



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM.**

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

Complaint No: 2/2024

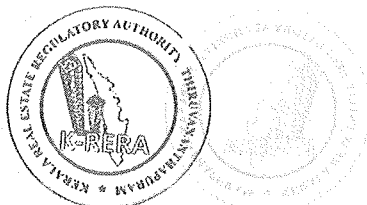
Dated 22nd August 2024

Complainant

C. P. Gopakumar IPS (Rtd),
"Shanoor Nalanda",
Near Loyola College, Sreekariyam P.O,
Thiruvananthapuram, PIN 695017, Mobile
No. 9495757877.

Respondents

- 1.M/s Shanoor Projects & Realtors Pvt Ltd,
Bhagavathy Plaza,
Pongummodu,Medical College P.O,
Trivandrum, Pin - 695011
2. Sri. Nizar Ahammed,
Managing Director,
Shanoor Projects & Realtors Pvt Ltd,
Bhagavathy Plaza, Pongumoodu,Medical College P.O.,
Thiruvananthapuram, Pin - 695011



3. Smt. Anjuman Abdeen,
Director, Shanoor Projects & Realtors Pvt Ltd,
Bhagavathy Plaza, Pongummodu,
Medical College P.O,
Trivandrum, Pin – 695011
[For R1, R2 & R3 Adv. Sajad Kharim]

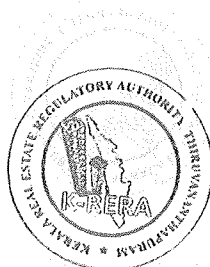
The above Complaint came up for hearing on 24.07.2024.
The Complainant and the Counsel for the Respondents/Promoters,
appeared the hearing.

ORDER

1. The factual matrix of the above Complaint are as follows: The Complainant, his wife and son jointly entered in to an agreement for sale with the Respondent No. 1 represented by the 2nd Respondent, its Managing director of the company on 21.10.2020 for the purchase of 4.0% undivided interest on land having an extent of 10.15 Ares and Apartment No. D on the 4th Floor of the building named as ‘Shanoor Nalanda’ admeasuring 1443 sq ft, inclusive of proportionate share of common area together with right to enjoy common amenities along with right to use parking space for a consideration of Rs. 61,82,487/- A construction agreement was also executed between the parties on the same day. As per document No 1524/2021/I dated 30.06.2021 sale deed was registered in favour of the Complainant, his wife and son by the Land owner represented by the POA, the 2nd Respondent/promoter. The project is constructed in



25 cents of land with 4 stories and 27 apartments of 2 & 3BHK. According to the Complainant, the handing over ceremony of the apartment was conducted without completing the agreed works. Further, the Complainant had given representation dated 01.06.2022 to the Respondents, stating that the sound making games i.e. snooker, table tennis and fuse ball should be removed from the hall above his apartment, as due to the installation and playing of the said games his family was suffering from heavy sound pollution during day and night. As no action had been taken by the Respondents, the Complainant filed a petition before the Inspector of Police and SHO Sreekariyam Police Station on 22/06/2022 and thereafter the representatives of the Respondents agreed before the SHO that the sound making sports equipment would be shifted to some other place in the Ground Floor and they would provide floor mats in the hall to reduce sound pollution above the Complainant's apartment. But no action was taken by the Respondents. There was no clause in the agreement for sale or in the construction agreement as to the playground above his apartment No. 4D. Also alleged that drilling of a new bore well has not been completed as per agreement, and had not provided rain water harvesting and solar panel facility. The rectification of STP is pending, not provided a tread mill and the children play area is not fenced. The Complaint was filed seeking reliefs for direction to the Respondents, (1) to remove Billiards, Table



