



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Dated 16th November 2020

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

COMMON ORDER

IN

**COMPLAINTS NOs: 12/2019, 13/2019, 14/2019, 15/2019, 16/2019,
17/2019, 18/2019, 19/2019, 20/2019, 21/2019,
22/2019, 23/2019, 24/2019, 25/2019, 26/2019,
27/2019, 28/2019, 29/2019, 30/2019, 31/2019,
32/2019, 33/2019, 34/2019, 1/2020, 2/2020,
3/2020, 4/2020, 113/2020.**

1. COMPLAINT NO: 12/2019

Complainant:

Sri. M.N Sunil Kumar ,
Mambrapilly Mana,
Annmanada P.O Chalakudy -680

[By Advocate Vijulal]

2. COMPLAINT NO: 13/2019

Complainant:

Sri. Kumar Das,
Ramaneeyam, Tc-8/853-4, Tirumala,
Thiruvananthapuram-695 006

[By Advocate Vijulal]

3. COMPLAINT NO: 14/2019

Complainant:

Sri. V. Suresh Kumar,
S/o Sri. Velayudhan chettiyar,
Suramana, SPRA 405,
Sreepadmam Line,
Nettayam P.O,
Thiruvannathapuram-695 013

[By Advocate Vijulal]

4. COMPLAINT NO: 15/2019

Complainant:

Sri. T.S Sankar,
S/o Thankappan Nair,
Sobha Nivas, TCR 106/1,
Sreevaraham,
Thiruvananthapuram-690 009

[By Advocate Vijulal]

5. COMPLAINT NO: 16/2019

Complainant:

Smt. Raja Lakshmi Haridas,
W/o V.K Haridasan,
Nellikkal , Edavetty P.O,
Thodupuzha- 685 588

[By Advocate Vijulal]

6. COMPLAINT NO: 17/2019

Complainant:

Sri. Shameer,
S/o Shri. Abu
Flat No.608, Al Khathir Building A-Block,
AL Nahda Sharjah,UAE
residing at Karuppam veettil, Iringapuram P.O,

Guruvayur, Thrissur-680103

[By Advocate Vijulal]

7. COMPLAINT NO: 18/2019

Complainant:

Sri.P. Raja Mohanan,
S/o Kuttisankaran Nair,
Ranjana, Pallikkal P.O,
Malappuram-676 517

[By Advocate Vijulal]

8. COMPLAINT NO: 19/2019

Complainant:

Smt. M.V Indira,
W/o Sankara Narayanan,
Sreelekshmi,
Muthukurisi, Elamkulam P.O,
Malappuram-679 340

[By Advocate Vijulal]

9. COMPLAINT NO: 20/2019

Complainant:

Sri. M.O Vinod,
S/o Sri. Parameswaran Namboothiripad,
Ozhukil, Nelluvaya P.O,
Thrissur-680 584

[By Advocate Vijulal]

10.COMPLAINT NO: 21/2019

Complainant:

Sri. Ajith,
S/o Gangdharan pillai ,
residing at Tc 21/1289, "Samgam",
Nedumcand P.O,
Thiruvananthapuram-695 002

[By Advocate Vijulal]

11. COMPLAINT NO: 22/2019

Complainant:

Sri. Viswanathan K.V,
KGRA-AG-2, Puthanpalli P.O,
Guruvayoor -680 103
Represented by power of attorney holder
Sri. Sankar Narayanan
S/o S.N Warriar
SreeLakshmi, Muthukkurussi,
Elamkulam P.O, Malappuram-679 340

[By Advocate Vijulal]

12. COMPLAINT NO: 23/2019

Complainant:

Sri. K Narendran,
S/o Gopalakrishnan Nair,
Kelamkandoth House,
Guruvayur P.O, Thrissur-680 101

[By Advocate Vijulal]

13. COMPLAINT NO: 24/2019

Complainant:

