



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 90/2024

Present: Sri. P.H Kurian, Chairman
Dr. B. Sandhya, Member

Dated 23rd January, 2025

Complainants

Gautham. A,
Kedaram, Pathiriyal P.O.
Manjeri,
Malappuram District, Pin – 676123.

Respondents

1. Managing Director and Promoter,
Chothy's Building Promoters (P) Ltd
TC 71/2575(1) Killippalam,
Thiruvananthapuram -695036.
2. B. Karthikesan Nair,
Chothy's Building Promoters (P) Ltd
TC 71/2575(1) Killippalam,
Thiruvananthapuram -695036.
[By Adv. Shaju Ray & Adv. Harikumar]
3. Bhadranandan. N.
Rosenhyme, Villa No. 14, Chothy's Green Views,
Kavinipuram, Puliয়ারakonam,
Thiruvananthapuram- 695573.



The above Complaint came up for virtual hearing on 23.01.2025. The Complainant and the Counsel for Respondents No 1 & 2 attended the hearing.

ORDER

1. The factual matrix of the Complaint in brief is as follows: The Complainant is an owner of villa No. 12 in the real estate villa project 'Chothy's Green Views' Puliয়ারakonam, Vilappil, developed/promoted by the Respondents No. 1 and 2. The Respondent No. 1 is the promoter Company and Respondent No. 2 is its Managing Director. The villa project is a registered project under K-RERA vide No. K-RERA/PRJ/116/2020. The Respondent No. 3 is the neighbouring villa owner of plots/villas No 13 & 14 later converted as a single unit. The Complainant entered into an Agreement for Land Development and Construction with the Respondents No. 1 and 2 on 18.06.2019 for the purchase of villa No.12 which is a 4.25 cent of plot in the project with villa admeasuring 1515 sq ft. As per clause 26 of the of the said Agreement "THE PURCHASER unconditionally and unequivocally agrees that he shall not after the completion of the construction or before, undertake any structural work, which will be detrimental to other residential units or cause hindrance/inconvenience to other residential units. The PURCHASERS shall also be bound to strictly adhere to the



conditions set out in the schedules 'C, C-1, C-2' attached herein". The Complainant had taken the possession of villa No. 12 during November 2021. After taking possession of the villa from the Respondent No.1, upon his visit to the villa, in January 2022 the Complainant noticed an additional construction work on the common wall, front side and wall in between the Complainant's villa No.12 and the neighbouring two plot/villa No. 13 & 14, converted to a single plot, causing hindrance and inconvenience to the Complainant and his villa No.12. On 18.01.2022, immediately upon noticing the same the Respondents No. 1 & 2 and their representatives were requested to rectify the same. The initial response from the representative was that the wall height was increased as per their chief Engineer's instruction for the privacy and safety of villa No. 13 & 14. Since then, the Complainant have had multiple telephonic conversations, face to face visits and have also sent multiple emails regarding the issue and lastly it was raised in the General Body meeting between the Builder and the Owners wherein the Respondents No. 1 and 2 had agreed to rectify the additional construction. The Complainant had also highlighted multiple times to the Respondents No. 1 and 2 on the agreement between them which clearly states that the owners of the villa shall not after the completion of construction or before, undertake any structural works, which will be detrimental to the residential units or cause hindrance/inconvenience to other residential units. Since similar



agreement would be available with all owners, it is grave violation of written agreement by the owners of plot/villa No 13 and 14. The construction done by the builder for the 3rd Respondent villa owner was entirely different from the other villas within the complex which is also a violation of the said agreement. The Respondents No. 1 and 2 verbally informed the Complainant that the construction was undertaken by the Respondent No.3 without informing and getting any approvals from them. No approval was taken from owners' association as well. The Owner's Welfare Association was also requested that it is under the purview and duties of the villa management Association to rectify, sort out and course correct any issues prevailing within the villas. However, the Association had denied the request stating that the construction had occurred prior to the inception of the Association. For plot/villa No. 13 & 14 the land height for the neighbouring plot to villa No.12 was also increased by the Respondents No. 1 and 2 to bring both the plots to the same land level. The Respondent No.3 villa owner has not sought permission, while the modification was made on the common walls and other walls of plots No. 13 and 14. The boundary walls of plot/villa properties are common and modifications are not permitted against the conditions in the Agreement for Land Development and Construction. With the additional construction of the walls the sight to Complainant's villa is hindered hugely at aesthetic levels, wind circulations, sun light and also would affect