Tennis and accessories and Fuse ball Table from the Hall above Apartment No. 4D, (2) to lay/spread quality rubber/other material mats in the hall above Apartment No. 4D to prevent sound pollution, (3) to dig a new bore well in Shanoor Nalanda, (4) to provide facilities for rainwater harvesting and solar panel in Shanoor Nalanda, (5) to rectify the defects in the sewage treatment plant in Shanoor Nalanda, (6) to replace a new Tread Mill with sufficient specification for the use of Apartment owners of Shanoor Nalanda, (7) to provide sufficient protective fencing around the side wall in the roof top to prevent accidents to children, (8) to handover the original document of Apartment No. 4D to the HDFC Bank, Vazhuthacaud in which the Complainant had availed housing loan and (9) to pass such other order as the Authority think just and fine. The copies of sale deed dated 30.06.2021 executed in favour of the Complainant, his wife and son, e-mail communications dated 11.07.2022 by Dr. Unnikkuttan D, P. Radhakrishnan Pillai, and Sivakumar S O to the 2nd Respondent requesting completion of pending works, Sales agreement and construction agreement executed between the parties dated 21.10.2020, representation dated 01.06.2022 by the Complainant to the Respondents, representations dated 22.06.2022 & 19.12.2023 by the Complainant to the CI of Police, Sreekaryam, against the respondents and the Association, and the occupancy certificate of the



project with date of completion as 21.12.2020 were produced by the Complainant.

2. The Respondents/promoters filed statement of objection on 27.03.2024 as follows: The Project was handed over to the respective owners including the Complainant as early on 19.02.2021, after completion of the project, as per sanctioned plan and specifications including common amenities as agreed in the respective agreements entered in to with the allottees. The maintenance of the project was taken over by the “Shanoor Nalanda Apartment Owners Association” and after October 2021, maintenance of the project including the common amenities has been looking after by the Association and the Respondents have no role there in the project. The reliefs sought for do not fall within the jurisdiction of the Authority and no structural defects alleged in the Complaint. The relief is mainly related to recreational equipment placed in the recreation hall located in the terrace floor. It was the responsibility of the Respondents to provide recreation hall with equipment and the Complainant was very well aware in advance that his apartment is located right under the recreation hall as evident from the building plan. The Complainant had visited the building multiple times and satisfied with the constructions, entered in to agreements for sale. If he had any objection, he had the option/choice to choose some other apartment there but he never availed, such an option. It is



the Owners Association who is in control and maintenance of common amenities including the recreation hall and equipment and the Association is also a necessary party in the Complaint, and without impleading them, the Complaint is defective and liable to be dismissed. At the expense of the Respondents, the floor mat has been provided on the floor of the recreation hall, bore well has already been provided, in addition KWA water connection. As regards rain water harvesting, the Respondents already provided a non-drinking collection tank for collecting rain water and there is no such provision in the agreement for solar panel. The STP is functional and AMC dated 05.01.2024 was executed by the Owners Association. The Respondents have already provided a tread mill and the Association is maintaining the same. The children play area is properly fenced. Also a balance payment of Rs. 2,47,300/- is outstanding from the Complainant. The copies of building plan showing the lie of recreation hall in the terrace floor and other floors, relevant pages of brochure showing possession of recreation hall, petition dated 19.03.2024 by the Owners Association against the Complainant before AC of Police, petition dated 15.02.2024 by the Secretary of the Owners Association against the Complainant before the SHO Sreekaryam Police Station, receipt dated 19.03.2024 by the IG & Police Commissioner acknowledging the petition from Rahul S, Secretary of the Owners Association, receipt dated 01.03.2024 by



the Kerala Women's Commission acknowledging the petition from Deepa, receipt dated 29.02.2024 by the IG & Police Commissioner acknowledging the petition from Rishna Marian John, copy of relevant page of register from SHO Sreekaryam Police Station showing settlement signed between the Complainant, 2nd Respondent and the office bearers of Owners Association, letter dated 07.03.2024 by the Owners Association to the Respondent showing the reluctant attitude of the Complainant, AMC dated 05.01.2024 with regard to STP signed between Owners Association and the agency, statement of accounts with respect to the Complainant, email communication dated 02.03.2024 by the Respondent requesting balance amount outstanding with interest from the Complainant were produced by the Respondents.