Sri. Vijayan Menon,
S/o Kuttikrishnan Menon,
Pattathil Puthenpura House,
Annakara, Thrissur- 680 508

[By Advocate Vijulal]

14. COMPLAINT NO: 25/2019

Complainant

Smt. Daya Radhakrishnan ,
Kezhukuttu House, Chemmanoor P.O,
Kanippayyur, Thrissur -680 517

[By Advocate Vijulal]

15. COMPLAINT NO: 26/2019

Complainant

Sri. Balachandran Pillai T.B,
S/o T.R Govinda Menon,
Easwara, Swadeshabhmani Nagar,
Neyyatinkara P.O,
Thiruvananthapuram- 695 121

[By Advocate Vijulal]

16. COMPLAINT NO: 27/2019

Complainant

Smt. C.V Jessy,
W/o Late Pappachan
Manjali, Chavakadu,
Guruvayur, Thrissur- 680 506

[By Advocate Vijulal]

17.COMPLAINT NO: 28/2019

Complainant

Sri. K.C Sasikumar,
S/o Late Ramunni Menon,
Anagha, Nharangat,
Olakkara P.O, Tirurangadi,
Malappuram- 676 306

[By Advocate Vijulal]

18. COMPLAINT NO: 29/2019

Complainant

Smt. Sheeja A.K,
W/o Late Soni ThengamomTc 11/631,
Anjali, Nanthencode,
Kowdiar P.O,
Thiruvananthapuram- 695 003

[By Advocate Vijulal]

19. COMPLAINT NO: 30/2019

Complainant

Smt. Lakshmi Menon,
Pattathil Puthenpura House,
Annakkara, Thrissur-680508

Represented by Power of Attorney holder
Sri. Vijayan Menon, S/o Sri. Kuttikrishna Menon,
Pattathil Puthenpura House, Annakkara, Thrissur- 680 508

[By Advocate Vijulal]

20. COMPLAINT NO: 31/2019

Complainant

Smt. Lakshmi. P,
W/o Janardhanan, TC 40/95,
Onnam puthentheruvu,
Manacaud P.O, Thiruvananthapuram- 695 009

[By Advocate Viju Lal]

21. COMPLAINT NO: 32/2019

Complainant

Sri. Subash. M,
S/o Parameswaran Nair,
Mannarathu House, Guruvayor P.O,
Thrissur- 680 101

[By Advocate Vijulal]

22. COMPLAINT NO: 33/2019

Complainant

Dr. Vasudevan,
S/o VMC Narayanan Nambothiri,
Vaidyamadham Mana,
Muzhathoor, Thrithala P.O,
Palakkad- 679 534

[By Advocate Vijulal]

23. COMPLAINT NO: 34/2019

Complainant

Sri. Ranganath,
S/o Venkitachalam Iyer, Flat No.8/B,
Geevan Prakash, NES School Marg Bhattipada,
Bhandeep west, Mumbai-400 078,
Represented by his Power of Attorney holder
V.K Sanal Kumar,
Shanmuga vilasom, Vaikkatillam,
Nedumpuram P.O, Thiruvalla, Pathanamthitta- 689 110

[By Advocate Vijulal]

24. COMPLAINT NO: 1/2020

Complainant

Sri. RajaGopalan Nair,
S/o Govindan Nair, Flat No. G-603,
6th Floor, Santhi Complex,
Saki vihar Road,
Thunga village, Powai, Anderi (East),
Mumbai- 400 072

[By Advocate Vijulal]

25. COMPLAINT NO: 2/2020

Complainant

Sri. Mannil Sankunni Nair,
S/o Kesavan Nair, Flat No. 402, A-6
Kachnar Block, Aakriti,
Ecocity, Bhopal , Madhya Pradesh- 462 001

[By Advocate Vijulal]

26. COMPLAINT NO: 3/2020

Complainant

Smt. Leshitha Harikumar,
W/o K. Harikumar Kidson,
Puthiyara P.O, Kozhikode- 673 004,

