



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaints No. 90 /2020 & 126/2020

Dated 8th March,2021

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

Complainants

Ajith Kumar K.R : Complaint No.90/2020
Kuzhupadikkal House
Karattupallikara Perumbavoor P.O,
PIN- 683 542

Siva Kumar. S : Complaint No.126/2020
68/1610, Mughal Tower,
Kamaleswaram, Manacaud,
Thiruvananthapuram

Respondent

M/s Sowparnika Projects,
Represented by its authorized Partner,
S. Sreenivasan,
Vetticulam Arcade,
Opp. Mar Ivanios College Main gate,
Nalanchira(PO)
Trivandrum-695 015.

The Complainants and the Counsel for the Respondent,
Advocate Ajakumar attended the virtual hearing today.

COMMON ORDER

1. As the above two complaints are related to the same project developed by the same Promoter and 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 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 No: 90/2020 are as follows: The project was supposed to be completed and handed over possession to the Complainant by March 2019 as per the agreement of construction dated 26th July 2016. Copy of the Agreement for construction dated 26/07/2016 produced by Complainant. But the Project was not ready till 22nd January 2020 and no favorable response has been received from the Respondent. The facts of the Complaint 126/2020 are as follows: - The Respondents are the absolute owner of 13.36 Ares of land in Re. Sy No: 677/1-1-1 of Nemom village which they obtained by virtue of sale deed no: 327/2015 and Correction deed No: 2137/2015. The Respondents had entered into a registered agreement for sale with the Complainant on 13-06-2018 with respect to 25.03 Sq.mtr of undivided right, title and interest out of the total extent of 13.36 Ares of land. Copy of Agreement for sale dated 13-06-2018 is produced herewith by the Complainant. On the same day itself, the Complainants and Respondent entered into a construction agreement and as per the terms, the Respondent had offered to sell and transfer 25.03 Sq.mtr of undivided right on 13.36 Ares of land with apartment unit bearing No: D on the 1st floor of the building known as "River View Garden Phase V" admeasuring super built up area of about 884 Sq.ft. As per the agreement, an amount of Rs. 25,73,990/- was fixed as total sale consideration and

Respondents further agreed to execute sale deed and handover possession of the proposed flat by October 2018 with a grace period of 6 months. Copy of the Agreement for construction dated 13/06/2018 is produced by the Complainant. On 13-06-2018 itself the Complainant, Respondent and State Bank of India, Manacaud branch had entered into a Tripartite agreement and as per the terms SBI had disbursed an amount of Rs. 21,10,781/- in total to the Respondent as per the schedule incorporated in the agreement for construction. Copy of Tripartite agreement dated 13-06-2018 is produced by the Complainant along with complaint. The Respondents were dutiful to commit their promise to complete the construction work and handover possession of the flat before October 2018, but they violated and ignored the terms and has completed only 60% of the work so far. The relief sought by the Complainant in Complaint No: 90/2020 is to deliver the possession of the apartment with Tc number at the earliest and to get compensation as per the agreement of construction dated 26 July 2016 from the period March 2019 onwards and the relief sought by the Complainant in Complaint 126/2020 is (1) to direct the Respondents to complete the construction work and handover possession of the Apartment within one month. (2) to pay compensation of Rs 5,00,000/- to the Complainant for delay caused in delivering apartment, (3) to get 18% interest for the amount of Rs 2,50,000/- from Respondent till delivering possession, (4) to get a compensation for mental agony for Rs 2,00,000, (5) and to compensate the Complainant for unnecessary expense incurred by paying monthly rent till date.

3. The Respondent has filed written statements in both the above complaints. The Respondent pointed out that the complaints are not maintainable either in law or on the facts. The promoter in the complaint is a registered partnership firm "M/s Sowparnika Projects" but the said firm is

not impleaded in one of the Complaints. So, the Respondent submitted that the complaint be returned back to complainant for curing the defects or to file a fresh complaint. The Respondent also pleaded that the project was registered with Kerala Real Estate Regulatory Authority and the completion date stipulated in the application is December 2021. In such a circumstance the complainant has no right to claim compensation unless the allotment is opted to be cancelled by the Complainant. The Respondent also submitted in objection that the delay in delivering possession occurs due to 2018 flood which affected the construction area badly and further after March 2020 no work could take place effectively due to Covid-19 pandemic and subsequent lock down. These factors are beyond control of the Respondent and the same amounts to force majeure, so the Respondent is not liable for any compensation for the delay. The Respondent also denied Complainant's contention that the work was completed only up to 60%, but stated that more than 92% of the work is completed and the same could be verified by the Complainant. The Respondent further claimed that the project was registered with the Authority and the completion date stipulated in the application is December 2021. So, the allottee has no right to claim compensation unless the allotment is opted to be cancelled by the allottee. The part payments made by the Complainant and more are used for construction and hence the payment of interest for the amount paid by the allottee to the promoter to be utilized for construction will be unjust and the same will lead to the unjust enrichment on the part of the allottee. An allottee who failed to discharge his obligation under section 19 (6) of the Act is not entitled to claim interest for the delay in handing over the apartment. The allottee's claim in the complaint is totally against the provisions under section 19 (4) of the Act. The project was conceived as a low-cost affordable housing project for the middle-class income group who had no means to buy a house. The delay was due to the flood, covid-19 pandemic and non-

availability of sufficient laborer. Further, the Respondent claims that they have upgraded the specifications agreed to be provided to the allottees such as: for flooring tiles have been upgraded from ceramic tiles- to vitrified tiles, for painting – from OBD to emulsion paint, Kitchen counter- from kadappa to granite, Door- RCC frame to molded door frame, Windows- MS shutter to aluminum shutters. The agreement contains stagewise schedule of payments and the promoter has been paid only up to the stage of construction finished. The tripartite agreement was entered into by the promoter at the instance of the allottee to help him and if the allottee defaults the payment of instalments the bank can recall the loan amount. The alleged delay is due to unforeseen circumstances and the complainants are not entitled to any compensation. When there is progress linked payment schedule in the agreement, the date of completion in the agreement has no relevance as the same is only an expectation of the parties. The Complainants as well as other allottees have not paid the respective instalments and the same has also affected the progress of construction. There is substantial balance due from the allottees. The Respondent further states that they are ready and willing to finish the works at the earliest and hand over possession of apartments to the complainants.

