bank officials have colluded with the Respondents as a result of the same, without adhering to the release of stage-wise amount in tune with the construction, they have released more than 90% of the loan amount. The Complainant filed private Complaint and Consumer case which has been withdrawn. The Complainant submitted that out of the 23 villas mentioned in the brochure, not even a single structure has been completed and occupied. Likewise, the other facilities such as the swimming pool, Children's Park, Clubhouse, Jogging track, Indoor shuttle court,



etc are also not provided in the property inquest. The Reliefs sought by the Complainant is (1) to direct the Respondent to return an amount of Rs. 63,12,644/- received from the Complainant towards the advance and construction of villa project by name "CALADIUM" together with interest @18% p.a and (2) to declare that under Section 18(1) Respondents are bound to return an amount of Rs. 63,12,644/- received from the Complainant towards the advance and construction of villa project by name "CALADIUM" with interest @18% p.a and an amount of Rs. 4,69,353/- paid to Axis Bank towards EMI and Interest.

2. The Respondents filed written statement and submitted that the Complaint is not maintainable either in law or on facts and the Authority does not have the jurisdiction to entertain the above Complaint. The Complaint has been filed by the Complainant on the basis of agreement executed on 03.08.2012. The period fixed for the construction was 2 years from the date of the agreement, which ended on 02.08.2014. In such circumstances, the Complainant's right to claim any remedy on the basis of the agreement dated 03.08.2012 became time-barred on 02.08.2015, and the agreement dated 03.08.2012 became unenforceable. Since the agreement dated 03.08.2012 ceased to be enforceable and thus became void on 02.08.2015 ie. Even before the Act came into force, no proceedings can be initiated against the Respondents under the Act on the basis of



the agreement dated 03.08.2012. The development works were delayed because the purchasers of the various plots in the project, including the Complainant, were not regular in making payments to Respondent Company as per their respective payment schedules. 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 and it cannot be claimed as an ongoing project as contemplated in the Act. 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 much 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 are 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 Complaints were withdrawn for approaching the Authority. After starting the construction, the Respondents periodically updated the progress of the work. Thereafter, some issues arose between the Complainant and his banker and in September 2013, the Complainant instructed the 1st Respondent over telephone to slow down the construction work of his villa. Further on 08.01.2014, the Complainant instructed the 1st Respondent to stop the work completely by



sending an email and accordingly, the construction of the villa was stopped and send an email claiming a total amount of Rs. 9,41,932/- towards payment of pending dues. However, the Complainant did not pay any amount. The Respondent issued several reminders, but the Complainant did not respond to same and meanwhile the contract period expired on 03.08.2014. In this situation, the 1st Respondent issued an email on 04.10.2014 intimating the same and asking for the balance payment due for restarting the Construction. It was also informed that payment has to be revised as per the current rates as the agreement has already expired. The Complainant replied to the said email on 12.01.2015, raising false allegations. Since the Complainant failed to respond positively to email dated 04.10.2014, the 1st Respondent rescinded agreement dated 03.08.2012 executed with the Complainant and therefore, there was no agreement between the 1st Respondent and the Complainant when the Act came into force in the year 2016.

3. The Complainant claimed that he paid a total sum of Rs. 63,12,644/-. It was submitted that the Complainant has paid only a sum of Rs. 47,84,695/- till date and the Respondent has already paid sales tax proportionate to the amount received. 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 Complainant entered into an agreement for the sale of a plot of land marked as No. 3A with the landowner on 03.08.2012. On the same date, the Complainant entered into an agreement for construction with the Respondent for a total construction cost of Rs. 64,15,250/- and paid an advance of Rs. 2 Lakhs to the Respondents. As per the agreement, the Respondent agreed to complete the construction within 24 months, ie on 03.08.2014. Subsequently, the landowner executed and registered Sale deed dated 08.08.2012 in favour of the Complainant. Even though the Complainant had agreed to pay Rs. 23,66,100/- at the time of execution of construction agreement dated 03.08.2012, but he could not pay any amount to the respondent. The Complainant thereafter issued post-dated cheque for Rs. 14,15,456/- and agreed to pay the balance amount after availing a housing loan. The Complainant was always irregular in making the payment as per the schedule and even two of the post dated cheques issued by him were dishonored for want of funds in his account. While so, some issues arose between the Complainant and his banker, and in September 2013, the Complainant instructed the Respondent over the phone that the construction work of his villa be slowed down. Further on 06.01.2014, the respondents were instructed to stop the work. Thereafter, the work was stopped and the Respondent sent an email to the Complainant claiming a total amount of Rs. 9,41,932/- towards the payment of balance dues.



Then again, a reminder mail was sent to the Complainant on 05.07.2014. The Complainant did not respond to that email either. Meanwhile, the contract period expired on 03.08.2014. In such circumstance, the Respondents issued an email dated 04.10.2014 indicating to the Complainant that the Contract period is over, that the balance amount has to be paid by the Complainant and that a new agreement has to be executed with the current rates. The Complainant sent a formal reply. Since the Complainant failed to positively respond to email dated 04.10.2014, the Respondent rescinded the agreement dated 03.08.2012. Thereafter, there was no communication from the Complainants.

4. The relief claimed by the Complainant by way of compensation is without any rhyme or reason as the Complainant has not pleaded anywhere as to how he has suffered the loss, if any nor did he submit the details of the calculation. He has not deducted the value of the property transferred to his name by the landowner. The delay in completing the villa happened not due to any negligence on the part of the Respondents, but happened only due to the failure on the part of the Complainant to make payment as the payment schedule. The Respondents submitted that there is no cause of action for filling the complaint. The Complainant is not entitled to get any relief claimed by the Complainant and prayed to dismiss the Complaint.



