



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Dated 23rd October 2020

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

COMMON ORDER

IN

COMPLAINTS NO: 7/2019, 8/2019, 9/2019, 10/2019, 97/2020 & 146/2020

1. COMPLAINT NO: 7/2019

Complainant:

Mr. Jacob George
S/o of A.K George, Alummoottil House ,
TP Puram Post, Vazhoor,
Kottayam District- 686504

[By Advocate Satheesh A.K]

Respondent(s):

1. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024
2. Sri. Nishad N.P,
Managing Director,
Nucleus Premium Properties Private Ltd,
S/o. Mohammedali,
residing at Nellaya Puthen Peediyakkal House,
Thazhakode West P.O, Malapuram- 679352
3. Sri. Nashid N.P
Director, Nucleus Premium Properties Private Ltd.
S/o Mohammedali,
residing at Nellaya Puthen peediyakkal House,
Thazhakode West P.O, Malappuram- 679352

4. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam
[Respondent 1 to 3- By Advocate T.P Varghese]

2. COMPLAINT NO: 8/2019

Complainant:

Mr. Prince Mathew
S/o O.V Mathew,
Puthenpeedikayil,
Moolavattom P.O, Kottayam 686026

[By Advocate Satheesh A.K]

Respondent(s):

1. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024
2. Sri. Nishad N.P,
Managing Director,
Nucleus Premium Properties Private Ltd,
S/o. Mohammedali,
residing at Nellaya Puthen Peediyakkal House,
Thazhakode West P.O, Malapuram- 679352
3. Sri. Nashid N.P
Director, Nucleus Premium Properties Private Ltd.
S/o Mohammedali,
residing at Nellaya Puthen peediyakkal House,
Thazhakode West P.O, Malappuram- 679352
4. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam
[Respondent 1 to 3- By Advocate T.P Varghese]

3. COMPLAINT NO: 9/2019

Complainant:

Mrs. Annie Abraham Koshy
S/o Koshy Pulivarathil House,
Chennerkkara P.O, Pathanamthitta- 689 503

[By Advocate A.K Satheesh]

Respondent(s):

1. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024
2. Sri. Nishad N.P,
Managing Director,
Nucleus Premium Properties Private Ltd,
S/o. Mohammedali,
residing at Nellaya Puthen Peediyakkal House,
Thazhakode West P.O, Malapuram- 679352
3. Sri. Nashid N.P
Director,Nucleus Premium Properties Private Ltd.
S/o Mohammedali,
residing at Nellaya Puthen peediyakkal House,
Thazhakode West P.O, Malappuram- 679352
4. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam

[Respondent 1 to 3- By Advocate T.P Varghese]

4. COMPLAINT NO: 10/2019

Complainant:

Mr. John Christopher
S/o J.C Naronha, Meenath House,
Clappana P.O, kollam- 650525

[By Advocate A.K Satheesh]

Respondent(s):

1. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024
2. Sri. Nishad N.P,
Managing Director,
Nucleus Premium Properties Private Ltd,
S/o. Mohammedali,
residing at Nellaya Puthen Peediyakkal House,
Thazhakode West P.O, Malapuram- 679352
3. Sri. Nashid N.P
Director, Nucleus Premium Properties Private Ltd.
S/o Mohammedali,
residing at Nellaya Puthen peediyakkal House,
Thazhakode West P.O, Malappuram- 679352
4. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam

[Respondent 1 to 3- By Advocate T.P Varghese]

5. COMPLAINT NO: 97/2020

Complainant:

Mr. Rojer Zachariah Joseph
Ambattu House,
Chamampathal Post,
Vazhoor, Kottayam.

[By Advocate A.K Satheesh]

Respondent(s):

1. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024

2. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam
3. Punjab National Bank,
Housing Finance Ltd.,
Ist Floor, R P Arcade,
Vytila, Kochi 682019.