4. Heard both parties in detail and examined the documents submitted by them. During the hearing the Complainants repeatedly complained that though the Respondent promised to complete the project and hand over possession on or before October 2018, with a grace period of 6 months, the project is not completed till date and the Complainants are paying huge amounts towards EMIs if their bank loans due to the inordinate delay in completion of the project. All the meetings conducted with the Respondents to discuss the issue were in vain and the construction of the apartment complex is nowhere near to completion. The Complainants

strongly denied the arguments of the Respondent that the Complainants as well as other allottees have not paid the respective instalments and the same has also affected the progress of construction. During the course of hearing, the Complainants also produced copies of 2 inspection reports, prepared by an engineer, dated 30.10.2020 showing the status of pending works in both the apartments belong to the Complainants as well as common amenities of the project, which state that the said individual units could be completed within a period of 5 months and common amenities within 2 months, if it is done with proper planning and sufficient labor strength. The statements of the Respondent such as "the alleged delay is due to unforeseen circumstances and the complainants are not entitled to any compensation", "When there is progress linked payment schedule in the agreement, the date of completion in the agreement has no relevance as the same is only an expectation of the parties", etc. are reckless and made without any reasoning. If the Respondent/Promoter makes such inordinate delay in completion of the works, how could he expect payments from the allottees precisely as per the payment schedule? Moreover, we surprise as to the relevance of statement of the Respondent here that "the project was conceived as a low-cost affordable housing project for the middle-class income group who had no means to buy a house" because such 'middle-class income group who had no means to buy a house' should not be fallen in such a huge trouble due to the negligence of the Respondent himself.

5. As the Respondent has undertaken that they are ready and willing to finish the works at the earliest and hand over possession of apartments to the complainants, the Authority, vide Interim Order dated 19.01.2021, directed the Respondent to call a meeting with prior notice to all the allottees, form an association, list out all the agreed pending works and time

schedule to be arrived at for completing the works. The Respondent was also directed to file a sworn affidavit with regard to the decisions arrived at with the time for completion of the entire project with clear mile stones along with minutes of the meeting. In compliance of the said order, the Respondent submitted an affidavit dated 17.02.2021 with work schedule, as per which the Respondent affirms that they will complete the full work and hand over the apartments by **August 2021**. It is noticed that the direction for forming the association of allottees has not been complied with by the Respondent. In the meeting minutes produced by the Respondent, it is stated that the Allottees informed that there is no requirement of forming an association at present. As per Section 11 (4) (e) of the Real Estate (Regulation & Development) Act, 2016 it is the responsibility of the Promoter to enable formation of association of allottees within a period of 3 months of the majority of allottees having booked their apartments which is to be followed by the Promoter mandatorily and as per Section 19(9) of the Act, it is the duty of every allottee to participate towards formation of association of allottees in the project which is to be followed by all the allottees mandatorily. Copies of two minutes of meeting dated 15.02.21, attended by 26 allottees & 16.02.21, attended by 20 allottees are produced by the Respondent.

6. On the basis of the confirmation and undertaking by the Respondent as per the above-mentioned affidavit and also with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions :

- 1) The Respondent / Promoters, shall fix a date of meeting send notices to all the allottees of the project 'Souparnika Riverview Garden' and convene a meeting of all the allottees at the project site. Those who are not able to attend physically shall attend the meeting virtually for which suitable arrangements shall be done by the Promoters.
- 2) All the allottees of the project 'Souparnika Riverview Garden' shall participate in the meeting and co-operate for the successful formation of Association of allottees and its registration, as per the provisions laid down under Section 11 (4) (e) and Section 19 (9) of the Act.
- 3) The Respondent shall complete and hand over, the project 'Souparnika Riverview Garden' to the Complainants, in all respects as committed/promised to them, along with all the amenities and facilities and mandatory sanctions / approvals required to be received from the Authorities concerned, **on or before 31.08.2021** without fail.
- 4) The Association shall monitor the progress of works and make sure that it is being carried out as per the Work Schedule. In case of any default from the part of the Respondent, the Association can approach this Authority.
- 5) The Respondent shall submit before this Authority, the compliance report in the form of an affidavit on 01.09.2021.

In case of non-compliance of this order, the Authority shall initiate severe penal actions against the Respondent in accordance with the provisions of the Act.

This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation, for the loss sustained to them, if any, in accordance with the provisions of the Act and Rules.

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 dated 26/07/2016 and 13/06/2018.
- Exhibit A2 series : True copy of agreement for sale dated 13-06-2018 and 26-07-2018
- Exhibit A3 series : True copy of the Tripartite agreement dated 26-07-2016 & 13-06-2018
- Exhibit A4 series : Copies of two inspection reports, prepared by an Engineer, dated 30.10.2020
- Exhibit A5 : True copy of lawyers notice dated 25-11-2019
- Exhibit A6 : Renewal and extension of tenancy agreement dated 17-12-2012

Exhibits on the side of the Respondents

- Exhibit B1 : Affidavit dated 17.02.2021 with work schedule.
- Exhibit B2 : Copies of minutes of meeting dated 15.02.2021
- Exhibit B3 : Copies of minutes of meeting dated 16.02.2021