

**In the Office of the Adjudicating Officer
KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

**Present:
K.S. SARATH CHANDRAN
Adjudicating Officer**

(Friday, the 30th day of August, 2024)

CCP No. 07/2024

Complainant:

Mr. Anil Kumar P.R.,
Flat No.19D, Burj Alhind, Tower 2
Karaparamba, Kozhikode – 673 010

By Advocate: Mr. Thomas Kochenayil

Respondents:

1. M/s. Sowparnika Projects and Infrastructure (P) Ltd.
Having its registered office at No.750
C Block, 1st Main Road, AECS Layout
Kundalahalli, Bangalore, Karnataka – 560 037
2. Mr. Ramji Subrahmaniam, Managing Director
M/s. Sowparnika Projects and Infrastructure (P) Ltd.
No. 750, C Block, 1st Main Road, AECS Layout
Kundalahalli, Bangalore, Karnataka – 560 037
3. Mrs. Meenakshi Ramji, Director
M/s. Sowparnika Projects and Infrastructure (P) Ltd.
No. 750, C Block, 1st Main Road, AECS Layout
Kundalahalli, Bangalore, Karnataka – 560 037
4. Mr. Sreenivasan Subramaniam, Director
M/s. Sowparnika Projects and Infrastructure (P) Ltd.
No. 750, C Block, 1st Main Road, AECS Layout
Kundalahalli, Bangalore, Karnataka – 560 037



5. Mr. Joji Joseph, General Manager
M/s. Sowparnika Projects and Infrastructure (P) Ltd.
Vettakulam Arcade, SH1, Opposite AMSET
Nalanchira, Paruthipara, Thiruvananthapuram – 695 015
6. Mr. Ratheesh K.R., Manager – CRM
M/s. Sowparnika Projects and Infrastructure (P) Ltd.
Vettakulam Arcade, Near Mar Ivanious College
Nalanchira, Thiruvananthapuram – 695 015



By Advocate: V. Ajakumar

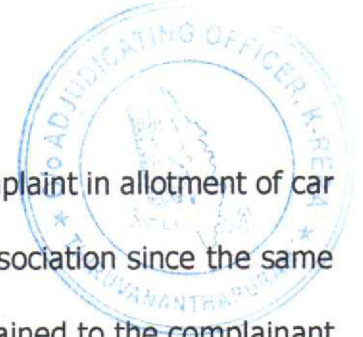
ORDER

1. The complaint filed for compensation u/s 31 and 71 of the Real Estate (Regulation and Development) Act, 2016.
2. The brief relevant facts of the complaint are as follows:
3. The complainant, owner of Apartment No.8E, 8th Floor, SOWPARNIKA PROMENADE SQUARE, Poonthi Road, Anayara, Thiruvananthapuram paid ₹92,150/- for individual car parking but not provided the same. There was a common order in C. No. 175/2021, C. No. 222/2021 and C.No.232/2021 filed by the Flat Owners Association and two other allottees wherein it was directed to construct new car parking spaces and allow to all the allottees of the project as promised to them within six months from the receipt of this order, dated 06.04.2022. Further, it imposed a penalty of ₹5,000/- per day from 23.10.2022, if not complied the order. After the order, the respondents have constructed extra car parking without any approval from the Authorities and ear-marked one open car parking in the driveway. The local authority issued notice for its demolition. Hence, the complainant claims ₹1,00,000/- for mental agony due to the allotment of illegal car parking shed which is ordered to be demolished by the Authorities and ₹5000/- per month



from 23.10.2021 to 22.04.2024 as per RERA Order dated 06.04.2022 and ₹10,000/- as Advocate Fee and expenses.