[Respondent 1 & 2- By Advocate T.P Varghese]

6. **COMPLAINT NO: 146/2020**

Complainant:

Mr. Day George Philip
S/O Kaithayil Chacko,
Kaithayi, Kollad P O,
Kottayam

[By Advocate A.K Satheesh]

Respondent(s):

1. Sri. Nashid N.P
Director, Nucleus Premium Properties Private Ltd.
S/o Mohammedali,
residing at Nellaya Puthen peediyakkal House,
2. Nucleus Premium Properties Private Ltd
4th Floor, Ventura,
Anchumana, NH 47 Bypass,
Kochi-682 024
3. Sri. Joseph Lukose,
residing at 12C, Alliance Residency,
Marine Drive, Ernakulam

[Respondent 1 & 2- By Advocate T.P Varghese]

COMMON ORDER

1. The Complainants in the above six complaints are the Allottees of a Villa Project named 'Nucleus Bayvue' at Panachikad Village, Kottayam District, developed by the 1st Respondent Company in the above cases land owned by the 4th Respondent in complaints No.7/2019 to 10/2019. The 2nd and 3rd Respondents in Complaint No.7/2019 to 10/2019, are the Managing Director and the Director respectively of the 1st Respondent Company and the 4th Respondent is the owner of the project land. The facts of all the abovesaid complaints in common is as follows: In the year of 2014, the Respondents 1-3 started advertisements in connection with the sale of villas offering all modern facilities in the project such as swimming pool, kids pool, club house, games room, health club, children's play area, visitor's lounge, office room, 24 hours security service, generator back up for common area, servant's toilet, 5-6 meters wide internal roads, etc. Believing the promises given by the Respondents Nos. 1-3, the Complainants entered into sale & construction agreements with Respondents No. 1, 3 &4 wherein 4th Respondent, Land Owner is represented by Respondent No. 3. As per the terms of these agreements, the Respondents assured the Complainants to complete construction of the villas and hand over their possession within February 2017. The standards & specifications of materials to be used are also specified in the respective agreements. But the construction works in the project was stopped completely in the end of 2016 and the Respondents completely failed to honour their promises given to the Complainants.

2. The Complainant in Complaint No. 7/2019 entered into a tripartite agreement with the Respondents for Villa No. 20 having 1506 sq.ft. together with 4.31 cents of land and 1.13 cents of undivided share in the common area and has paid an amount of Rs. 64,00,000/-

3. The Complainant in Complaint No. 8/2019 entered into a tripartite agreement with the Respondents for Villa No. 29 having 1348 sq.ft. together with 4.31 cents of land and 1.51 cents of undivided share in the common area and has paid an amount of Rs. 60,35,625/-

4. The Complainant in Complaint No. 9/2019 entered into a tripartite agreement with the Respondents for Villa No. 9 having 2037 sq.ft. together with 4.31 cents of land and 1.51 cents of undivided share in the common area and has paid an amount of Rs. 95,86,106.53/-

5. The Complainants in Complaint No. 10/2019 entered into a tripartite agreement with the Respondents for a Villa having 2354 sq.ft. in 6.07 cents of land and 1.22 cents of undivided share in the common area and has paid an amount of Rs. 1.08 Crores.

6. The Complainant in Complaint No. 97/2019 entered into a tripartite agreement with the Respondents for Villa No. 23 in 4.22 cents of land and undivided share in the common area and has paid an amount of Rs. 54,91,921/-

7. The Complainant in Complaint No. 146/2019 entered into a tripartite agreement with the Respondents for Villa No. 32 having 2354 sq.ft. together with 3.11 cents of land and undivided share in the common area.

8. As the works in the said project seen stopped, the Complainants sent numerous requests and reminders to the Respondents to complete the project and hand over villas but the Respondents kept on assuring that the construction would be completed within a short period. But the Respondents have not taken any steps to complete the project so far and even now the Complainants have paid total amounts for the plot on which the villas

are to be constructed, the Respondents have not executed the sale deeds in favour of some of the Complainants.

9. Due to faulty construction works such as piling etc. one of the villas under construction ie; Villa No.31 which was almost constructed, tilted, sank and had to be demolished. Due to inferior quality of materials used and since partly completed villas are being neglected by the Respondents, they have deteriorated badly and unless the works resume after carrying out necessary maintenance and restoration works, the partly finished villas will be beyond salvage and will be a total loss. The Complainants have paid sale consideration for the land and cost of construction after availing huge amount as loans from various banks and are paying interest for the same. Though the respondents offered to complete and hand over the villas within February 2017, even after a lapse of more than 2 years, there is no progress in the project and the Respondents do not appear to have any intention to resume construction and to complete the project in near future. It is also alleged by the Complainants that the Respondents have diverted funds collected from the Complainants to their various other projects and so they don't have funds to complete this project.

