



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaint No.106 / 2021**

Dated 10<sup>th</sup> November,2021

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

## Complainant

1. Nandakumar Padat  
Paradise Villa, Paradise Road  
Vytilla, Kochi-682019

## Respondents

1. Syama Dynamic Project Developers Pvt. Ltd  
30/1366C, Syama Business Centre  
NH Bypass, VytilaDesom, Poonithura Village  
Ernakulam, Rep by its Director Mr. Suraj.S.Vaidyan
2. Suraj.S.Vaidyan  
11D, Silver Crest Apartments  
Jawahar Nagar, Kadavanthra  
Ernakulam-682020.
3. N. Suseelan, 5A, Lakshmi  
Namasita Lane, Kadavanthra Desom  
Elamkulam Village, Ernakulam-682020.
4. N.Surendran, No. 31/27E,28,  
Panchavadi Colony, Ambelipadam Road,  
VytilaDesom and P.O, Poonithura Village  
Ernakulam-682020.
5. N.Syama Prakash,  
No.832, Q Tower, Ashirwad Palace,  
Surat City, Gujarat-395007.



6. Paradise Apartments Owners Association  
Rep. by its Secretary, Paradiso  
Paradiso Road, Vytilla, Kochi-682019.
7. Dr. Tisha Ann Babu  
Paradiso Villa, No.2  
Paradise Road, Vytilla, Kochi-682019.
8. Tony Jacob  
Paradiso Villa, No.1  
Paradise Road, Vytilla, Kochi-682019.

*(Addl. Respondents 6 to 8 Impleaded as per Orders in I.A 77/2021, I.A.78/2021 & I.A 79/2021 dated 29-07-2021)*

The above Complaint came up for virtual hearing today. Complainant, Respondents and additional Respondents attended the hearing through their respective Counsels Adv.P.Nandakumar, Adv.John.T, Adv.Vivek Vijayakumar & Adv. Athul Rajesh.

### **ORDER**

1. The Complainant's case is that the Complainant had purchased a Villa in the Project named "Paradiso" located at poonithura village, developed by Respondents consisting of 3 villas and a residential multi storied apartment complex comprising 39 flats. The purchase of the v villa and appurtenant land were effected as per registered deed and the deed covers the land with a villa described as Schedule A and right of way described as Schedule B. Now, the 3<sup>rd</sup> Respondent Association and its members are blocking the usage of the passage described in Schedule- B through which the right of way is settled in favour of the Complainant. All the flat owners and the villa owners should have equal rights over common areas as assured to the Complainant by the Respondents to avoid future disputes in the matter. It



is submitted that the entire villa owners and 39 flat owners together had formed an association for the upkeep of common areas and amenities. Presently, the undivided rights were given to 32 flat owners only which were already sold out and they claim the entire common areas and open yard as belonging to them without any rights to Complainant as the Complainant was not given any undivided right over the common areas and open yard. The unequivocal understanding at the time of sale agreement had been that the Complainant shall be entitled for 1/42<sup>nd</sup> rights over the common areas including passages and other open yards in the complex comprising of 3 villas and the apartment complex. It is submitted that the Respondents 1 and 2 still hold 6/39 rights in the apartment complex and over common areas. The association and it's a few members are challenging the competency and authority of Respondents 1 and 2 to convey right of way through land upon which many of the flat owners were conveyed 1/39 undivided right before the execution of sale deeds in favour of villa owners. However even now undivided rights can be given to the Complainant by Respondents over the common areas and amenities to avoid difficulties to Complainant even to have access to their villas purchased paying huge amounts. The Reliefs sought by the Complainant are (1) to direct the Respondents to convey due share of undivided right to Complainant in A schedule property comprising of common areas, passages, amenities (2) to execute due deeds to decide the right of Complainant for effective and complete enjoyment of their properties.

2. The Respondents 1 to 4 have filed objection and denied the allegations of the Complainant and submitted that the project was constructed after obtaining building permit and plan approved which was later revised bearing No.KRB/90/COC/KRP/0180/12. After completing the project, the Respondents have obtained occupancy certificate prior to 2019 itself. So



the Complaint is not maintainable as the Respondents were not required to register under the RERA Act. It is further submitted that the building permit obtained from Cochin Corporation takes in a composite project which include 39 Apartments and 3 villas and with such approved entrance to the project land for motorable ingress and egress to the apartment as well as to the villas and to the car parks. The entrance to the apartment as well as to the villas as per the drawings, plans, approved design permit is an open private road provided inside the composite project area for the benefit of use of all owners of the project land. It is submitted that the offer, acceptance and subsequent agreement by all the parties concerned have been carried out after having a look on all the papers relating to the project and fully understanding the design and use of the land and building, its amenities, and facilities. The Complainant has no locus standi to prefer the complaint lamenting for unwarranted mercy. The Complainant is demanding undivided share in the area demarcated for the apartments for which there was no offer acceptance or agreement between the parties right from day one. The Complainant is safe and secure with his right for ingress and egress for taking all kinds of traffic to the villa and conveying right of way which is an easement to go to and from the villa from the Corporation road at the north. The Respondents have not done any act of omission, challenge, obstruct or interfere with any right of the Complainant in the project land. The right to use the right of way over 6.10 meter wide private road is granted in schedule B of the sale deed to the Complainant for taking all kinds to his A schedule property.

3. After hearing both sides in detail and from the facts and documents produced, the Authority is convinced that, the subject matter of the Complaint is with regard to the right of way and is a dispute between Allottees which cannot be entertained by this Authority. The Complainant



had produced sale deed executed in his favour wherein, the sketch of the property is also attached. It is very clear from the document that he is having a right of way over a strip having an area of land lying north-south having a length of 30.9 meters as detailed in the sketch referred above. It is evident that the right of way of the Complainant is protected by the sale deed executed. The Authority has no jurisdiction to entertain the matter as there is no violation of any of the provisions of the RERA Act of 2016 and the Complainant can approach appropriate forum for getting their grievance redressed. Hence the above Complaint is dismissed.

No order as to costs.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri.M.P. Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order



Secretary (legal)