3. The Complainant filed replication on 15.05.2024 as follows: The Owners Association has not been registered before the Competent Authorities. The Respondents produced forged letter pad and seal printed in the name of unregistered Association to mislead the authority. Electric connection from KSEB was obtained only on 29.04.2021 and the handing over of apartment conducted on 19.02.2021 which was two months before the domestic KSEB connection and it shows that the handing over was without proper electricity connection. Water connection from KWA was affected only on 26.04.2021. But the Respondents handed over 27 flats to the



owners on 19.02.2021, two months before getting water connection. The Respondents concealed the fact of initial construction by M/s Keratech Builders and Developers Pvt Ltd and M/s Highline Builders. Hence the Respondents had no assurance or guarantee or responsibility about the strength and durability of foundation of the project. The Respondents had not handed over the sanctioned plan, lay out plan etc. The Respondents committed a delay for six months in transferring the title of flat on 30.06.2021 after the date of completion of apartment on 21.12.2020 as per occupancy certificate. No usable borewell was provided as per agreement, STP is not functioning properly. The Respondents had not provided guest parking. Twenty-four apartment owners had given mass representation dated 15.10.2022 to the Respondents to sound proof the multipurpose hall with best possible solution available to reduce sound pollution but not cared. This shows that there was no Association existed as on 15.10.2022 even though the Respondents claimed that the association was in existence from 9/2021 and as such the Respondents made false claim before the Authority for which appropriate action may be taken. The Respondents had not filed quarterly progress report and other details before RERA. There is another play area of 30.88 m² to recreation in the ground floor but the Respondents not arranged proper sports and games equipment there. In this area, the Respondents constructed security cabin and



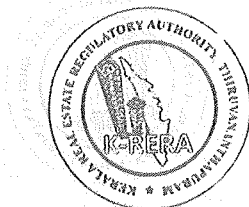
borewell. The Respondents are cheating the allottees by not providing the facilities agreed. They are bound to sell habitable apartments. The Complainant prayed to depute some officers from RERA to evaluate the sound pollution and requested to issue orders to execute the work of sound proofing in the hall above his apartment and to issue orders to execute sound proofing in the hall above the Complainants apartment. The copies of letter dated 23.04.2024 from the District Registrar showing that the Owners Association has not been not registered, letter dated 30.04.2024 from KSEB that the electricity connection given to the apartments on 29.04.2021, copy of consumer ledger from KWA, copy of receipt dated 01.10.2020 of payment of Rs one lakh to the Respondent, copy of print from the Respondents' website showing common amenities, copy of mass representation to the Respondents by the allottees for sound proof floor area, letter dated 11.03.2024 by a Consultant Architect with suggestions for prevention of floor sound disturbance were produced by the Complainant.

4. 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"] Registration No. K-RERA/PRJ/167/2020, with validity up to 30.06.2021. The occupancy certificate dated Nil with date of completion on 21.12.2020 obtained for the project is seen uploaded on 20.04.2021 and Form 6 dated



09.07.2020 uploaded on 13.07.2021, in the web portal of the Authority.

5. Heard both parties in detail and examined all the documents placed on record. The documents produced by the Complainant are marked as **Exhibits A1 to A15** and the documents produced by the Respondents are marked as **Exhibit B1 to B17**. The copy of sale deed dated 30.06.2021 executed in favour of the Complainant, his wife and son, by the 1st Respondent, represented by the 2nd Respondent, the Power of attorney holder of the land owner, produced is marked as **Exhibit A1**, as per Annexure to which the Complainant had purchased undivided share of land and Apartment No. 4D with TC No 5/2782(25) along with car parking facility, common compound wall, common water connection. The valuation certificate dated 09.06.2021 was also attached as Appendix to the Exhibit A1 by a Valuer. Another certificate by the Valuer appended to the Exhibit A1 shows that the facilities for harvesting rain water, energy saving electrical appliances, and solar panels for lighting as evidenced during their inspection on 09.06.2021. The copy of e-mail communications dated 11.07.2022 by Dr. Unnikkuttan D, P. Radhakrishnan Pillai, and Sivakumar S O to the 2nd Respondent requesting completion of pending works, produced is marked as **Exhibit A2 Series**. As per Exhibit A2 Series requests were made to the Respondents, with regard to correction works with regard to the