4. The Respondents 1, 5 and 6 have filed an objection/explanation and Respondents 2 to 4 adopted the same contentions. The respondents 2 to 6 are unnecessary parties and are to be deleted from party way. This is a test case to harass the respondents and hit by doctrine of acquiescence. The Owner's Association has agreed construction of extra car parking and its allotment based on lot and the complainant has no right to challenge the same since he being member of that Association. The complainant has been enjoying the said car parking area allotted to him. The respondents have obtained building permit as per the provisions of KMBR 1999 and 2019 which never stipulated car parking for 99 apartments. Only 29 car parking is necessary as per KMBR 1999. They have collected ₹92,150/- and allotted car parking on first come first service basis. Due to landslide and consequent construction of retaining wall, they lost 5 cents of property from this project. The respondents have spent ₹60,00,000/- for construction of additional car parking as per the settlement with the Association and based on that common order passed in Complaint No.175/2021, C.No.222/2021 and C. No.232/2021. The Association has filed EP and thereafter, the respondents have completed the construction of the car parking and allotted to all the allottees including the complainant at the intervention of the Association. Since the additional car parking's are temporary structures, no permit is required and no demolition order issued based on the explanation given by the 1st Respondent. There is no scope for any objection from the Fire, Rescue and Safety Department since Fire drive way is need only two sides of the building and



the said Fire way is provided as per the norms. If there any complaint in allotment of car parking, the complainant has to take up the matter with the Association since the same was decided by the Association. There is no mental agony sustained to the complainant and hence the complaint is to be dismissed.

5. The complainant has filed a replication denying all the contentions taken by the respondents and reiterated the claims in the complaint. The Association had no role in allocating the car parking slots which was mentioned by them to the complainant and the present temporary construction of car parking is in violation of the rules. It is constructed with GI sheets and GI pipes and fixed at the retaining wall. The said retaining wall collapsed more than once during heavy rains. The Respondents have provided covered parking inside the building to their interested people which is against the contract.

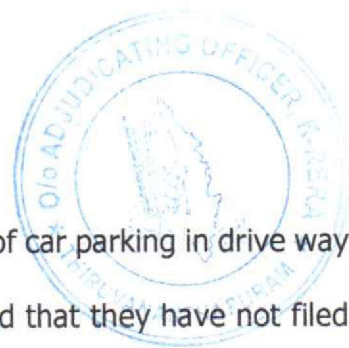
6. The following points arose for consideration:

1. Whether the complainant is entitled to get compensation of ₹1,00,000/- under the head of mental agony due to the illegal allotment and construction of car parking shed without obtaining permission from the local authority and Fire & Rescue Department as prayed?
2. Whether the complainant is entitled to get ₹90,000/- penalty as ordered by RERA in the common order dated 06.04.2022 as prayed?
3. Whether the complainant is entitled to get cost of ₹10,000/- as Advocate Fee and expenditure as prayed?
4. Relief and cost?
6. CW1 was examined and marked Exts.A1 to A17. RW1 was examined from the side of the respondents.
7. **Point No.1** – The complainant had purchased Flat No.8E having 1125 Sq.ft. from the respondents, builder. Through Ext.A2 dated 16.12.2010, the complainant entered



into an agreement for sale with the Respondents wherein the complainant has agreed to pay ₹27,00,000/- including ₹92,150/- for cost of car parking. The car parking is specifically mentioned in Page No.3 Paragraph No.2 that exclusive car parking facility in the building SOWPARNIKA PROMENADE SQUARE Apartment and further described in Schedule-B. In Schedule-B in second portion, it clearly stated that apart from 1125 Sq.ft. apartment together with 0.588 cents of undivided interest in the respect of the property described above with reference to the apartment 5E having an area of 1125 Sq.ft. and with one covered car parking space in SOWPARNIKA PROMENADE SQUARE apartments. In last portion of Ext.A2, Schedule-C, car parking referred as covered car parking at extra cost on first come first served basis. In Ext.A16 sale deed para 1 & 4 in page 15, it clearly reiterated the said undivided right over 0.588 cents and particularly in 'B' schedule in the sale deed.