Represented by Power of Attorney holder
Sri. K. Harikumar,
S/o K. Somasundaran, Kidson,
Puthiyara P.O, Kozhikode- 673 004

[By Advocate Vijulal]

27.COMPLAINT NO: 4/2020

Complainant

Sri. Santhosh Kumar,
S/o Udayavarma Raja,
Residing at HQ CWE(Navy)
Vasco Da Gama, Goa- 403 802

[By Advocate Vijulal]

28. COMPLAINT NO: 113/2020

Complainant

Sri. Santhosh M, represented by
Power of Attorney Holder Sri. M Subash,
Mannarathu ahouse,
Guruvayoor P O,

[By Advocate Vijulal]

Respondents:

1. Kerala Gramam Properties,
Lakshmi Homes, Near Lion's club,
Mavinchuvadu, Thaikkad P.O,
Guruvayoor-680104
2. Sri. Bino Gopinath, S/o K. Gopinathan Nair,
Managing Partner of Keral gramam Properties,
Residing at III/414, kelamkundath House,
Guruvayur Amsom Desom,
Chavacadu Taluk- 680 101
3. Sri. R.P Najeeb
S/o Ummerkutty
Managing Partner of Kerala Gramam Properties,
Residing at VI/123A, Rayammarakkarveetil Puthenpurayil House,

Engandiyur Amsom Desam ,
Chavacadu Taluk-680 101

4. Sri. Fizal Babu
S/o V.N Bapputty
Managing partner at II/592B, Valiyakath Nettiyamparambil House,
Vadakkekkad amsom Desom,
Vadakkekkadu P.O, Pin-679562
5. Sri. Fiyaz Thanveer,
Managing partner,
Kerala Gramom Properties , Residing at IX/87,
Rayammarakkarveetil house, Guruvayoor Amson,
Karakkaddesom, Chavakkadu- 680101

[By Advocate Sivasankaran Nair]

COMMON ORDER

1. As the subject matter, cause of action and reliefs sought in all the above complaints are virtually one and the same as it is related to the same apartment project developed by the same Promoter, the said Complaints have been 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. As all the agreements, sale deeds and all other records related to all the above complaints are of uniform formats, it is decided to treat the Complaint No. 12/2019 as the leading case for easy reference of the records produced.

2. The Complainants are allottees of a real estate project named 'Kerala Gramam Properties' consisting of apartments/duplex villas/villas in 113 cents of land located Irinjapuram Desom which is hardly 2 Km from Guruvayoor temple, Trissur. The Complainants were lured by the brochure issued by the Respondents which conceptualized three dimension

pictures of the conceived project. The Respondents offered special amenities around the clock security, beautiful ethnic natural pond, ample car parking area, sufficient open area and conveyance vehicle shuttling daily twice to Guruvayoor temple. They also assured common facilities like passenger lift, standby generator, fire fighting system, proper sewage/drainage system, landscaped garden and recreation area. Hence the Complainants purchased undivided share in the land including apartments/duplex villas/villas by virtue of agreements and sale deeds separately executed by the Respondent No. 2. It is provided in the agreements that there shall be timely completion of the project. In the agreement with the Complainant in Complaint No. 12/2019, it was offered that the apartment will be completed and delivered on or before 31.12.2011. In all the agreements it is stated that the Respondent shall abide by the plan, drawings and design approved by the authorities. The copy of agreement executed between the complainant and Respondent No. 2 has been produced by the Complainant. The completion of the project protracted for years together in breach of the agreed period and finally the skeleton structure of villas/apartments completed with name sake accessories of low quality. The interior works of the villas have not been completed so far. No completion certificates obtained, no electricity connection or building number obtained so far. Some of the complainants are constrained to take possession of the incomplete apartment as there is no move to complete them in entirety. Electricity connection obtained temporarily pose a threat of disconnection at any point of time. The common amenities offered are not yet made available in the project. The pond constructed at the entrance of the project has now become a great nuisance to the complainants. The compound wall separating the project with the public road being not constructed, the pond became a meeting point of anti-social elements in the locality. Their open bathing exposing themselves is a major nuisance to the complainants. The presence of such anti-social elements hindered the peace, safety, tranquility and harmony