10. The relief sought by the Complainants are (1)to direct the Respondents to complete the construction of the villas and all other amenities as agreed by the Respondents within one month after ensuring the structural stability of the building and other standards of the building by a competent civil engineer appointed by the Authority and to hand over possession of the Villas to Complainants or (2) alternatively this Authority may take over the project from the Respondents and complete the project and hand over the villas to the Complainants, (3) Direct police authorities to take criminal case against the Respondents for cheating the complainants and also for committing fraud upon

the complainants, (4) to take appropriate action against the Respondents not to cheat the public any more, (5) Order to recover cost of this proceedings from the Respondents and their personal assets and (6) such other reliefs which in the circumstances this Authority deems just and proper.

The copies of agreements executed with the Respondents have been produced by the Complainants 7/2019 to 10/2019 & 97/2020 [Exbt. A1 to A5].

11. The Respondents No. 1 in Complaint No.7/2019 to 10/2019, and 97/2020 and 2nd Respondent in Complaint No.146/2020 are same. The 4th Respondent in Complaint No.7/2019 to 10/2019 and 2nd Respondent in Complaint No.146/2020 are also same. The Respondent No 1 to 3 in the above cases submitted their reply statements in all cases. Respondent No. 4 submitted reply statement only in Complaint No. 7/2019 to 10/2019. The Respondent No. 1-3 in Complaint No.7/2019 to 12/2019 contended as follows: The complaint is not maintainable in law and on the facts of the case as the grievance of the complainants are in respect of agreements executed much before the Real Estate (Regulation & Development) Act 2016 came into force and the complainants are not entitled to invoke provisions of the Act in respect of a transaction that took place much before the Act came into force. The Respondents 2 & 3 have no personal responsibility regarding the transactions between the Complainant and the Builder is unjustified. The Respondents 2 & 3 also stated that the 4th Respondent had entered into an agreement with the 1st Respondent Company for development of land and sale of property of 102.16 Ares in extent. The 4th Respondent/ Land Owner had entered into agreements with the buyers of villas in the project for conveyance of right in land and he had no role in the development of land. Due to the litigation between 4th Respondent and some third parties there was delay in obtaining permit and commencement of the project.

12. The Panachikkad Grama Panchayath granted Development Permit No. A1 6238/15 dated 02.05.2015 for development of land and thereafter obtained building permits for villas in the project. The Complainants and other purchasers were promptly appraised the stage wise construction and they understood reasons for delay. The Project consists of total 31 villas out of which construction of 28 villas have almost been completed. Only 3 villas are unsold and construction of those villas will be completed only after bookings are done for them. The construction of internal roads and amenities were being carried out there. The allegation as to stoppage of works is denied. The 1st Respondent had carried out works without break till the end of 2017 till the cash crunch due to demonetization policy of the central government and also due to delay in payment from the purchasers including complainants.

14. The 1st Respondent had already paid the entire amounts due to the 4th Respondent, land owner and thereafter, the sale deeds for 24 villas have been executed by the land owner. The Project was also affected by floods in 2018 & 2019 and in spite of the same 1st Respondent is taking all efforts to complete and hand over the villas to purchasers. There are no defects in the construction and no inferior quality materials used and the works of any villas were being neglected by the Respondents. The construction works are fast progressing now. The allegation regarding defect and demolition of villa No. 31 is also denied by the Respondents 1-3 saying that it is to tarnish the reputation of 1st Respondent. The allegation as to diversion of funds is also denied by them. It is stated that they have formed an Owners ad-hoc committee of buyers who had evaluated the works there with the help of engineers and an exclusive bank account has been opened for the project and the entire amount received will be used as common pool bank account for the purpose of project alone. This committee is monitoring the work progress and collection and

utilization of funds on a regular basis. The complaints are being filed to evade the payments due from the complainants. It is also assuring that the 1st Respondent is ready and willing to pay compensation if any payable for any delay in handing over the villas. If any adverse order is passed by the Authority, it will result in stoppage of entire construction works and then the prompt payers will be badly affected. Same are the contentions in other cases also.

The following documents are produced by the Respondents in Complaint No.7/2019

(1) Copy of the documents showing accounts relating to the project Nucleus Bayvue including amounts received and outstanding (**Exbt B1**).