8. It is learned that there are 96 units of apartments and out of which there is 57 covered car parking inside the building at Ground and Basement Floor. Therefore, through Ext.A2, initially the respondents introduced first come first served basis inside 57 car parking space after collecting cost of ₹92,150/- from all the 96 allottees. When the Association as well as other allottees challenged it before RERA and obtained Ext.A3 order dated 06.04.2022, wherein it is directed to construct additional car parking spaces to all allottees as promised to them. Thereafter, the respondents have constructed additional temporary car parking slots with GI sheets and pipes in the common area as well as in the drive way area without obtaining sanction from Authorities. Through Exts. A5 and A6, it reveal that the local authority and Fire, Rescue and Safety Department



issued notice to the respondents regarding illegal construction of car parking in drive way without permission. At the time of evidence RW1 has admitted that they have not filed any objection to Exts. A5 and A6 since permit is not necessary for temporary construction. Ext.A7 letter of Corporation of Thiruvananthapuram confirms the illegal construction of car parking. Ext.A13 letter from Fire, Rescue and Safety Department also confirms trespassed construction in Fire drive way and recreation area. Ext.A15 letter from Corporation of Thiruvananthapuram also confirms absence of permission for car parking and KMBR violations.

9. The role of the Association in construction of additional car parking has not been challenged by the complainant or not even impleaded the Association in this complaint or examined any of the office bearers in this case in order to prove the role of Association. The complainant is entitled to get car parking inside the building as per Ext.A2 agreement and inside project property in Ext.A16 sale deed. The respondents cannot go back from Ext.A2 and Ext.A16 since Ext.A3 directs to provide car parking as promised and not temporary shades in drive way. Here, they provided temporary GI sheet roof on GI pipes inspite of the agreed car parking space in the building or inside project property, garage as defined u/s 2(y) of Kerala Real Estate (Regulation and Development) Act, 2016. Exts.A10 & A11 series are the photographs of temporary car parking slots constructed additionally by the respondents after charging ₹92,150/- that too in an area which already sold undivided common area without obtaining permit and trespassed in Fire drive way. In Section 2(y) garage means a place within a project having a roof and walls on three sides for parking any vehicle, but doesn't include an unenclosed or uncovered open



parking areas. The said definition of garage as such is defined in Section 2(a1) in Ownership Flats (Regulations of the Promotion of Construction etc.) Rules 1964, (Maharashtra). While deciding a case by the Hon'ble Supreme Court in Nahalchand Lalorchand Pvt.Ltd. vs. Panchali Co-operative Housing Society Ltd, 2010(a) SCC 536 defined the word garage that it is a place having a roof and walls on three sides. Both the definitions are same. It also decided the Promoters right to sell stilt parking spaces as these are neither flats nor appurtenant or attachment to a flat. It further held that garage does not include an unenclosed or uncovered parking space. As per the provision of Real Estate (Regulation and Development) Act, 2016 the Builder cannot sell a car parking separately or charge separately. Parking, gymnasiums, club houses, electrical rooms, security rooms are excluded from built-up area. However, open or stilt parking spaces are clearly defined as part of common amenities such as lobby, stairs, elevator, garden etc.

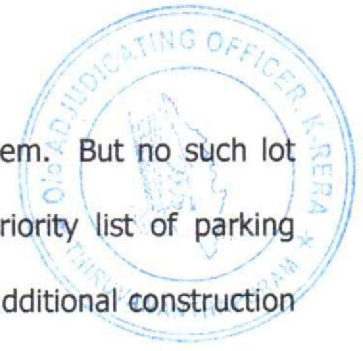
10. As per Ext.A3 order, the complainant is entitled to get car parking as promised in Ext.A2 and Ext.A16, which is a car parking inside the Ground Floor or Basement Floor or inside project area as defined u/s 2(y) of the Real Estate (Regulation and Development) Act, 2016. Ext.A17 (Ext.B1 in Complaint No.175/2021, C.No.222/2021, C.No.232/2021 of RERA) and Ext.A4(a) plan attached to Ext.A4 by the Respondents are different and no such car parking shows in drive way as 8E. Ext.A4(a) plan is not same as in Ext.A17 submitted before RERA. Ext.A3 order was pronounced based on Ext.A17 (Ext.B1 in Ext.A3 proceedings). At present, the complainant was allotted a car parking space No.8E constructed with GI sheets and GI pipes attached to a retaining wall practically a shade

