



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos. 129 /2020, 281/2020 & 107/2021

Dated 06th January, 2022

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

Complainants

1. Roy Varghese, : Complaint No.129/2020
Varambel Grace Villa,
Mudiyoorkonam P.O,
Pandalalm-689501
Pathanamthitta.
2. Prasanth Kumar R
& Sujana Sreekumar : Complaint No.281/2020
Sreemangalam, JRA F-33,
Near Anganvadi, Chellamangalam,
Sreekaryam, Thiruvananthapuram-695 017
3. Sowparnika Vaishnavam
Apartment : Complaint No.107/2021
Owners Association
Represented by its President Prasanth Kumar
Sopanam, RG 191, Puliyaravilakom Lane, Kochuloor,
Medical College P.O, Thiruvananthapuram &
the Secretary Anand H Shankar,
T.C 41/1729-8



Souparnika, Kadiyapattanam Lane,
Manacaud P.O, Thiruvananthapuram.

[By Adv.Philip Mathews, Adv.Babu G Koshy]

Respondents

1. Sowparnika Projects& Infrastructure (p) Ltd
No. 750, C Block, 1st main road, AECS lay out,
Kudalahalli, Bangalore.
2. Ramji Subrahmaniam
Managing Director,
Sowparnika Projects& Infrastructure (p) Ltd
Vettakulam Arcade,
Opp. Mar Ivanios College main gate
Nalanchira(p.o)-695 015.
3. Meenakshi Ramji,
Chairperson,
Sowparnika Projects& Infrastructure (p) Ltd
Vettakulam Arcade,
Opp. Mar Ivanios College Main gate
Nalanchira(p.o)-695 015.
4. Subramaniom Sreenivasan
Director,
Sowparnika Projects& Infrastructure (p) Ltd
Vettakulam Arcade,
Opp. Mar Ivanios College Main gate
Nalanchira(p.o)-695 015.



5. Joji Joseph
State Head,
Sowparnika Projects & Infrastructure (p) Ltd
Vettakulam Arcade, Opp. Mar Ivanios College Main gate
Nalanchira(p.o)-695 015.
[By Adv. V.Ajakumar]

The complaints No. 129/2020, 281/2020 (both filed by the Allottees of the project) and Complaint No.107/2021 filed by the Association of Allottees of the project 'Sowparnika Vaishnavam Luxury Apartments', Sreekaryam, Thiruvananthapuram, came up for virtual hearing today.

ORDER

1. As the above 3 Complaints are related to the same project developed by the Respondent/Promoter, the cause of action and the reliefs sought in all the Complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No:107/2021 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Case of the Complainant is as follows: The Complainant is the registered association of allottees of Sowparnika Vaishnavam Apartments who have sale and construction agreements registered in their name. The Respondents published an attractive



brochure under the caption "Sowparnika Delivering Happiness" for a Project named Vaishnavam Luxury Apartments at Sreekaryam, Trivandrum. Respondents assured that the facilities offered in the brochure will be provided and they have advertised their Project through website also. Advertisements were published stating that apartments are ready to occupy and that possession started from year 2019. Claims and advertisements regarding 96 flats were made at a time when they were permitted to construct only 74 units. It is submitted that on 16/02/2018, 3rd Respondent obtained revised permit from Thiruvananthapuram Corporation enabling construction upto 8th floor. It appears that there is no proper approved plan in relation to the revised permit. Third Respondent has obtained two building permits from Thiruvananthapuram Corporation on 15/02/2020 with number UEZ/BA/224/14. File number UEZ/6228/18 is shown in one permit dated 15/02/2020. The other permit dated 15-02-2020 does not mention any file number. Even place of construction is not mentioned in that permit. It is alleged by the Complainants that the permit was issued without a site inspection and in violation of the Kerala Municipality Building Rules, 2019. It is further submitted by the Complainants that Respondents have collected Rs 1,00,000/- from persons who have booked the apartments, without informing them about the clauses in the agreement and without disclosing their intention to construct anything more than mentioned in the brochure. The Respondents have fixed different dates for completion of Project in the agreements with allottees and the completion dates mentioned are now over. Provisions