(2) Copy of Statement showing accounts due and paid to land Owners in respect of land of Villa (**Exbt B2**).

(3) Copies of emails exchanged with the complaints (**Exbt B3**).

15. The contentions of 4th Respondent in Complaint No.7/2019 to 10/2019 are as follows: The complaint against the 4th Respondent is not maintainable and the 4th Respondent is not a Promoter and do not come within the definition of Promoter in the Act. The 4th Respondent as the owner of the properties having a total extent of 118.29 Ares had entered into a registered agreement for sale on 14.08.2014 with the 1st Respondent represented by the 2nd Respondent and the period of agreement was 8 months. The 1st Respondent paid advance amount and agreed to pay balance amount within 8 months. But the 1st Respondent did not pay entire sale consideration within the period. The role of the 4th Respondent is only to execute sale deeds and he executed 29 sale deeds in total. The entire sale consideration was received by the 1st Respondent from the purchasers. Except complainant in 10/2019, other complainants got executed the sale deeds. The 4th Respondent filed 2 civil

cases against the Respondents 1-3 in connection with the said dispute one is for injunction restraining them from proceeding with construction until the payment of balance amount and other is for recovery of balance sale consideration along with compensation in which the Hon'ble Sub court ordered attachment of properties covered by the agreements to secure the money due. It was also submitted there that on receiving balance sale consideration, the 4th Respondent is ready to execute the sale deeds. The 4th Respondent has no role in the construction and sale of villas and he granted an oral permission to make constructions believing that the Respondents 1-3 would honour the agreement and complete the transaction within time.

The following documents were produced by the 4th Respondent in Complaint No.7/2019.

- (1) Copy of Regd. Agreement for Sale No. 1348/2014 dated 14.08.2014 [**Exbt B4**].
- (2) Copy of agreement dated 05.05.2016 [**Exbt B5**]
- (3) Copy of agreement dated 16.09.2015 [**Exbt B6**].
- (4) Copy of ledger account [**Exbt B7**].
- (5) Copy of Counter Affidavit filed in O S No. 40/2018 before the Munsiff court Kottayam [**Exbt B8**].
- (6) Copy of Written statement and counter claim filed in O S No. 40/2018 before the Munsiff court Kottayam [**Exbt B9**].

16. As the subject matter, cause of action and reliefs sought in all the above complaints are one and the same as it is related to the same Villa project developed by the very same Promoters, the said Complaints were being clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6(6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

17. We have heard the learned counsels on either side, gave careful consideration to their submissions, perused the material documents available on record. After detailed hearing and perusal of pleadings and documents submitted by both the parties, following points were came up for consideration:

- 1) Whether these complaints are maintainable before this Authority?
- 2) What are the responsibilities/liabilities of the Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 and the Respondent No.4 in Complaint in No.7/2019 to 10/2019 regarding the grievances of the Complainants including the completion of the project after curing the structural defects?
- 3) What order as to costs?

18. **Point No. 1:** The learned counsel appeared for the Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 contended that the Complaints are not maintainable, as the agreements between the Complainants and the Respondents were executed much before the Act came into force.

The Real Estate (Regulation & Development) Act 2016 was enacted by the Parliament As Act No. 16 of 2016 ('the Act' for short) and Sections 2, 22-39, 41-58, 71-78, 81-92 came into force w.e.f. 01.05.2016 as per S.O. No. 1544 (E) dated 26.04.2016 and sections 3 to 19, 40, 59-70, 79-80 came into force w.e.f. 01.05.2017 as per S.O. No. 1216(E) dated 19.04.2017 of the Central Government. As Section 31 of the Act which gives right to any aggrieved person to "file a complaint before the Authority or the Adjudicating Officer for any violation or contravention of the provisions of the Act or the Rules and Regulations made thereunder against any Promoter, allottee or real