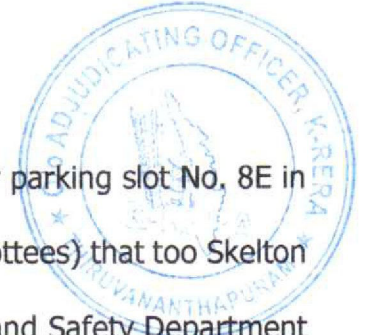


which is not legally permitted as per KMB Rules or Real Estate (Regulation and Development) Act and Rules. It is also intruded in to the driveway and the said Fire, Rescue and Safety Department already issued notice to demolish the same. Apart from that the builder has no right to construct any permanent or temporary structures in the assigned undivided common area, which are owned by 96 allottees. They are supposed to comply the Rule 29 of KMB Rules 2019 or Rule 34 of KMB Rule 1999 in order to provide car parking areas depends upon the Sq.metre in extend for each units. In spite of that they had collected cost for car parking from all the allottees and created hardships to allottees and at last they come to a settlement at the cost of all the allottees in the undivided common area and even then, not allotted the car parking space as promised in Exts.A2 and A16 or as per KMBR and Real Estate (Regulation and Development) Act and Rules. Through Ext.A12 series WhatsApp communication, the Association informed that they didn't have any role in allotting car parking slots to any of the allottees nor the Builder consulted with the Association. Further, it directs that if anybody aggrieved approach the builder. The additional parking slots were never transferred to the Association. The contents or authority of Ext.A12 series were not disputed by the respondents or objected when it tendered into evidence. It is also confirmed in Ext.A4 e-mail (Ext.A9 is same copy of Ext.A4) sent by the respondents to the complainant stating that the Builder has successfully completed the car parking works and individual parking slots are allotted to each apartment based on the priority of full and final settlement with the Builder. It clearly shows that the Builder has distributed the car parking allotment after Ext.A3 order in 2023. In the explanation paragraph No.4, it is admitted that the

complainant has decided to accept car parking based on lot system. But no such lot system conducted and when the complainant sought for the priority list of parking allotment and the approved plan of the local authority regarding additional construction parking areas through Ext.A8 Lawyer Notice, they have not served it or produced before this Forum in order to prove bonafides of the process of allotting car parking area by lot system. In short, it is admitted that the respondents have not provided the car parking area or garage as promised under Exts.A2 and A16 or defined u/s 2(y) of the Real Estate (Regulation and Development) Act, 2016 but now provided a temporary car parking space/shade attached to the retaining wall particularly in the drive way without obtaining permit and of course it caused mental agony to the complainant from the date of purchase of flat Ext.A16. As per the provisions of Real Estate (Regulation and Development) Act and Rules 2016 & 2018, the Builder is liable to assign common area in the name of Association but not seen complied herein.

11. The practice of first come first served was there in Ext.A2, initially when 57 car parking areas constructed in the building (GF & BF) and not allotted specific car parking to anyone. Prior to that the Builder offered a parking slot inside Ground Floor through Ext.A14 wherein 17 owners opted their choice of car parking inside GF and BF. The Complainant selected GF-24 and intimated to the Builder through Ext.A14(a). According to RW1, the same was not confirmed and permitted all the allottees to use that 57 car parking space by following the system of first come first serve basis. As per Ext.A3 order and based on collection of car parking charges of ₹92,150/- in 2010 from this Complainant, the Builder is bound to provide car parking to this allottee subject to promise