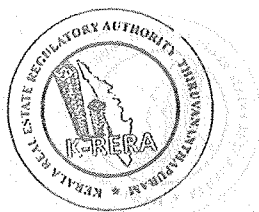
functioning of STP, restoration of rain water harvesting, regularising water pressure, providing sufficient depth for tube well, cleaning the cracks on terrace, solving leakage, removing debris, cleaning basement floor etc. The copy of request dated 01.06.2022 by the Complainant to the 1st and 2nd Respondents produced is marked as **Exhibit A3** as per which the Complainant made request for removing the sports equipment from the Recreation area of the project and stated that they were residing from 15.07.2021 and the recreation area is constructed above his apartment and installed billiards table etc but not provided suitable tile/mat/wood in order to prevent sound. It was also stated that the Respondents had not mentioned the installation of billiards table etc at the time of entering agreement or at the time of writing documents. The copy of Petition dated 22.06.2022 by the Complainant to the CI of Police, Sreekaryam, produced is marked as **Exhibit A4**, as per which request was made to the CI of Police for a direction to the 1st and 2nd Respondents in the matter of sound proofing. The copy of Petition dated 19.12.2023 by the Complainant to the CI of Police, Sreekaryam, produced is marked as **Exhibit A5**. As per which another request was made to the CI of Police for a direction to the 2nd Respondent and the office bearers of the Association in the matter of sound proofing. The copies of Sales agreement and construction agreement executed between the parties dated 21.10.2020, produced is marked as **Exhibit A6 series**. The



copy of occupancy certificate of the project dated Nil with date of completion as 21.12.2020, produced is marked as **Exhibit A7**. The copy of letter dated 23.04.2024 from the District Registrar obtained under Right to Information Act, 2005, produced is marked as **Exhibit A8** as per which it was informed that the project Shanoor Nadanda Owners Association had not been registered as per records in the office of the District Registrar. The copy of letter dated 30.04.2024 from KSEB showing that the electricity connection has been provided to the apartments on 29.04.2021, produced is marked as **Exhibit A9**. The copy of consumer ledger from the KWA, produced is marked as **Exhibit A10**. The copy of receipt of payment of Rs. One lakh dated 01.10.2020 to the 1st Respondent, produced is marked as **Exhibit A11**. The copy of print from the 1st Respondents' website showing common amenities, produced is marked as **Exhibit A12**. The copy of mass representation to the 2nd Respondent by the allottees for best possible solution for sound proof floor area, produced is marked as **Exhibit A13**. The copy of representation to the 2nd Respondent by the allottees Association dated 07.03.2024 for curing defects in the STP, produced is marked as **Exhibit A14**. The copy of letter dated 11.03.2024 by a Consulting Architect to the Complainant, with suggestions for prevention of floor sound disturbance, produced is marked as **Exhibit A15**. The copy of typical floor plan and terrace floor plan, produced is marked as **Exhibit B1**. In Exhibit B1, in the



terrace plan, recreation area was shown. The copy of brochure and terrace floor plan, produced is marked as **Exhibit B2**. In the terrace floor plan, the multipurpose hall, indoor games for children were shown. The copy of petition dated 19.03.2024 filed by the Association before the Assistant Commissioner of Police Thiruvananthapuram against the Complainant, produced is marked as **Exhibit B3**. The copy of petition dated 15.02.2024 filed by the secretary of the Association before the SHO Sreehariyam Police Station, against the Complainant, produced is marked as **Exhibit B4**. The copy of receipt dated 19.03.2024 by the IG & Police Commissioner acknowledging the petition from Rahul S, Secretary of the Owners Association, produced is marked as **Exhibit B5**. The copy of receipt dated 01.03.2024 by the Kerala Women's Commission acknowledging the petition from Deepa, produced is marked as **Exhibit B6**. The copy of receipt dated 29.02.2024 by the IG & Police Commissioner acknowledging the petition from Rishna Marian John, produced is marked as **Exhibit B7**. The copy of relevant page of register from SHO Sreekaryam Police Station showing settlement signed between the Complainant, 2nd Respondent and the office bearers of Owners Association, produced is marked as **Exhibit B8**. The copy of letter dated 07.03.2024 by the Owners Association to the 2nd Respondent, produced is marked as **Exhibit B9**. Exhibit B9 admits that there exists a bore well and water



