



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Dated 5th February 2021

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

COMPLAINT NO: 11/2019

Complainant:

P.A Ajith Kumar,
Secretary
Mir Cintra Flat Allottees Association
Flat No.25, 2nd Floor, Kalamparambil Building,
Thottuva Junction, Malayattoor P.O, Ernakulam -683587

Respondent:

Arun Kumar
Managing Director,
MIR Builders and Developers Pvt Ltd, Door No.41/2073D,
Kalabhavan Road, Cochin- 682 018

ORDER

1. The Complainant is an association of allottees of a real estate township project named 'MIR CINTRA' at Angamaly Village, in Ernakulam District developed and promoted by the Respondent MIR Builders and Developers Pvt. Ltd. Some of the allottees made up-front payment, some of them took loans and some sold their properties to make payments to the promoter/Respondent. The Allottees include senior citizens and those who are migrated from a dead project of the Promoter/Respondent. The promise of the Respondent, as per the

agreements executed with many of the allottees, was to hand over the project on 31.07.2017. But the Respondent did not hand over the project so far. He is stretching the construction indefinitely and irresponsibly. The Promotional activities done by the Respondent including big offers at the initial stage lured the allottees/complainants. From the last quarter of 2015, the work force was reduced and gradually the work was completely stopped. The Complainants came to know that the building permit was not renewed after getting expired on 14.02.2017 due to a case pending in High Court of Kerala and the Promoter was deliberately marketing the project knowing that the project has not been given legal clearances. Some of the allottees paid 95% of the consideration, but the Respondent had not spent 50% of the collected money at the project site. During the last 2 years, the Respondent has given many assurances and the work schedule has been revised 3 times. It is pathetic to see the condition of the project after taking 15.6 Crores from the allottees and not even the structural works are over during the last 4 years. Now the project site is in an abandoned stage. Hence the Complainants pray for the reliefs for directions to the Respondent: 1) to register the Project under RERA, 2) to renew building permit or otherwise to refund the investments of the Complainants, 3) to give possession of project to the owners before 24 months from 01.01.2020 and exempt them from the tax liability as the delay was not of their fault, 4) in case the builder is not capable to complete the project, direct him to refund the money to the complainants and in such a case, to speed up the refund procedures. Complainant produced documents such as agreement for construction and agreement for sale of three allottees of association which were marked as **Exbt. A1 to A3**

2. The Respondent filed detailed counter statement in which he contended as follows: The Complainant has wilfully suppressed material

facts and for that reason the complaint is liable to be rejected. The project is developed on the strength of a Joint Development Agreement executed between the Respondent and the land owners Mr. K J Mathew & Mrs. Mary Mathew. The project was launched in the year 2014 and the period of building permit was till 14.02.2017 and the original proposal for completion of the project was during the year 2017. When the work was steadily progressing, the CTP(Vigilance) recommended cancellation of the permit and plan alleging violation of Building Rules. The Secretary of Angamaly Municipality issued a stop memo against construction on 23.03.2015 intimating that the building permit was cancelled. The cancellation of permit was done alleging that certain portion of land is wetland and not commercial in nature when the plot is situated just opposite to KSRTC bus station. So the Respondent challenged the stop memo in the Hon'ble High Court of Kerala and obtained an order to keep the same in abeyance. Copy of the said order dated 21.05.2015 in WP(c)No. 14917/2015 is produced **Exbt. B1**. Based on the said order, the Respondent continued construction but could not complete before the expiry of the original permit. Though application for renewal was submitted on time, it was not entertained by the local authority on the ground that the writ petition is pending. The Complainants are well aware of these facts and so the allegation of cheating is absolutely false. The Vigilance has not filed any case against the Respondent. The Complainants have entered into agreements only after seeing all the title documents and other documents related to the permit and so the allegation that the Respondent was deliberately marketing the project knowing that the project has not been given all clearances is made for the purpose of the complaint. The Respondent has been duly informing the Complainants regarding such developments at appropriate times. The Respondent has been insisting the customers to register the sale agreements, but only those who availed bank loans cared to get the agreements registered. There occurred