were incorporated in the agreements to avoid any delay in handing over the apartment. In the agreement, grace period was also fixed so the Complainants believed that they would be able to occupy the apartment at least within the 6 months grace period, even if there occur any unexpected circumstances affecting construction. There was sufficient time to complete the construction and to handover the apartments as agreed. There was no shortage of any construction materials or workers during this period. The Respondents have not so far completed the work. On 09-01-2020, Respondents gave a written undertaking to the allottees promising to deliver finished individual apartments to the allottees/ purchasers by 29-02-2020 with a grace period of 10 days. It was further assured that Respondents would pay Rs 10,000/- to 2Bhk apartments and Rs 15,000/- to 3Bhk apartments per month till possession, if possession were not handed over as promised.

3. It is further alleged by the Complainants that after the inordinate delay in the completion of the project, the Respondents in a meeting between Allottees on 24/08/2020, agreed to complete the works by 30/10/2020. No communication or endorsement has been received from 2nd Respondent or anyone else. A virtual meeting was convened by Respondents based on the direction of this Authority in C. No 129/2020. The first Complainant and other allottees along with Respondent 5 and Counsel for the Respondent attended the meeting. Several promises were orally made by Respondents in that meeting regarding completion and handing over of the apartments. Minutes of meeting were sent by the Respondents but it did not correctly reflect



the points discussed, the participants of meeting immediately sent a letter rejecting the incomplete and manipulated minutes and sent redrafted minutes, but so far Respondents have not responded. It is understood that Respondents have diverted the funds collected from the members of the Complainant for other purposes. Most of the members have paid more than 95% of the money due. Some among the allottees who had no place to stay were compelled to occupy the apartments even though works are not over. The nature and characteristics of building has been altered unauthorised. The Respondents are attempting to construct another apartment complex in the very same property in which the Project named Vaishnavam is situated. The Respondents have published a brochure for the new apartments named Signature Tower. The access to both buildings are through same place. A portion of the new building is proposed to be constructed in the space meant for clubhouse and over the STP and structures of the building mentioned in the brochure. The proposed construction would affect the air traffic considering the closeness of the structure to the Thiruvananthapuram Airport. Clearance has not been obtained for the proposed constructions from Airport Authority as per Rule 24(2) of the Kerala Municipality Building Rules, 2019. The proposed construction requires clearance from the defence authorities also as it is close to Air force enclave. If the construction proceeds ignoring these aspects, it may be liable to be demolished which would affect the existing constructions. The Reliefs sought by the Complainants in Complaint No.107/2021 which is considered as leading case are to direct 1) the



Respondents to complete and handover the project 'Souparnika Vaishnavam' within a time limit to be specified by this Honourable Authority not later than 2 months from the date of order, 2) the Respondent to provide the club house as promised in the brochure, 3) the Respondents not to make any construction in 42.71 Ares in re sy. No.573/11-1, 573/9-1, 573/9/573/10, 573/9-2, 585/1, 585/3 of Cheruvakkal village, Thiruvananthapuram Taluk, Thiruvananthapuram District, except the Apartment complex named 'Souparnika Vaishnavam' with 96 units, 4) the Respondent to submit a statement of account's sharing amounts received and spent in connection with the project 'Souparnika Vaishnavam' and to pass appropriate order under section 37 of the Real Estate (Regulation & Development) Act 2016 and allow the costs of the proceedings. Copy of Brochure published by Respondent, Copy of revised permit dated 16/02/2018, Copy of building permit dated 15/02/2020, Copy of building permit dated 15/02/2020 without file number, Copy of agreement of sale dated 13/12/2017, Copy of construction agreement dated 13/12/2017, Copy of undertaking dated 09/01/2020, Copy of minutes of meeting dated 24/08/2020, Copy of minutes of meeting dated 28/11/2020, Photographs showing present elevation, Copy of Brochure- Signature Tower are the documents produced from the part of the Complainant.