connection and that the Complainant is reluctant in paying charges. The copy of letter dated 07.03.2024 by the Owners Association to the 2nd Respondent admits that there exist STP, produced is marked as **Exhibit B10**. The copy of AMC dated 05.01.2024 with regard to STP signed between Owners Association and the agency produced is marked as **Exhibit B11**. The copy of statement of accounts with respect to the Complainant, produced is marked as **Exhibit B12**. As per Exhibit B12, an amount of Rs. 2,47,300/- is outstanding from the Complainant to the Respondents. The copy of email communication dated 02.03.2024 by the 1st Respondent requesting balance amount outstanding with interest from the Complainant, produced is marked as **Exhibit B13**. The copy of email dated 30.03.2021 by the 1st Respondent to the allottees, produced is marked as **Exhibit B14**. As per Exhibit B14, the 1st Respondent had made request to the allottees to make necessary arrangements for the formation of the association. The copy of representation by the Complainant dated 21.12.2023 to the District Registrar Thiruvananthapuram, produced is marked as **Exhibit B15**. As per B15, the Complainant raised objection in registering the association. In the representation the Complainant admitted that the allottees have decided to form an Association and office bearers have also been selected. The copy of representation by the office bearers of the Association dated 10.07.2024 to the District Registrar Thiruvananthapuram, produced is marked as **Exhibit B16**.



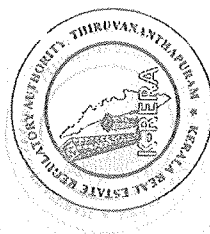
As per Exhibit B16, the office bearers of the Association made request to the District Registrar to make registration of the Association discarding the objection raised by the Complainant. The copy of Form -6 uploaded by the 1st Respondent on 13.07.2021 in the website of the Authority is marked as **Exhibit B17**.

6. It has been noted that the reliefs sought by the Complainant in the Complaint were for directions 1)to remove Billiards, Table Tennis etc., from the hall above Apartment No. 4D, 2)to lay/spread quality rubber/other material mats in the hall above Apartment No. 4D to prevent sound pollution, 3)to dig a new bore well in Shanoor Nalanda, 4)to provide facilities for rainwater harvesting and solar panel in Shanoor Nalanda, 5)to rectify the defects in the sewage treatment plant in Shanoor Nalanda, 6)to replace a new Tread Mill with sufficient specification for the use of Apartment owners of Shanoor Nalanda, 7)to provide sufficient protective fencing around the side wall in the roof top to prevent accidents to children, 8)to handover the original document of Apartment No. 4D to the HDFC Bank Vazhuthacaud in which the Complainant had availed housing loan and to pass such other order as the Authority think just and fine. But in his replication, the Complainant stated that no usable borewell was provided as per agreement, STP is not functioning properly and the Respondents had

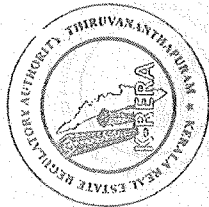


not provided guest parking and limited the prayer to a direction “to execute the work of sound proofing in the hall above his apartment and to issue orders to execute sound proofing in the hall above the Complainants apartment.”

7. In the initial hearing on 27.03.2024 itself, the Authority advised the Complainant to verify whether the reliefs sought by him are maintainable before this Authority through this complaint as it was informed by both parties that the project was handed over to the Association of allottees after completion of the project and the Association is maintaining the common areas. The Complainant during the hearing admitted that he was informed of the recreation space situated in the terrace area by the Promoter. When the learned Counsel for the Respondents argued that the project was already handed over to the Association of Allottees and the Association is maintaining the common area including the recreation space, the Complainant alleged that the Association is not yet registered as per law. Then Authority enquired the Respondents/promoters how could they hand over the project to an unregistered Association and then the Counsel concerned was directed to submit all the details of formation of Association and handing over the project to the Association of allottees by the Respondents. On 17.05.2024, the Counsel for the Respondents submitted that the