estate agent” came into force on 01.05.2016 itself, the right got vested with them since that date. If a real estate project was not completed as on 01.05.2016, as per the promises made by the Promoter, the aggrieved party can approach this Authority with his grievances related to that project. In this connection, it is significant to note that the completion of a ‘Real Estate Project’ is not merely the completion of building/s or execution of sale deeds or receipt of Development Certificate/Occupancy Certificate from the local authority but completion of the whole project with all the common amenities and facilities as committed to the allottee as per the terms and conditions of the agreements executed between the Promoter and Allottee. It is also to be noted in this context that the Promoter shall have the responsibility to enable formation of Association of allottees, to transfer common areas to the Association and also to hand over all the documents pertaining to the project to the Association before exiting from the project. In these set of cases, the Respondent No. 1-3 in Complaint No.7/2019 to 10/2019, who are the promoters, admitted in their counter statements that the project in question is not completed so far. In compliance of the direction given by this Authority at the initial hearing itself, the Promoters have submitted application before the Authority for registration under Section 3 of the Act. Hence the contention of the Respondents 1-3 in Complaint No.7/2019 to 10/2019 that ‘this complaint is not maintainable as the agreements were being executed, between the Complainants and the Respondents, much before the Act came into force’ does not prevail and so the Complainants can very well invoke jurisdiction available under this Act. This point has been answered in favour of the Complainants.

19. Point No. 2: (1) As far as the responsibility of Respondents No. 2&3 is concerned, their argument that ‘they have no personal responsibility regarding the transaction between the complainants and the Builder, which is a private limited company and they are only directors of said company’ has no

legal standing because Section 69 of the Act clearly says that “ where an offence under this Act has been committed by a Company, every person who, at the time the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly”. Exbt. A1-A6 shows that the Respondent No. 3 put his signatures, on behalf of R1 Company as its director and also on behalf of the Land Owner. Surprisingly, all the other contentions in their Reply statements are in the form of admissions of their direct liability in the issues raised by the Complainants. They admit execution of sale and construction agreements with the Complainants and also the delay occurred in completion of the project despite trying to give explanations/reasons for the delay in the names of demonetization, floods, etc. Hence it is very clear that Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 are directly liable and responsible for the violation of promises made to the Complainants.

(2) One of the substantial issues raised by the complainants was regarding their apprehension concerning the structural stability of buildings constructed and to prove the same they point out that one of the Villas (No. 31), which was almost completed was tilted and sank and thus had to be demolished by the Respondents. The Complainants also pointed out that due to inferior quality of materials used and partly constructed villas are being neglected by the Respondents, their condition is becoming worse day by day. In view of these facts and as prayed by the Complainants, this Authority, as per Interim order dated 26.02.2020, directed to conduct a joint inspection of the project by the Engineers/experts deputed by both parties and submit a detailed report regarding structural stability of the buildings already constructed, works to be completed in the project, and time and expenses to be incurred for the balance works to be completed in the project. In compliance of

the said direction, joint inspection was done on 01.03.2020 and detailed report has been submitted by Mr. K G. Surendran, Retd. PWD Engineer who conducted a group inspection with other technical experts [Exbt X1]. The report shows significant structural damages in some Villas, significant structural elevation difference, etc and it provides suggestions/remarks of the experts for curing the defects noticed by them. It is noticed that the Building permits of many of the villas got expired. The inspection team also noticed poor workmanship of water proofing of all external walls and sloping roof and flat roof leading to water seepage into the interior walls. At the end of the detailed report they conclude recommending to demolish and rebuilt the villa showing settlement with proper piling and supervision and give warning that the present condition of such villas lead to significant instability and danger in near future. The Authority has considered [Exbt X1] report very seriously and expressed serious concern over the findings of the inspection team. The Respondents 1-3 in Complaint No.7/2019 to 10/2019 assured at the time of hearing that they would start the works as advised by the experts in [Exbt X1] report immediately.

(3) Another important issue raised by the Complainants in complaint No. 10/2020 and 97/2020 is the non-execution of sale deeds in their favour till date. The Respondent/Land owner, Mr. Joseph Lukose (hereinafter referred to as 'Respondent No. 4' as arrayed in above 4 complaints), appeared only on the first hearing day and submitted his objections and some documents as mentioned above. The contention of Respondent No.4 in Complaint No.7/2019 to 10/2019 is that the complaint against him is not maintainable as he is not a Promoter and do not come within the definition of Promoter in the Act . As per Section 2(zk) (i) of the Act, the definition of 'Promoter' includes "a person who constructs or causes to be constructed..... or a person who develops land into a project, whether or not the person also