5. The Respondents filed I A 115/2022 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 adduced to show that, the project was discontinued by informing the same to 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 abandonment of



the project is a statement which cannot be allowed to raise going by the scheme and provisions of the Act.

6. After hearing the learned counsels on both sides, 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 A7. The documents produced by the Respondent are marked as Exhibit B1 to B13. Both parties submitted their argument notes. The Complainant has produced an Agreement for Construction dated 03/08/2012 executed between the Complainant and the Respondent which has been marked as **Exhibit A1**. As per the agreement the term used is 'Contractor' who is constructing similar villas called 'CALADIUM' and it is nowhere mentioned that it was a Real Estate Project. The objective of the Act 2016 itself is "*to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector*". Hence for adjudication of the above complaint, initially it is to be confirmed that it is related to a "real estate project" registerable under Section 3 of the Real Estate (Regulation & Development) Act, 2016. As per Sec 2(zn) of the Act, 2016 "Real Estate Project" defines as "*the development of a building or a*

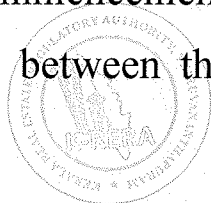


building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights, and appurtenances belonging thereto". The founding objective of the Authority is to monitor the real estate sector and adjudicate disputes related to real-estate projects. As per the Construction Agreement produced, it can only be considered as a Contractual relationship between the parties that cannot be entertained under the Act,2016.

7. Moreover, as per Section 2 (d) of the Act, 2016, the "allottee" means "*a person to whom a plot, apartment or building, has been allotted or sold or otherwise transferred by the promoter, and also includes the person who subsequently acquires the said allotment through the sale but does not include a person to whom the plot or apartment is given on rent*". There is no such agreement for sale seen executed in this case. The Authority also observes that there is no development permit obtained or produced by the parties. As per Section 3 of the Act,2016- (1) *No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without*

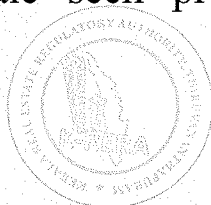


registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration. The Complainant had not produced any evidence proving that the Respondents have tried to advertise the project or tried to sell any of the plots after the commencement of the Act,2016. It is clear from the agreement produced that there exists a contract between the parties for constructing building by a contractor on payment made for construction. The Respondents had produced a Sale Deed dated 08.08.2012 which is marked as **Exhibit B1** executed between the Landowner and the Complainant. The Sale deed produced by the Complainant was executed in the year 2013 which is much before the commencement of the Act,2016 and there is no agreement for sale between the Complainant and Respondent



seen produced by either parties. The sale deed was executed to the full satisfaction of the Complainant. The Respondent have produced the email communications which has been marked as **Exhibit B3** which explains that there was an instruction from the side of the Complainant to stop the work for the time being and after reminders to pay the balance amount, the Complainant had sent the reply mail not to continue with the work. Even though the Complainant had submitted that he had made a payment of Rs. 47,84,695/ to the Respondent Company, but no sufficient receipts have been produced to substantiate the said contention. There is no substantial evidence produced by the Complainant regarding the registrability of the project. The Respondents submitted that they had already abandoned the project much before the commencement of the Act as there was not payment made by the parties. From **Exhibit B 7** produced by the respondent, it is clear that the firm has been dissolved back in 2018 and the Authority cannot make the firm liable for the non-completion of the villa under the Act,2016.

8. On going through the documents produced by both the parties, it can be concluded that the project in question in the Complaint cannot be considered as an ongoing project and is not registrable under the Act,2016. Moreover, there is no allottee-promoter relationship (as described in the Act) to prove that between the Complainant and the Respondent. There is no agreement for sale seen produced. The sale deed is seen



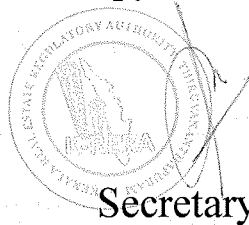
executed to the full satisfaction of the Complainant. There is no transaction seen between the Complainant and Respondent for want for refund or the villa construction after the commencement of the Act,2016.

9. 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 forum to get the redressal of his grievance.

Sd/-

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 cheque details issued to the Respondents.
- Exhibit A3: True copy of the notice dated 30/12/2016
- Exhibit A4: True copy of the Brochure.
- Exhibit A5: True copy of the emails.
- Exhibit A6: True copy of the Account Statement.
- Exhibit A7: True copy of the email communications.

Exhibits marked on the side of the Respondents

- Exhibit B1: True copy of the Sale Deed
- Exhibit B2: True copy of the Agreement for construction.
- Exhibit B3: True copy of various emails.
- Exhibit B4: True copy of Complaint filed by the Complainant in JFMC.
- Exhibit B5: True copy of the FIR
- Exhibit B6: True copy of the Complaint CC No. 221/2017.
- Exhibit B7: True copy of the Agreement for dissolution of partnership.
- Exhibit B8: True copy of the Notice of change filed before the Registrar of firms
- Exhibit B9: True copy of the certificate issued by CA.

- Exhibit B10: True copy of the objection filed in CC 221/2017.
- Exhibit B11: True copy of Final Report dated 18.07.2018.
- Exhibit B12: True copy of Complaint No. 6/2020
- Exhibit B13: True copy of the Judgement in WPC 4918/2020.