project was handed over on 19.02.2021 and maintenance is being done by the Association but the Association is not yet registered. But no documents have been produced in proof of his contentions. Again, the Respondents/promoters were directed, vide order dated 17.05.2024, to produce documents to prove that they had already handed over the project to the Allottee/Owners Association along with the details of registration of the Association, within two weeks from the receipt of the order. In response, the Respondents, vide I.A. No. 99/2024, filed on 23.07.2024 submitted that the documents regarding registration of the Association could not be produced since the request for registration by the Owners Association was kept pending before the District Registrar, Thiruvananthapuram because of the objections filed by the Complainant herein. The Respondents also filed a Statement on 23.07.2024 and submitted that the project, "Shanoor Nalanda" was one of the initial projects of the Respondents, originally commenced during 2011 by the land owner A.N Varghese through M/s Keratech Builders and Developers and later on the builder was replaced by M/s Highline Builders and said builder also failed in implementing the project and approached these Respondents for taking over the project and the same was taken over in 2018 by the Respondents. Later on, RERA came into existence and the project was registered as per Section 3 of the Act, 2016 and project was completed and handed over to the respective owners/allottees on



19.02.2021. The owners of the apartment were informed to form an Association to take over the maintenance of the project, vide e mail dated 30.03.2021. The copy of said email is produced. As per the agreement, the Respondents had to maintain the project for six months from date of handing over. The owners formed Association during September 2021, but the Respondents could not keep any records evidencing the formation of the Association. The restrictions on physical meeting due to Covid 19 pandemic was also reason for not able to prepare documents such as minutes etc. It was learnt by the Respondents that collective decision to register the Association formally were taken by the owners, except the Complainant, in the General body meeting, but could not do the same due to objections raised by the Complainant herein before the District Registrar. A copy of the said objection dated 23.12.2023 obtained under the RTI Act, 2005 is produced. From the objection filed before the District Registrar by the Complainant herein, it can be seen that there was decision taken in the General body meeting held in 2023, to register the Association. The association could not be registered due to the objection filed before the District Registrar by the Complainant herein and the Owners Association filed representation before the District Registrar on 10.07.2024 requesting to register the Association by discarding the objections of the Complainants. The copy of representation of the Owners Association dated 10.07.2024



is also produced. The handing over ceremony and taking over maintenance of common area in September, 2021 were admitted by the Association. The Respondents has also produced a copy of an enquiry report dated 14.06.2024 by SHO, Sreekariyam Police Station as additional document in support of the statement of objection dated 27.03.2024 filed before this Authority by the Respondents, in which the Complainant herein is the defendant. The Complainant submitted that the petition/objection to the District Registrar was filed much before filing the above Complaint before this Authority.

8. On perusal of documents before us, Exhibit A1 sale deed executed in favour of the complainant shows that common compound wall, water connection rain harvesting, energy saving electrical appliances and solar panels were provided in the project and the same was evidenced in the inspection of the valuer dated 09.06.2021 in connection with the registration of sale deed. The Exhibit A2 Series representations are with regard to correction works/curing of defects as to the functioning of STP, restoration of rain water harvesting, regularising water pressure, providing sufficient depth for tube well, cleaning the cracks on terrace, solving leakage, removing debris, cleaning basement floor etc which do not indicate that such facilities have not been provided in the project. Similarly, the Exhibits B9 and B10 representations of the Association



also shows that there exists a bore well, water connection and STP. As far as the relief with respect to the sound of recreational equipment placed in the recreation hall located in the terrace floor, Exhibit B1 and B2 copies of building plan and brochure clearly show that the recreation hall will be located right above the apartment allotted to the Complainant. It was also argued from the part of the Respondents that the Complainant visited the project multiple times before purchasing it and he was well aware that his apartment is right below the recreation hall. The counsel for the Respondents contended that if the Complainant had any objection, he could have opted some other apartment there in the project but he never availed, such an option so far. Even if the Association is not registered, as evidenced from Exhibit A5, the documents produced such as Exhibit B11 AMC and Exhibit A13 mass representation on behalf of the Association, in which the Complainant himself is of the one of the signatories itself reveal that there existed an Owners Association and an ad hoc committee, which is in control and maintenance of common amenities. The B15 representation of the Complainant also admits that there exists an adhoc committee and Association. According to the Respondents the said Association is in control of the recreation hall and equipment and the Association is also a necessary party in the Complaint. Anyhow, the Complainant had not taken steps to implead the said Association as a party in this complaint. Through