4. The Respondents filed written statement on 07-10-2021 and submitted that the Complaint is not maintainable either in law or on facts as the Project Sowparnika Vaishnavam is a registered



Project with Reg. No. K-RERA/PRJ/109/2021 registered on 01/03/2021 with proposed date of completion on 30/06/2022. The provisions of the Act are applicable to the Project from the date of commencement of registration only. The complaints are filed in respect of delay relating to pre-registration period and the same cannot be entertained by this Honble Authority. The Complainants are not the association of allottees formed as per the provisions of the Act at the instance of the Promoter after issue of notice to all allottees. Only an association formed at the instance of the builder could represent the allottees in a Project and could file Complaints under the Act. It is also submitted Respondents 2 to 5 are not promoters of the Project and they may be directed to be deleted from the party array as the Act does not permit filing of any complaints against them and the Authority has no jurisdiction to pass any orders against them. It is further submitted by the Respondent that K-RERA has accepted the proposed completion date as 30/06/2022. Hence, no direction could be issued by this Authority to complete the Project on a date before the said date and any complaint filed demanding completion before the said date is legally unsustainable. When the permit was obtained in 2014 the Real Estate (Regulation and Development) Act 2016 was not passed. The Authority has no authority to set-aside the permit granted by the local authority or to pass any injunctions against a construction being carried out by the Promoter as per a permit issued by the local body. If the Complainants have any objection to the permits granted by the local body, they ought to have filed appeal before appropriate Tribunal under



the Municipalities Act, 1994. The permits for two towers were obtained and construction is being carried out as per law and the same cannot be questioned before this Authority.

5. It is further submitted that the agreement was open for inspection and the Complainants entered into the agreement with full knowledge about the agreements. The draft of the agreement has been sent to each allottees for their perusal and the final agreement has been prepared upon the confirmation of the allottees. As of 22/02/2021, there are 31 defaulters in payment, and amount of which was affecting the speed of the completion of the Project. The Respondent Company has finished the individual apartment work of all allottees who completed the 95% payment. At present possession of 29 apartments has been handed over. As of now an amount of Rs. 2,44,53,385/- is pending from the allottees. The Project is almost on the verge of completion. The claim of the Complainant that building permit dated 15/02/2020 does not have file number is a false claim. From the annexure produced by the Complainant it is seen that the revised permit dated 15/02/2020 is having the file number UE2/BA/224/14. The Respondent revised the permit as per the KMBR 1999 following all mandatory requirements. Furthermore, it is submitted that in the 7th clause of the agreement of construction that if the resultant delay in transferring possession due to delay in payment, the vendor shall not be responsible. It is very evident from the payment schedule of the Complaint that there is still delay in payment on the part of allottees. It



is also submitted in the 71 agreements out of 96 allottees, it has been clearly specified that the second tower is in the same premises. There is also no clause in the agreement with the allottees that the Promoter shall not make any further constructions in the property. Considering the request of the allottees the Promoter has completed and handed over the apartments and allowed them to occupy even before getting occupancy. The Complainants are bound to know that the Project is registered under K-RERA and the proposed date of completion is 30/06/2022. The Project could not be completed at the expected dates due to various reasons beyond the control of the Promoter especially the heavy default on the part of allottees. The electrical and water charge of the allottees who are residing in the apartment are being paid by the Respondent even after handing over of the possession. The Respondent is providing these without collecting any charge from the allottees. The place for construction of signature tower is well demarcated in the layout plan as well as in the last permit. The Promoter is legally entitled to utilize the full potential of his property and for which no allottees could object or obstruct. Airport NOC was already obtained and the premises are 100 meters away from Air Force Enclave and no NOC from the Air Force is insisted for in the permit. It is further submitted that the Authority is expected to adjudicate a complaint under Rule 36 of Kerala Real Estate Regulation and Development Rules, 2018. In such event the Authority cannot pass coercive interim directions under Section 36 of the Act against one of the parties to put him under illegal pressure and threat. The enclosures produced by the