financial constraints to the Respondent due to the demonetization and introduction of GST which affected the sales. The Respondent was also affected by the flood calamity in the year 2018 & 2019 in which 2 floors happened to be immersed in flood water. The machineries and motors also happened to be destroyed in the flood which also occasioned to stop the construction. The construction was going on mainly on the cash flow receiving from the customers on stage wise completion of construction. The members of association suddenly took a decision to not honour the demand letter from the Respondent company for payment which compelled to stop the construction. The Respondent made repeated discussions with the association and consequently an agreement was entered into with the association for completing the project by June 2020. Copy of said agreement dated 03.05.2019 is produced as **Exbt.B2**. The time for completion of the apartments is mentioned through a detailed schedule to the agreement. Based on the said agreement the Respondent identified an external investor who offered to invest Rs. 4 Crores and accordingly an agreement was entered into with him to complete the project. The Respondent restarted the construction with the help of the external investor. The Complainants filed a police complaint against the Respondent in September 2019 due to which the investor backed out from his commitment. Then the Respondent took initiatives to commence the work of its own and complete it by September 2020 and submitted a revised work schedule to the Police, copy of which is produced as **Exbt. B3**. The Complainant has also fully agreed to the new schedule but suppressed all these developments before this Authority. The project is not abandoned by the Respondent and the 10th floor slab will be completed soon and a reputed contracting company has been awarded with the concrete works which is going on. If the payments are readily made by the allottees, the Respondent will complete all the works before 24 months from 01.01.2020 as stated by the Complainants. The Respondent is in

the process of RERA registration of the project and taken steps to expedite the disposal of the writ petition pending before the Hon'ble High Court of Kerala to get the permit renewed and extended which is mandatory for RERA registration. The Respondent is committed to deliver possession of the apartments within 24 months from 01.01.2020 or earlier and to execute sale deeds in favour of the allottees. The Respondent is ready to absorb all the tax burden as demanded by the complainants. The total receivable of the project is Rs. 6,46,67,117/- The Balance unsold inventory is 26,794 sq.ft. for which the market value will be Rs. 13,63,30,342/- The Respondent needs only Rs. 12 Crores for completing the project including amenities. So the project is having positive net worth and completion of the project is possible if the allottees are ready to co-operate and make payments as agreed. Hence the entire cause of action alleged is false and artificial and no reliance could be placed on such false averments.

3. The Complainants submitted their response/rejoinder to the counter statement of the Respondent as follows: The Respondent could not resume the work, as claimed by him, which was stopped in November 2016 and the failure on the part of the Respondent can be proved by the mail communications with the Respondent, copies of which are produced **Exbt. A4(1 to 8)**. During all these times even when the work was stopped and the permit was suspended, the Respondent was marketing the project by all means. The claim of the Respondent that they were insisting the allottees to register the agreement is baseless. The complainants were not aware of the requirement for registration of agreements. Once the customers came to know the requirement of registration, they communicated it to the Respondent through mails. It was the unanimous decision of the allottees not to honour the demand letters for payment as it was found that the Respondent was only

focusing on concreting slabs and collecting money from customers. The repeated requests of the complainants to clear the stagnated water at basement, ramp work, brickwork etc. were adamantly ignored by the Respondent. The complainants were worried about the future of the project seeing the huge gap between the completed work against the collected money from them. The quality of work was also compromised as the steels were rusted when the work was stopped and it was exposed to sun and rain. Even in 2020, the Respondent is still using the rusted steel which was under the mud on ground and exposed to all climatic conditions from 2017. The allottees also informed the Respondent about their readiness to continue payment with the condition that the builder should first complete construction of 10 floors and brick work for at least 5 floors so that the builder can complete the balance works with the balance receivables. It is true that the complainants agreed to a schedule based on certain criteria. But the agreement became null and void as the Respondent could not meet even the basis conditions of this agreement. The police complaint was given as there was no effort by the builder even to fulfil any one of the criteria. It was clearly mentioned in the addendum agreement that the customers shall not honour demand letters until concrete of 10th floor slab and brick work until 7th floor completes. The builder has engaged only few workers at site for last 3 months and he was not able to complete even concreting of a single floor. The workers are not sufficient and the available workers are not getting materials and fund to work. The contractor needs only 25-30 days to complete the concreting of each floor if he gets sufficient workers and materials. The Complainants cannot take further risks by releasing any fund unless and until the Respondent gets the building permit renewed.

4. Heard both sides in detail and perused the documents submitted by both sides. As the Respondent admitted the delay occurred in the