and KMB Rules. But this Builder provides temporary additional car parking slot No. 8E in the common area (undivided share property already sold to 96 allottees) that too Skelton GI roof without obtaining permit from Corporation, Fire, Rescue and Safety Department after trespassed into Fire drive way and recreation area. Ext.A3 order directs only car parking area as promised and obviously subject to Section 2(y) of Real Estate (Regulation and Development) Act, 2016 and not a car parking space in common area, or in drive way by violating KMBR and Fire, Rescue norms. Even in the event of construction of additional car parking as per Ext.A3, the Builder can provide specific car parking area in the building as promised in Exts.A2 or 0.588 cents equivalent to 23.83 Sq.metres undivided right as agreed in Ext.A16 and follow the process of lot system for remaining car parking areas, after collecting pro rata amount from the remaining allottees. Here, the Builder collected same charge from all allottees and violated Section 29 & 34 of KMBR 1999 and 2019 and obtained illegal gain. Even if it is admitted that if there any shortage of space by construction of retaining wall it also badly affects the allottees to their common area and not the Builder.

12. Considering the allocation of unsafety parking area 8E, temporary parking space which is not free from rain, hot or dust and it caused injury and amounts to mental pain to the complainant and practically unlawful gain achieved by the respondents and violated Exts.A2, A3 and A16 terms. Therefore, the claim of the complainant regarding mental agony is just and reasonable and it is quantified at ₹75,000/- and the respondents are liable to pay the said amount ₹75,000/- with interest and this point found in favour of the complainant.

13. **Point No.2** - The complainant claims an amount of ₹90,000/-, the penalty amount ordered by RERA in Ext.A3 order. The penalty is not compensation or liable to be given to allottee so it will not come under Section 72 of the Real Estate (Regulation and Development) Act, 2016 and therefore this point found against the complainant.

14. **Point No.3** - Of course, the complainant has filed this complaint through an Advocate and who conducted the case and of course, the complainant is entitled to get Advocate fee and expenses. Here, the Complainant claims ₹10,000/- which is less than just and reasonable and hence this point found in favour of the complainant

15. **Point No.4** - In the result, the complainant is entitled to get ₹75,000/- with 16.85% interest from the date of complaint, dated 23.03.2024 till realization along with cost of ₹10,000/- from the respondents and their assets.

Dated this the 30th day of August, 2024

Dictated to the Confidential Assistant, typed by him and corrected by me.



[Handwritten signature]
30.8.24

K.S. SARATH CHANDRAN
Adjudicating Officer

APPENDIX

Exhibits marked on side of the Complainant.

Exhibit A1 : Copy of Building Certificate dated 18.03.2024

Exhibit A2 : Copy of Sale Agreement dated 06.12.2010

Exhibit A3 : Copy of Common Order from RERA in Complaint Nos.175/21, 222/21 and 232/21 dated 06.04.2022

- Exhibit A4 : Copy of e-mail dated 20.11.2023
 Exhibit A5 : Copy of Notice dated 22.01.2024.
 Exhibit A6 : Copy of letter from Fire and Rescue Station dated 13.02.2024
 Exhibit A7 : Copy of letter from Thiruvananthapuram Corporation dated 24.02.2024
 Exhibit A8 : Copy of Advocate Notice dated 10.01.2024
 Exhibit A9 : Copy of e-mail dated 20.11.2023
 Exhibit A10 : Photograph of the Car Parking
 Exhibit A11 series: Photographs (3 Nos.)
 Exhibit A12 series: Copy of Screenshots (2 Nos.) of the Secretary's reply dated 27.11.23
 Exhibit A13 : Copy of letter from Fire and Rescue Station, Chakka dated 03.05.2024
 Exhibit A14 : Copy of e-mail dated 26.03.2013 of Car Parking Slots
 Exhibit A14(a) : Copy of e-mail dated 26.03.2013
 Exhibit A15 : Copy of letter from Thiruvananthapuram Corporation dated 03.07.2024
 Exhibit A16 : Copy of Sale Deed dated 21.10.2015
 Exhibit A17 : Copy of B1 plan in Ext.A3 proceedings

Exhibits marked on the side of the Respondents. Nil

Witness for the Complainant.

CW1 : 28.06.2024 – Anil Kumar P.R.

Witness for the Respondents:

RW1 : 25.07.2024 – Ratheesh K.R.



[Handwritten Signature]
 30.8.24
Adjudicating Officer