Complainants are totally irrelevant and are liable to be ignored and the allegations are vague, baseless, and hence submits the Complaints are not entitled to get any of the reliefs as claimed for. True copy of RERA Registration dated 01/03/2021, True copy of list of Allottees, True copy of request of Complainants to change structure of clubhouse, True copy of clearance certificate of Airport Authority, True copy of application for issue of Occupancy Certificate along with completion certificate from Corporation of Thiruvananthapuram.

6. An I. A. No. 8/2020 was filed by the Complainant in Complaint No.129/2020 for a direction to stay and stop further construction in the project land of 'Souparnika Vaishnavam' till the disposal of the main Complaint, alleging that the Respondent has violated the terms of the agreement executed with the Respondent by making deviations in the promised plan and started construction of another Tower in the same land and going to give the same common amenities that were given exclusively to the 1st Tower to the 2nd Tower also which is proposed to be constructed without informing the Complainants. The completion of the tower is only 75% then and Respondent obtained revised plan and approval from the local Authorities for the proposed tower after collecting 92% of the amounts from the Complainants. In the reply statement the Respondent contented that the Complainant, being a gross defaulter in making payment, cannot claim compensation for the delay and there is no forceful sharing of amenities as alleged. The Authority, vide its interim



order dated 30/06/2020, directed the Respondents to arrange a meeting of all the Allottees of the project 'Vaishnavam' and resolve all the issues and to produce the minutes of meeting with clear decisions taken regarding the completion of the project. But the Respondent failed to comply with the said direction given by the Authority. As the Respondent had mainly contented as per I.A No. 11/2021 that the above Complaints are not maintainable before the Authority and prayed to hear the issue of maintainability initially in detail, the Authority heard it as the preliminary issue. After hearing both parties, the Authority passed an order finding that the above Complaints are maintainable before this Authority. During the hearing on 10/02/2021, the Respondents submitted that if the Allottees pay 95% of the due amount, they will complete the whole project within 6 months. But the Complainants objected and stated that the Respondents can complete the works within three months if sufficient labourers and materials are provided. As per the interim order passed on the same day, the Authority directed the registered association of Allottees to file a fresh Complaint and directed the Respondent to file an Affidavit along with work schedule declaring that the project shall be completed in all respects as per the promises given to the Allottees within four months, after complying all the statutory formalities required for the project. It was also directed that the Respondents shall open a joint account with the Association of Allottees to collect the amounts due from the Allottees. In compliance of the said order the registered Association of the said project filed the Complaint No. 107/2021 which is taken as



leading case here. But the Respondent has not filed any Affidavit with work schedule regarding completion, in the proper manner as directed by the Authority. Though obtained ample time to comply with the directions passed by the Authority, the Respondents, against whom several complaints from the Allottees of several other projects are pending consideration of this Authority, always opted to neglect the directions of the Authority over which the Authority expressed its serious discontentment several times during the hearing of the case.

7. On 19.07.2021, the Complainants have also shown a video clipping revealing the present situation of the project site and the Authority is convinced of the pathetic state of the building and its surroundings which is kept in the most untidy and filthy manner. The Complainants submitted that it is very difficult for them to stay in the said building in such an unhygienic condition and the health of the residents there is also at risk. It was also submitted that even after filing the above Complaints the Allottees have paid Rs.79,00,000/- (Rupees Seventy-Nine Lakhs) to the Respondents/Builder, but no steps have been taken for completion and handing over the project. On that day, after hearing both sides, the Authority had given direction to the Respondent / builder to remove all the waste / garbage, dumped in the building and at the project site and make the whole project site as well as the building neat and clean within one week and to complete the whole project in all respects as promised to the Complainants on or before 31/09/2021 without fail and submit the compliance report before