completion and handing over the project and requested further time for completion of the project and settlement of the loan availed by him and also as it is found that earnest efforts are being made by the Respondent to solve the issues, this Authority found it is justifiable to grant some more time to the Respondent to complete and hand over the project in all respects. Consequently, the Authority, vide interim order dated 03.11.2020, directed the Respondent to file an affidavit before this Authority with clear affirmations regarding the completion of the whole project in all respects with all the statutory approvals, amenities and facilities as committed/promised to the allottees, registration of common areas in favour of the association and handing over all the documents related to the project including land title deeds, electricity & plumbing drawings, etc to the Association and also to submit the stage-wise work Schedule with dates and to serve copy of the affidavit to the Complainants. In compliance, the Respondent submitted the affidavit dated 19.11.2020 with work schedule which is marked as **Exbt. B4** along with order of the Hon'ble High Court of Kerala directing the Local authority to take decision on the renewal of permit in view of the impending action before this Authority. The copy of the judgement dated 06.11.2020 passed by the Hon'ble High Court of Kerala in WP (c) No.14917/2015 is produced and marked as **Exbt. B5**. The case posted for production of renewed building permit and final direction to the Respondent. On 22.12.2020, the Respondent produced the copy of renewed building permit issued by Angamaly Municipality which is marked as **Exb.B6**. In the abovementioned affidavit the Respondent affirmed that the entire structure of 8 floors of the 10 storied apartment complex has been completed and he is taking earnest efforts to obtain Swamiah fund for completion of the remaining works of the project. Even if the sanction and disbursal of the Swamiah fund is delayed on account of any reasons, the Respondent will infuse funds from other sources in a phased manner to complete the project. The total

funds required for completion of the project is around Rs. 12 Crores and the Association has agreed to make the overdue payments once the structure upto 10th floor and brick and internal plastering upto 6th floor and the ramp is completed. Funds for completing this much works will be around Rs. 5 Crores and immediately after completing these works, the members of the complainant association have to clear their dues payable as per the respective agreements executed by them. On receipt of such amounts the rest of the works can be completed and the respective units can be handed over to the allottees.

5. As per the work Schedule, the Respondent guarantees that the project will be completed with all the statutory formalities including building numbers and electricity by 6th July 2022. But the statement of the Respondent in the abovesaid affidavit that "On receipt of such amounts the rest of the works can be completed and the respective units can be handed over to the allottees" cannot be acceptable because an allottee of a real estate project invests his/her hard earned money, that too a bigger amount than that of an individual house property, not only for the respective single unit/apartment/villa but also for the whole amenities and facilities offered to him/her in the project and also for enjoying a peaceful community living there. Hence it is the sole responsibility of the Respondent/Promoter to complete the whole project with all the common amenities and facilities as committed to the allottees as per the terms of the agreements executed with them after complying all the statutory formalities. We also give due significance to the allegations of the Complainants that they are worried about the huge gap between the completed work against the amount collected by the builder and quality of work was also compromised as the steel were rusted as it was exposed to sun and rain and the builder is still using rusted steel which was under the mud since 2017. Undoubtedly, the Respondent builder has the bounden duty to ensure the safety and security of the allottees of the said project as well as the quality of construction as committed to them.

We also noticed from the submissions of the Complainants that the agreements for sale executed with the allottees of the project in question were not registered. Section 13 of the Real Estate (Regulation & Development) Act 2016 stipulates that “the Promoter shall not accept a sum more than ten percent of the cost of the apartment as an advance payment or application fee, from a person, without first entering into a written agreement for sale and register the said agreement for sale under any law for the time being in force”. Be it noted that infringement of such provisions will attract penalty as provided under Section 61 of the Act. This Authority is not initiating any penal actions at this point only to circumvent any delay or hindrance that may be transpired in the completion of the project due to such an additional fiscal liability on the Respondent builder that would affect the interest of the allottees, adversely.

6. In view of the above facts and on the basis of the confirmations and undertakings 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 issue the following directions :

(1) The Respondent shall complete and hand over, the project ‘MIR CINTRA’ to the Complainants, with all the amenities as facilities, as committed/promised as per the agreements executed with the allottees, along with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 06.07.2022 without fail;

(2) The Respondent shall open an escrow/joint account with the Association of allottees and make sure that all the receivables from the said project shall be deposited in the said account and amount from the said account shall be used only for the works in the project MIR CINTRA;

(3) The Respondent shall submit before this Authority the status/progress report of works, in every 2 months, starting from 15.02.2021, in the form of a sworn affidavit with copy to the Complainants;

(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 also ensure the quality of materials used in the construction works and thereby safety and security of the allottees of said Project, in all respects.

In case of non-compliance of this order by the Respondent, the Authority shall initiate severe penal actions as provided under 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, 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 : Agreement for construction and agreement for sale made by Mr. Antoy Poullose.
- Exhibit A2 : Agreement for construction and agreement for sale made by Mr. Vincent Pavunny.
- Exhibit A3 : Agreement for construction and agreement for sale made by Mr. K.P James
- Exhibit A4 : Copy of the mail communications
(1 to 8)

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of order dated 21.05.2015 in WP(c) No. 14917/2015
- Exhibit B2 : Copy of agreement dated 03.05.2019
- Exhibit B3 : Copy of revised work schedule
- Exhibit B4 : Affidavit dated 19.11.2020
- Exhibit B5 : Copy of order dated 06.11.2020 in WP(c) No.14917/2015
- Exhibit B6 : Copy of renewal building permit issued by Angamaly Municipality