monetarily while selling the property. Out of the 32 villas in the project, villa No. 13 and 14 converted as single plot, is the only offender in terms of unauthorized and unapproved construction causing inconveniences to the neighbouring villas and villa owners. This is unacceptable as all the owners have the same rights. The Reliefs sought are: i) all the common walls between Villa No. 12 Villas No. 13 & 14 along with the front wall including the gate of Villa No 13 & 14 to be demolished and reworked as per the standards sizes as agreed by 1st & 2nd Respondent in Agreement for Land Development and Construction, causing no issues to the neighbouring villas and follow the common pattern of the villa project as per the brochure ii) the 1st and 2nd Respondents be warned to take due caution to avoid such instances of hindrance and inconvenience to the inmates during future projects.

2. The Respondents No. 1 and 2 filed counter affidavit in which it was stated as follows: The Complaint is not maintainable and the allegations made in the Complaint are totally false and unsustainable in law. The plots No. 13 and 14 was registered and possession was handed over to the Respondent No. 3 in the year 2019 and construction of the building as well as the compound wall was completed in the year 2022. The plots No. 13 and 14 were allotted to the Respondent No. 3 and the Respondent No. 3 converted the same as a single plot. The construction of the building and the compound wall was done at the instruction and



direction of the Respondent No. 3 by Respondents No.1 & 2. The gate was also designed and delivered by the Respondent No. 3 at the spot. The allegation that the height was increased as per the instruction of the chief engineer of the Respondent No. 1 is false and hence denied. Respondents No.1 & 2 have no right or legal authority to interfere with the acts, deeds and things done by the respective owners of the villas after handing over the possession and hence Respondents No.1 & 2 have been unnecessarily been impleaded in the present complaint. The complainant has no cause for the present complaint against Respondents No.1 & 2 and the Complainant is not entitled to get nay reliefs as prayed for and the Complaint is only to be dismissed.

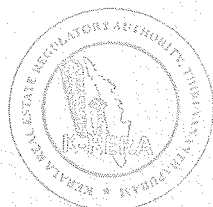
3. The Respondents No. 3 and his wife, the owners of plots/villas No 13 & 14 jointly filed counter affidavit in which it was stated as follows: The Respondents No. 3 and his wife entered into agreement with Respondent No. 2 for and on behalf of Respondent No.1 on 06.05.2019 for the purchase of 9 cents of land in survey No.244/4 which were designated as plot/villa No. 13 and 14 as a single plot and for the construction of 1660 sq ft house in it. The land was registered in their name vide document dated 21.08.2019 of Malayinkeezhu Sub-Registrar office. Since then, the land is owned and possessed by them and the land taxes are remitted, subsequent to the registration of land, Respondent No.1 started the construction. The building and related works including the construction of compound walls, gate fixing etc,



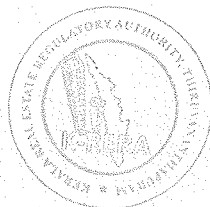
were done by Respondent No.1 itself and handed over to the Respondent No.3 and his wife on 27.07.2022 vide letter 27.07.2022. The gates for the compound walls both wicket and main were supplied by the Respondent No. 3 since they noticed many other villas owners have done so. The heights of compound walls of plot/villa No. 13&14 were furnished.

- a. Shared compound wall between Villa No. 12 (North side boundary) – 110 cm (measured from inside of our land)
- b. Shared compound wall between Villa no. 15 (South side boundary) – 180/190 cm (measured from inside of their land).
- c. Shared compound wall between Villa no. 21 (West side boundary)-about 5 mtr (approximate). Villa no. 21 and 22 are at a different level and at the back side of their land.
- d. Front side (East side/villa road side) in front of house – 130 cm (measured from inside of their land)
- e. Front side (east side-villa road side) in front of vacant land – 150 cm (measured from inside of their land)

4. It was further submitted that the Villa was constructed as per the 'Site Approval and Building Permit' issued by Vilappil Grama Panchayat vide No. A3-9160/2019 dated 24.10.2019. The permit stipulates that the construction shall be as per KPBR Rules 2019. After construction of the building, the panchayat authorities have inspected the construction and issued building number (2/525/Q) to their villa. Ownership certificate bearing No. A3/73668/2021 dated 27/04/2021, was also issued by the