Exhibit A3, the Complainant alleged that the Respondents had not provided any suitable tile/mat/floor to prevent the sound from the recreation hall. The Respondents argued that at their expense, the floor mat has been provided on the floor of the recreation hall, bore well has already been provided and in addition to KWA water connection which are not seen objected by the Complainant. With regard to solar panel, there is no such promise is seen in the agreement. From Exhibit B11 AMC, it can be seen that the STP is functional and AMC dated 05.01.2024 was executed with the Owners Association. With regard to direction sought for handing over of original documents of Apartment 4D to HDFC Bank, the Complainant, being the owner/title holder of the said apartment, should be the custodian of the original deed/s and how the Respondents/ Promoter could keep it in their custody? If it is so, the Complainant can approach appropriate judicial Forum to recover those documents.

9. However, no documents showing the handing over of project/common area to the Association, as claimed by the Respondents /Promoters, could be produced by them so far even after specific direction given by this Authority. After hearing both the parties on 24.07.2024, it was found that the common area is not yet handed over to the Owners/Allotee Association by the Respondents



without which the Respondents have uploaded Form-6 Statement on 13.07.2021, which is to be filed in the web-portal of the Authority, only on completion of project and handing over of common area to the project to the Association. The contentions raised by the Respondents that ‘the owners formed Association during September 2021, but the Respondents could not keep any records evidencing the formation of the Association, the restrictions on physical meeting due to Covid 19 pandemic was also reason for not able to prepare documents such as minutes etc.’ cannot be accepted as they are meritless and untenable. As per Section 11 (4) (e) of the Act 2016, it is the responsibility of the Promoters to enable formation of Association of allottees within a period of three months of majority of allottees having booked their apartments. According to Section 17 of the Act 2016, the Promoters shall have the obligation after completion of the project, to hand over the common area and documents concerned to the Association of allottees and obtaining Occupancy Certificate for the project and only after complying with these formalities, they could submit Form-6 in the registration web portal of the Authority declaring that the Project has been completed, as provided under the Kerala Real Estate Regulatory Authority (General) Regulations 2020. Furthermore, the Promoters of such real estate projects in the State have been given specific directions about



these mandatory procedures through Public Orders and Notices issued by this Authority from time to time.

10. Section 17 of the Act, 2016 is reproduced hereinbelow:

“17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary



documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

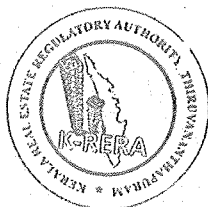
Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

11. It is found that the action of the Complainant, preventing the registration of Association is violation of the provisions of Section 19(9) of the Act, 2016 as per which every allottee of the apartment, shall participate towards the formation of an association or society or co-operative society of the allottees or a federation of the same. The Complainant being an allottee is duty bound to ensure the formation of an allottee Association and its registration, in which he is supposed to an active member. Unfortunately, the Complainant herein have objected the registration of the Association, by violating the provisions of the Act, 2016. It is strange that the Complainant himself approached the District Registrar to prevent the registration of the Association in which he is also a member and at the same time filed this Complaint alleging that the Association is not yet registered as per law. The Doctrine “those seeking equity must do equity or equity must come with clean



hands” is also applicable in this case. In the landmark case of *Ramjas Foundation and Another Vs Union of India and Others (2010) 14 SCC 38*, the Hon’ble Apex Court has univocally held “ *The Principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievances and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums*”. The copy of representation submitted by the Complainant before the district Registrar is produced by the Respondents and marked as Exhibit B15. But the said fact was suppressed by the Complainant. On perusal of Exhibits B3 to B9, and B16, copies of representations/complaints given by other allottees and the Association itself before various forums/agencies and Exhibits A4, A5 and B15 it could be found that the Complainant happened to be as an opposite party to all those issues/complaints.

12. From the above facts, it is found that the reliefs sought in the Complaint are not maintainable before this Authority through this Complaint. However, it is made clear that as per Section 14(3) of the Act, 2016 in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to



such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act, 2016. Hence, the above Complaint is hereby dismissed.

13. The Registry is directed to proceed with suo-motu actions against the Respondents/promoters for violating the provisions under Section 17 of the Act, 2016 and for filing Form-6 Declaration wrongfully, without handing over the common area and documents concerned to the Registered Association of allottees as provided under the provisions of the Act 2016 and the Rules and Regulations made thereunder.