constructs structures on any of the plots for the purpose of selling to other persons all or some of the plots, whether with or without structures thereon.....” Even though the Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 themselves confirmed in their reply statements that it is not a joint venture project with the 4th Respondent/Land owner but only an agreement for development of land was entered into between them. No such agreement for development is being produced before the Authority by any of these parties. At the same time the Respondent No. 4 admits that he had entered into an agreement for sale with Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 , copy of which is produced as Exbt B4. In which “the Respondent No. 4 in Complaint No.7/2019 to 10/2019 , Land owner agrees to sell and the Respondent No. 3 on behalf of Respondent No. 1 agrees to purchase the land by itself and/or through its nominees appointed in writing”. It is clear that the term “nominees” here intends to denote their prospective allottees of villas. Moreover, the Land owner is the first party in each and every agreement for sale & construction entered into between the 1st Respondent Builder and the Allottees in which it stipulates that “the Builder/Land owner shall register the land in the name of Allottee on or before the completion of construction of Villa”.

(4) It is noticed that the Respondent/Land owner Mr. Joseph Lukose neither appeared nor represented by anybody after attending in the very first hearing only in Complaints No.7/2019 to 10/2019, despite repeated notices from this Authority and violated the repeated directions issued by this Authority to complete the pending sale deed registrations in favour of the 2 of the complainants. The Authority observed that the Respondents have grievously failed to comply with the interim orders passed by this Authority and violated them repeatedly and such a negligent and obstinate act from the part of the Respondents, both Promoter (Respondents 1-3 in Complaints No.7/2019 to

10/2019) and Land owner(Respondent No.4 in Complaints No.7/2019 to 10/2019), amounts to an offence punishable under Section 63 of Real Estate (Regulation & Development) Act 2016 and during the hearing, the Authority specifically expressed its displeasure over such reckless attitude shown by both the Promoter and the Land owner. Hence the Authority has decided to issue separate Show Cause Notices to both the Promoter and the Land Owner for not imposing penalties as per the provisions of the Act.

(5) During the hearings, the Respondents No.1-3 in Complaint No.7/2019 to 10/2019 recurrently stated that they were ready with stamp papers and all to comply with the direction given by this Authority to complete the sale deed registrations but could not complete them due to the non-co-operation from the part of the Land Owner. It is clear that the Respondent/Land Owner Mr. Joseph Lukose is a party to the sale & construction agreements executed with the allottees. He is a party in all these agreements as First Party-Land owner who assures allottees to convey title over the plots as well as the common areas of the project. So, he cannot be absolved from the responsibility of executing sale deeds to the Allottees with whom he had executed such Sale & Construction Agreements.

(6) At the same time, it is worthwhile to note that in the absence of a Joint Venture/Development Agreement, the Builder/Promoter (Respondent No1-3 in Complaint No.7/2019 to 10/2019), who received the consideration directly from the Allottees, is undoubtedly vested with the primary responsibility to complete and hand over the Project, as per the terms and conditions of the Sale & Construction agreements executed with the Allottees. As far as the Allottees of a Project are concerned, the dispute between the Promoter and Land Owner is totally extraneous and this Authority also have no jurisdiction to entertain such disputes. Here, the Respondents 1-3

in Complaint No.7/2019 to 10/2019 themselves clearly admitted in their reply statement that the 4th Respondent has no role in the development of land. Hence, we came to conclusion that the only responsibility/liability of Respondent No. 4 is the completion of registration of sale deeds of plots and common areas, if any, pending in the project. But the sole responsibility/ liability with regard to all the issues related to development and construction such as delay in completion, structural defects, quality of materials and all other promises given to allottees. Undoubtedly, it is the responsibility of the Respondent 1-3 in Complaint No.7/2019 to 10/2019, to make the 4th Respondent in Complaint No.7/2019 to 10/2019, complete all the pending registrations of sale deeds w.r.t. title of individual plots and common areas in favour of allottees and the Association of allottees respectively, at any cost. Hence Point No. 2 is also answered in favour of the Complainants.

