



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 145/2020

Dated 19th January 2021

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

Complainant

Afeesudhien Sujith,
S/o Afeesudhien,
Elavakkad House, Elavakkad Nagar,
Thrikkakara P.O, Kochi-682 021

Respondents

1. Nucleus Premium Properties Private Ltd,
4th Floor, Ventura, Anchumana,
NH 47 Bypass, Kochi-682 024.
2. Sri. Nishad N.P, S/o Mohammedali,
Managing Director,
Nucleus Premium Properties Private Ltd,
Nellaya Puthen Peediyakkal House,
Thazhakode West P.O, Malappuram-679 352
3. Sri. Nashid N.P, S/o Mohammedali,
Director,
Nucleus Premium Properties Private Ltd,
Nellaya Puthen Peedikayakkal House,
Thazhakode West P.O, Malappuram-679 352
4. Sri. Abdul Nazer N.P, S/o Mohammedali,
Director,
Nucleus Premium Properties Private Ltd,
Nellaya Puthen Peedikayakkal House,
Thazhakode West P.O, Malappuram-679 352

Complainant in person and 1st Respondent's counsel Adv. Thomas Varghese attended the virtual hearing today.

ORDER

1. The Complainant was allottee of Villa No.1 of the villa project called "Nucleus Aura" at Kanayannur Taluk, Ernakulam District. As per the Agreement for sale and construction between the Complainant and the Respondent, the date of delivery of the villa was 26th August 2016. However, the project is not yet completed with the amenities and common facilities as per the agreement. The complainant paid a total lump sum of Rs.1,22,90,515/- (Rupees One Crore Twenty two lakhs Ninety Thousand Five hundred and fifteen only) as per the "sale price and payment schedule based on work completed on his villa. The Complainant executed the sale deed on 16.10.2015. The Complainant prayed for compensation in case of delay to give Possession and for registration of the project in Real Estate Regulatory Authority.

2. Since the relief sought in the complaint is for compensation, the complaint is not maintainable before the Authority and the Authority during hearing on 04.11.2020, directed the Complainant to file amendment petition to amend the relief portion of the Complaint. As per the direction, the Complainant amended the complaint with reliefs such as to order the Respondents not to interfere the possession, construction and occupation of the Complainant in plot No.1 with right to use the common areas in the Project and to Order the Respondents not to cause any obstruction or interference to the Complainant to sell, mortgage, lease or otherwise transfer his interest in Plot No.1 of the Project with right to use the common areas in the project to any person of his choice and order the Respondents to hand over the original of the Sale Deed No.3288/2015 of SRO, Thrikkakara to the Complainant and Order the Respondents to remove the temporary shed on the

immediate southern side of the Plot No.1 at their cost and Impose penalty on the 1st Respondent for non registration of the project with this Hon'ble Authority and to grant cost of this proceedings from the Respondents. The copies of sale and construction dated 06.12.2014 and sale deed dated 16.10.2015 produced by the Complainant were marked as Exhibit A1 and A2.

3. The Respondent filed the reply statement in which he states that the Complaint is not maintainable in law and on the facts of the case. The parties 2 to 4 arrayed in this complaint have no personal responsibility regarding the transaction between the complainant and the builder. The arraying of parties 2,3 and 4 in the complaint, who are only the directors of the Builder, which is an private limited company, and who have no personal responsibility regarding the transactions between the Complainant and the Builder is unjustified and improper. The complainant and other purchasers of the project were promptly appraised the stage of construction and they had fully understood the reasons for the delay. The allegation that only 10% work of the villa has been completed till now is false and hence denied. The payments made by the Complainant to the builder are according to the payment schedule agreed between the parties vide the sale and construction agreement dated 06.12.2014. The payment made by the Complainant on 30.05.2016 was for the completion of plastering work as per the payment schedule in the agreement and an amount of Rs.1,58,845/- is still pending against this stage from the complainant. All the payments were done by the Complainant after verifying the completed stages and the builder had provided detailed photographs of the completed stage along with the payments request mails. Hence the allegation that only 10% of the work of the villa No.1 is completed is completely false and hence denied. Only the flooring and finshing work of the Villa No.1 is pending and the Builder intends to complete the same without delay if the payments due from the Complainant are made. The project was also affected by the floods in 2018 and 2019. In spite of

the same, the builder is taking all proper and necessary steps to complete and handover the villas to persons who had purchased the villas, including the Complainant, on receipt of the amounts due from the purchasers. The allegation that the Respondents had received 90% of the sale consideration from all the allottees in the project and that they directed the money for their personal use and some other business without investing the same in the project is a concocted story made only for the purpose of this complaint. The sale deed can be handed over only after the Complainant makes payment of pending amounts due to the builder. The temporary shed constructed by the builder is required for the continuation of the remaining works in the area for stocking cement and other materials. The shed is in no way obstructing the access to villa No.1 and after the construction is finished the builder intends to clear the area. The Complainant has to pay an amount of Rs.1,58,845/- to the builder as per the terms of agreement entered into by him. Though Complainant has been repeatedly called upon to pay the same, he has not paid the same. The construction work can be expedited if the Complainant pays the amount due and payable by him.

4. The Authority, vide its Interim Order dated 30.11.2020, directed the Respondent to hand over the original sale deed pertaining to the plot owned by the Complainant and not to interfere into the possession, construction and occupation of the Complainant in his plot and his right to use the common areas in the project and not to cause any obstruction or interference to the complainant to sell, mortgage, lease or otherwise transfer his interest in his plot with the right to use the common areas in the project to any person of his choice and to remove the temporary shed on the immediate southern side of the plot of the Complainant & the Respondent shall comply with this order within two weeks from the date of this order and submit the compliance report before the next hearing date.

5. The parties were heard in detail and documents were perused. The Respondent filed compliance report as per the direction of the Authority given vide interim order dated 04.01.2020. He submitted that in compliance of the said interim order, the original of the sale deed has been handed over to the Complainant and the Complainant acknowledged it. The only pending relief to be obtained is to remove the temporary shed made by the Respondent which stands as an obstruction to the construction of the villa owned by the Complainant. The Respondent assured to this Authority that the said shed will be removed by 15.02.2021 without fail. The Authority accepted it and decided to issue the final order accordingly.

6. In view of the above facts, the Authority hereby directs the Respondent not to hinder the construction works of villa No.1 to be done by the Complainant himself and not to restrict in any way, his right to enjoy the common amenities and facilities of the project as per the sale agreement entered into between the Complainant and the Respondent.

The parties shall bear their respective costs.

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: Agreement for sale and construction dated 06.12.2014

Exhibit A2 : Sale deed dated 16.10.2015