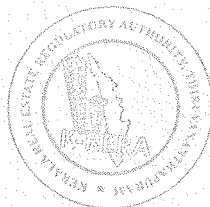
Secretary, Vilappil Grama Panchayath. Entire construction excluding the 'Interlock pavement of entire court yard, interior furnishing (cupboards, kitchen cabinets, partition walls etc) open terrace roof (corrugated sheet roofing), fitment of one UPVC window, were done by the Respondent No.3 and his wife engaging other vendors since these works were not covered under the contract of the superstructure, shuttering of windows and doors, all works of plumbing, electrification, painting, laying of floor-tiles, wall tiles (rooms, halls, bathrooms, kitchen), bathroom fittings, construction of compound walls, fixing of gates (both wicket and main) etc. have been done by Respondent No.1 & 2. Villa No.13/14 was with compound walls and both wicket and main gates, when it was handed over to them on 27.07.2022, and they still maintain the building and compound walls and gates as it was handed over to them. The Respondent No. 3 and his wife have not made any structural or design or paint changes to the compound walls or the building so far. As per Clause No. 21 of the agreement Respondent No.1, the builder had the right to go ahead with their activities to complete the incomplete works in a villa even after the possession of the residential unit by the purchaser. Neither the PURCHASER nor the owner's association shall stand in the way of unfinished works in the remaining portion of the construction. The construction of building of Respondent No. 3 and his wife was still going on when the Complainant took over the possession of Villa No. 12. Whatever



construction done in the villa No. 13 &14, by Respondent No.1 are as per requirement and needs of Respondent No.3 and his wife. The construction of Villa No.13 &14 and its compound walls are in accordance with the provisions of KBPR/2019. If there is a violation of the provisions of KBPR/2019 which were applicable during the period of construction of our villa No.13 & 14, and that is specifically convinced, Respondent No. 3 and his wife have no objection in directing Respondent No. 1 to rectify it.

5. The Project is registered under Section 3 of the Kerala Real Estate (Regulation and Development) Act, 2016 [herein after referred to as “the Act 2016”] vide Registration No. K-RERA/PRJ/116/2020, the proposed completion was on 28.02.2023. As per declaration in Form 6 uploaded in the web portal of the Authority by the Respondents No.1 &2 /promoter on 02.08.2023, project is completed in all respects.

6. On the initial hearing on 25.09.2024, the Authority directed to send two technical officers of the Authority to inspect the site giving notice to all parties and to submit detailed report. The technical officers visited the project site on 13.11.2024 and submitted report dated 26.11.2024 in which it was submitted as follows: During inspection, Smt. Jayasree mother of the Complainant, Presannakumar GM of the Respondent No.1, Bijukumar Chief Engineer of Respondent No. 1 and Bharanandan Respondent No.3 were present. As per report, Respondent No. 3



purchased 2 plots No. 13 & 14 and has constructed a villa in plot No.13 and plot No. 14 is found to be vacant. The project is located in an undulating terrain with lot of level differences. The issue raised by the Complainant is with regard to the height of the compound wall constructed in between the plots and in front of plot No. 13. The height of compound wall constructed in between plot No.12 &13, from plot No.12, Complainants side is 2.25 m and from plot No. 13 is 1.10 m. The compound wall constructed in front of plot No. 13 & 14 is not seen the typical design of the compound wall and gate that constructed on other villas. No rules exist covering height of compound wall in Kerala panchayath Building Rules. As informed by the Representatives of the Respondent No 1 & 2, association of allottees was formed and is functioning.

7. Heard the parties in detail, the Complainant alleges violation of Section 12 of the Act, 2016 and Clause 26 of the agreement for development and construction dated 18.06.2019 entered in to between Respondents No. 1 & 2/promoter and the Complainant. Also alleged that there is value reduction of property due to the alleged construction/violation for which the Complainant has to be compensated. In that case the Adjudicating Officer of this Authority is the proper judicial Forum. The Counsel for Respondents No. 1 & 2/promoter submitted that sale deed executed and project completed in all respects and possession handed over to the allottees and the alleged construction was at the




instruction of the owner of the plot/villa 13 & 14 and the Respondents No. 1 & 2/promoter is not bound by the acts, deeds and things done by the respective owners of villas after handing over possession.

8. It is found that the reliefs sought in the Complaint are not maintainable before this Authority. The above Complaint is hereby dismissed.

Sd/-
Dr. B. Sandhya
Member

Sd/-
P. H. Kurian
Chairman

True Copy/Forwarded By/Order


Secretary (Legal)



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