next posting date. But the Respondent neither complied with the order passed by the Authority on 19.07.2021 nor completed the project as promised or removed the debris/garbage dumped in the building. The Counsel appeared for the Complainants made serious allegations that no work has been done in the project by the Respondent even after the direction of the Authority and no common amenities were given so far as promised to them. It is also submitted that the Sewage Treatment Plant is not functioning there and even the human waste is grounded in an open pit which is against all the public norms. The representative of the Complainants Association has again shown videos showing the pitiable condition of the project. At the same time, the Counsel for the Respondent submitted that the STP can be made functional within 2 months and 4th lift will be installed within 2 months. The Complainants' counsel reiterated that the Respondent could complete the whole works within a short span of time if sufficient workmen and materials are arranged by them. As it was observed that the Respondent was continuously evading the directions given by the Authority and purposefully dragging the case by submitting lame excuses, the Authority has decided to impose penalty on the Respondent/Builder invoking Section 63 of the Act 2016. The Authority, vide order dated 04.10.2021, directed the Respondent to remit an amount of Rs. 3,000/- everyday from the date of the said order up to the date of compliance of direction given vide order dated 19.07.2021. When the case came up for hearing on 06.12.2021, the Counsel for the Respondent submitted that all the garbage has been removed and the project site has been



cleaned completely and the works of Gym, children's play area etc were completed. The representative of the complainant Association also agreed to the same and informed that the works are progressing fast in the project site now. The Authority reminded the Counsel for the Respondent that they did not file any affidavit as to the compliance of the previous order and they are liable to remit the penalty till the date of filing affidavit.

8. The Respondent, as per the direction of Authority, vide Orders dated 19/07/2020, 4/10/2021 and 6/12/2021 has filed a Compliance affidavit on 18-12-2021 with respect to the completion of works and remittance of the penalty till date. It is submitted by the Respondent that as per the direction of Authority, the Respondent has cleaned the project site and the building. The Project has been completed and the Respondents have applied for issue of Occupancy to the Corporation of Thiruvananthapuram with completion certificate on 15/12/2021. It is also submitted that all necessary common amenities except swimming pool have been completed and the same will be handed over on getting occupancy. The swimming pool could be provided only on completion of 2nd Tower as there are space constraints in the 1st Tower. It is further submitted in the affidavit that all common amenities such as water, lifts, electricity are provided and 28 families are residing in the Project. But the Secretary of the Complainant association objected and submitted that some more works are yet to be completed including the 4th lift as offered to them.



9. An I.A 3/2022 was filed by the Complainant Association in Complaint No: 107/2021 praying for giving direction to Respondent to provide all facilities promised in Annexures A1 to A4 including swimming pool, club house, uninterrupted water supply from Kerala Water Authority, individual KSEB connection, adequate and safe parking space and to prevent water logging in basement parking area of Sowparnika Vaishnavam Apartments. I.A 298/2021 filed by the Complainant in Complaint No: 129/2020 and I.A 4/2022 filed by the Complainants in complaint No. 107/2021 to get appointed an Expert Commissioner to inspect the Project and to report on STP, Boundary wall, Swimming pool, Exclusive Club House, building access control system, etc. and report before the Authority. The Complainant in complaint No. 129/2020 also filed an I.A 299/2021 for direction to the Respondents to pay an amount of Rs 23,99,544/- being the interest on the amount of Rs 34,77,600/- till the date 21/11/2021, paid to the Respondents.