Sd/-
Preetha P. Menon
Member

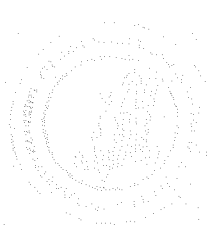
Sd/-
Dr. B. Sandhya
Member

Sd/-
P. H. Kurian
Chairman

True Copy/Forwarded By/Order



Secretary (Legal)



APPENDIX

Exhibits on the side of the Complainant

- Exhibit A1: The copy of sale deed dated 30.06.2021.
- Exhibit A2 Series Three Numbers: The copy of e-mail communications dated 11.07.2022 by Dr. Unnikkuttan D, P. Radhakrishnan Pillai, and Sivakumar S. O. to the 1st Respondent
- Exhibit A3: The copy of request dated 01.06.2022 by the Complainant to the Respondents.
- Exhibit A4: The copy of Petition dated 22.06.2022 by the Complainant to the CI of Police, Sreekaryam.
- Exhibit A5: The copy of Petition dated 19.12.2023 by the Complainant to the CI of Police, Sreekaryam.
- Exhibit A6 Series (Two Numbers): The copies of Sales agreement and construction agreement executed between the parties dated 21.10.2020.
- Exhibit A7: The copy of occupancy certificate of the project dated Nil.
- Exhibit A8: The copy of letter dated 23.04.2024 from the District Registrar obtained under Right to Information Act, 2005.
- Exhibit A9: The copy of letter dated 30.04.2024 from KSEB.
- Exhibit A10: The copy of consumer ledger from the KWA.
- Exhibit A11: The copy of receipt of payment of Rs. One lakh dated 01.10.2020 by the Complainant to the 1st Respondent.
- Exhibit A12: The copy of print from the 1st Respondents' website
- Exhibit A13: The copy of mass representation to the 2nd Respondents by the allottees.
- Exhibit A14: The copy of representation to the 2nd Respondent by the allottees Association dated 07.03.2024 for curing defects in the STP.
- Exhibit A15: The copy of letter dated 11.03.2024 by a Consulting Architect to the Complainant.



Exhibits on the side of the Respondents

- Exhibit B1: The copy of typical floor plan and terrace floor plan.
- Exhibit B2: The copy of brochure and the terrace floor plan.
- Exhibit B3: The copy of petition dated 19.03.2024 filed by the Association before the Assistant Commissioner of Police, Thiruvananthapuram.
- Exhibit B4: The copy of petition dated 15.02.2024 filed by the secretary of the Association before the SHO Sreekariyam Police Station.
- Exhibit B5: The copy of receipt dated 19.03.2024 by the IG & Police Commissioner acknowledging the petition from Rahul S.
- Exhibit B6: The copy of receipt dated 01.03.2024 by the Kerala Women's Commission
- Exhibit B7: The copy of receipt dated 29.02.2024 by the IG & Police Commissioner acknowledging the petition from Rishna Marian John
- Exhibit B8: The copy of relevant page of register from SHO Sreekaryam Police Station showing settlement signed.
- Exhibit B9: The copy of letter dated 07.03.2024 by the Owners Association to the Respondent.
- Exhibit B10: The copy of letter dated 07.03.2024 by the Owners Association to the Respondent.
- Exhibit B11: The copy of AMC dated 05.01.2024 with regard to STP.
- Exhibit B12: The copy of statement of accounts with respect to the Complainant.
- Exhibit B13: The copy of email communication dated 02.03.2024 by the 1st Respondent to the Complainant.
- Exhibit B14: The copy of email dated 30.03.2021 by the 1st Respondent to the allottees,



Exhibit B15: The copy of representation by the Complainant dated 21.12.2023 before the District Registrar, Thiruvananthapuram.

Exhibit B16: The copy of representation by the office bearers of the Association dated 10.07.2024 to the District Registrar, Thiruvananthapuram.

Exhibit B17: The copy of Form 6 dated 09.07.2020 uploaded by the 1st Respondent on 13.07.2021 in the website of the Authority.