20. In compliance of our interim order dated 22.09.2020, a sworn affidavit, along with detailed statement of amounts received as well as receivable from the project, has been submitted by Respondent No. 2, Managing Director of Respondent No. 1 Company, in which it is stated that they were compelled to reduce the land area as per the initial plans and drop the construction of apartment complex due to litigations between the Respondent No. 4/Land owner and his business partners. So, the total land utilized, for the whole project consisting of 31 villas and the common areas kept aside for road, facilities and amenities is, at present 87.034 Ares only and so the Respondent No. 4/Land owner is entitled to get payment for the said land only. An amount of Rs. 1,10,29,780/- is due from various villa owners, inclusive of registration charges, for sold villas whose sale deeds have not been registered and an amount of Rs. 3,12,68,901/- is receivable from purchasers of villas which have already been registered. Thus, a total amount of 4,22,98,681/- is to be received from sold villas. An amount of 1,00,29,559/- will be received from unsold

villas. The Respondent/Promoter also undertakes that the entire project will be completed within a period of 9(Nine) months from the date, overdue payment against completed stage of construction amounting to Rs. 1,10,29,780/- is deposited by the defaulters into the designated escrow account.

21. After detailed hearing of both the parties and on perusal of the documents submitted by them, we have decided to issue final direction to the Respondents to complete the project in all respects and hand over it to the Allottees and also to complete the pending sale deed registrations within a fixed time frame. It is also noticed that a permanent association of allottees is not formed and the escrow account is not opened till date as directed by this Authority.

21. In view of the above facts and circumstances, this Authority invoking Section 34(f) & 37 of the Act hereby gives final direction to

(1) the Respondents No. 4 in Complaint No.7/2019 to 10/2019 /Land Owner to complete all the pending registrations of Sale Deeds w.r.t. title of individual plots in favour of allottees and common areas to the Association of allottees and

(2) the Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 /Promoter to enable formation of Association of allottees and register it as per the local laws and also to open a joint bank account with the Association so as to deposit all the receivable amounts from the project in this account and make sure that these amounts shall be used only for the construction of project 'Nuclues Bayvue'.

(3) the Respondents No. 1-3 in Complaint No.7/2019 to 10/2019 /Promoter to prepare a Work Schedule regarding completion of whole works in the project within 9(Nine) months from the date of receipt of this order, giving special attention and importance to the issues regarding structural damages & defects indicated in the Exbt X1 inspection report of technical experts and advices given by them, failing which the Authority shall initiate more stringent actions as per the penal provisions of the Act.

(4) The said work schedule properly signed by the authority concerned shall be submitted before this Authority within 15 days from the date of receipt of this order. Copy of the same shall also be served to the Complainants.

(5) The Association shall monitor the works and make sure that the work is progressing as per the work schedule submitted before this authority and in case of failure in this regard from the part of the Respondents, the Association can approach this Authority. Similarly, the Association shall assure that the due amount from allottees is being remitted promptly in accordance with completion of works and in case of default from any allottees, the Respondents can also approach us with complaints against defaulting parties.

Both parties shall suffer their respective costs.


This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation for the loss sustained to them as per 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 : True Copy of the Sale and Construction Agreement dated 22.05.2015 - Complaint No. 7/2019
- Exhibit A2 : True copy of the Sale and Construction Agreement dated 11.04.2015 - Complaint No. 8/2019
- Exhibit A3 : True copy of the Sale and Construction Agreement dated 26.08.2015 - Complaint No. 9/2019
- Exhibit A4 : True copy of the Sale and Construction Agreement dated 01.06.2015 - Complaint No. 10/2019

Exhibits on the side of the Respondents

- Exhibit B1 : Copy of the statement showing the accounts Relating to the Project bayvue including amounts received and outstanding
- Exhibit B2 : Copy of the statement showing the amounts due and paid to landowner in respect of land of villa
- Exhibit B3 : Copies of mails exchanged with Complainant
- Exhibit B4 : Copy of Regd. Agreement for Sale No. 1348/2014 dated 14.08.2014
- Exhibit B5 : Copy of agreement dated 05.05.2016
- Exhibit B6 : Copy of agreement dated 16.09.2015
- Exhibit B7 : Copy of ledger account
- Exhibit B8 : Copy of Counter Affidavit filed in O S No. 40/2018 before the Munsiff Court Kottayam
- Exhibit B9 : Copy of Written statement and counter claim filed in O S No. /2018 before the Munsiff court Kottayam
- Complaint No.
7/2019

Exhibits produced on order of the Authority

- Exhibit X1 : Expert Opinion