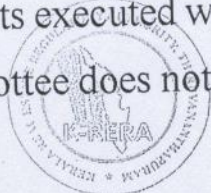
10. Heard both sides in detail and perused the documents submitted by both parties. Exhibits A1 to A11 were marked from the side of Complainants and Exhibits B1 to B5 were marked from the side of Respondents. The Project in question is registered before the Authority as per Section 3 of the Act, 2016. As it is a registered project u/s 3 of the Act 2016, the Promoter is liable to upload in the website, all the details regarding the project precisely and upload the quarterly



updates as mentioned in Section 4 & 11 of the Act 2016 read with Rules 4,5 & 17 of the Kerala Real Estate (Regulation & Development) Rules 2018. The precision of data given by the Promoter as mentioned above could be verified by the allottees or prospective buyers of the project and if any falsities/ irregularities are found out by any allottee/prospective buyer, they could very well bring it to the attention of this Authority and in such an event, the Authority shall initiate action against the Promoter as per Section 60 of the Act 2016 after giving an opportunity of being heard. As per Regulation No. 4(4) of the Kerala Real Estate Regulatory Authority (General) Regulations 2020, "*Upon completion of the registered project in all respects as promised to the allottees, the Promoter shall upload a Certificate in Form 6 on his web page on the website of the Authority*". As per Form A1 of the Kerala Real Estate (Regulation & Development) Rules 2018, the 'proposed date of completion' to be given by the Promoter at the time of registration of an ongoing project shall be the date 'as committed to the allottees'. Anyhow, the Promoter shall not have any right to alter the date of completion offered to the allottees as per the terms of the agreements executed with them. So, immediately after completion of the project in all respects and handing over the common areas to the Association with all the relevant documents pertaining to the project, the Promoter shall have to upload Form 6 certificate in the website as specified in the Regulations 2020 after which the complainants can verify the veracity of the said certificate as mentioned above. Hence, we are of the view that no need of appointing an expert commissioner, as prayed by the Complainants



in I.A. 298/21 & I. A. 4/22, to inspect the project site and report the status, until the Promoter files the Certificate in Form 6 on the website of the Authority. The contentions of the Respondent/Builder that “K-RERA has accepted the proposed completion date as 30/06/2022, and no direction could be issued by this Authority to complete the Project on a date before the said date and any complaint filed demanding completion before the said date is legally unsustainable” are without having any legal footing. In the judgement of M/s Imperia Structures Ltd. vs. Anil Patni & another, the Hon’ble Supreme Court of India rightly observed that “Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration also entitles an allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder, Buyer Agreements.” Similarly, the submission of the Respondent that “Considering the request of the allottees the Promoter has completed and handed over the apartments and allowed them to occupy even before getting occupancy” is surprising because occupying such a building without obtaining Occupancy Certificate and other statutory clearances is per se illegal. Then how could the Respondent get permission for such wrongdoings and then to make such submissions? Undoubtedly, there occurred an inordinate delay in handing over the project as promised to the complainants as per the terms of the Agreements executed with each one of them. Handing over the apartment to an allottee does not simply mean that handing over the



individual apartment or the building but the apartment along with all the common amenities and facilities as promised to them and all the statutory clearances as per the law. The amount of consideration paid by an allottee of a real estate project is not only for his/her apartment/unit but also for the enjoyment of all the amenities and facilities offered and a safe and comfortable community living there.

11. Regarding one of the main allegations of the Complainants as to construction of the second residential Tower proposed to be done in the project site by the Respondents, a report as to compliance of Section 14 of the Act 2016 has been submitted by the Respondent, as directed by the Authority, in which it is stated that in the agreements with 71 allottees out of 96 allottees it is clearly specified about the 2nd Tower in the project land. The respective clauses (Clauses 33(1) & 34(1))- in the said agreements are also quoted in the abovementioned report as : *'The purchaser shall not object or interfere with the further development of the schedule A property or to the development of adjacent lands to the schedule A property by the SELLER. The purchasers of built-up space on those lands may be granted the right to use the facilities, amenities and infrastructure and car parking areas including the membership of the association and use of the common amenities etc. The purchaser hereby agrees that the SELLER shall provide necessary access for ingress and egress through the roads, passages, gates etc, to the purchasers of such adjacent properties through schedule A property, as the SELLER may in its absolute discretion may decide. The purchaser hereby agrees that he will fully cooperate with the SELLER to enable the SELLER to make any additions and alterations and or to complete the construction of the buildings sanctioned which may*



hereafter be sanctioned in the schedule A or the adjacent properties',- PURCHASER has also agreed that the amenities / common areas and parking will be common for the adjacent Vaishnavam II project. The common association will maintain all the common amenities. PURCHASERS are agreed to pay for the common expenses, taxes of the building, look after the welfare, maintenance, and repair etc." The list of allottees, the date of their agreements with respective number of clauses, etc. are also shown in the said report. It is further contented by the Respondent that the building permit No. UE2/BA/224/14 is pertaining to both the buildings, Tower 1&2. Hence there was clear communication to majority of allottees about the further development and construction of 2nd Tower. In the agreements with majority of allottees, it is stated that the common amenities such as STP and road access are same to both the buildings and recreation area specified as per the Building Rules is provided well within the area of Vaishnavam Tower. The total area of 477.81 sq.m in total is provided for this Tower. Section 14 of the Act 2016 stipulates that " (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the



case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee. (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building. Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only. (3) 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 this Act." Hence we are of the view that as the majority of allottees were being communicated by the Respondent regarding construction of the 2nd Tower and the Respondent has received approval from the competent authority for the said construction, at this juncture, the remedy for the Complainants who were not communicated about the proposed construction and

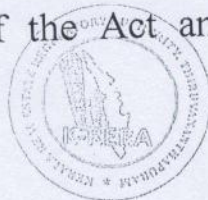


aggrieved/damaged in any manner due to said construction is to seek compensation from the Respondent for the damage/loss sustained to them in that regard.

12. Based on the above facts and circumstances and invoking the provisions under Section 34(f) & (g) and Section 37 of the Real Estate (Regulation and Development) Act, the Authority hereby directs as follows: -

1) The Promoter/ Respondent shall complete all pending works, if any, in the individual apartments of the Complainants as well as in the whole Project "Sowparnika Vaishnavam" and shall handover the apartments to the Complainants, after receiving the amount, if any, due from them and hand over the common area to the Association, after completing the works in all respects as promised to the Complainants, as per the terms of the agreements executed with them **within 90 days from the receipt of this Order**, along with Occupancy Certificate and all other statutory sanctions/approvals and documents pertaining to the said project.

2) This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority, in accordance with the provisions of the Act and Rules, for any loss or damage



sustained to them due to the default from the part of the Respondents.

3) The Petition IA 299/2021 submitted by the Complainant in Complaint No. 129/2020 seeking interest for delay in handing over possession shall be heard separately after the expiry of period of compliance mentioned in direction No. 1.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri. P H Kurian
Chairman



True Copy/Forwarded By/Order

AV

Secretary (legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of Brochure published by Respondent.
- Exhibit A2 : Copy of revised permit dated 16/02/2018
- Exhibit A3 : Copy of building permit dated 15/02/2020
- Exhibit A4 : Copy of building permit dated 15/02/2020
without file number
- Exhibit A5 : Copy of agreement of sale dated 13/12/2017
- Exhibit A6 : Copy of construction agreement dated 13/12/2017
- Exhibit A7 : Copy of undertaking dated 09/01/2020
- Exhibit A8 : Copy of minutes of meeting dated 24/08/2020
- Exhibit A9 : Copy of minutes of meeting dated 28/11/2020
- Exhibit A10 : Photographs showing present elevation
- Exhibit A11 : Copy of Brochure- Signature Tower

Exhibits on the side of the Respondents

- Exhibit B1 : True copy of RERA Registration dated 01/03/2021
- Exhibit B2 : True copy of list of allottees
- Exhibit B3 : True copy of request of Complainants to change
structure
of clubhouse.
- Exhibit B4 : True copy of clearance certificate of Airport Authority.
- Exhibit B5 : True copy of application for issue of Occupancy
Certificate along with completion certificate from
Corporation of Thiruvananthapuram.