of the project. The copies of brochure, advertisements and building permit are produced by the Complainant. The Complainant purchased the apartment after selling all the belongings so as to have a place of abode near Guruvayoor temple to lead a pious life during last stage of life. Huge financial liability is incurring to most of the Complainants as they had taken loan from bank for purchasing the apartments. The Respondents had cared not to respond to the legal notice sent by the Complainants. So the Complainants pray to direct the Respondents to develop and complete the project in scrupulous adherence to the amenities and specification envisaged under the brochure and sanctioned by the competent authorities within such time fixed by this Authority and to pass such other reliefs for the complete and effective redressal of the grievances of the complainants as contemplated under the Real Estate(Regulation & Development) Act, 2016 and the Rules thereunder.

Exbts A1 to A5 are the documents submitted by the Complainants.

3. The Respondents No. 1-5 filed their objection in which they contended as follows: The 1st Respondent is a Partnership firm, 2nd Respondent is the Managing Director, and 3rd, 4th and 5th Respondents are partners of the 1st Respondent firm. The details of dates of agreement and sale deeds of the Complainants are also mentioned in the statement. The completion certificates were ready with the Respondents. The complainants did not form Association despite the request by the Respondents. The Complainants did not collect the completion certificate from the Respondents. All the flats are having electricity and water connection on or before 2015. The Municipality has already issued building numbers and they are affixed on the flats and villas. Some flats are not occupied by the owners as they are out of station. A pond was constructed spending around Rs. 15,00,000/- Children from outside used the pond and some occupants lodged police complaints. Thereafter charcoal oil was poured in the pond by the occupants to prevent

outside children from making use of it. This is not an ongoing construction after 2014. The period of permit already expired and no construction can be made as of now. All the constructions were completed in 2014 and no complaint was made by anybody till the fag end of 2019. A probe in the matter at the site would suffice to come to a conclusion that the case of the complainants is fallible. The complainants got ration cards and gas connections in their names after obtaining relevant certificates from the local authority. No low quality materials were used for construction. All the special amenities offered in the brochures are available in the project. No passenger lift was mentioned in the approved plan and in the brochure since it is G+2 floors building. Generator system including supply is available. Fire fighting system was not required at the time of approval. There is no breach of contract and no delay was caused on account of the fault of the respondents. The Respondents already provided transformer. They took electricity connection before 2015. The amenities are not maintained by the Association. So the complaints be dismissed in view of the reasons mentioned in the Statement of Objection.

Exbts B1 & B2 are the documents produced by the Respondents.

4. Heard both parties in detail and perused all the records produced by both sides. The learned counsel appeared for the complainants argued that the non-completion of the project within the time stipulated in the agreement for sale is in contravention of terms of the agreement and thus the Respondents are guilty of gross violation of terms and conditions of the agreement. Similarly, the Respondents by deviating from the approved plan, drawings and design had also violated the clause concerned of the agreement for sale and thereby guilty of violations of agreement for sale as well as the provisions of Real Estate (Regulation & Development) Act, 2016. The Project started in the year 2008 and the Respondents obtained all the amounts of

consideration within one year from the date of execution of agreements/sale deeds . By non-completion of the project as offered to the Complainants even after receiving all the amounts of consideration had resulted in damages causing pecuniary loss to the complainants. The complainants had remitted the entire amount based on the information contained in the brochure published and issued by the Respondents. But they failed to provide any of the facilities as stated therein which caused loss and damages to the Complainants. Hence the Respondents are guilty of violating the provisions laid down under sections 12,14,18 & 19 of the Real Estate (Regulation & Development) Act, 2016.

5. But the learned counsel appeared for the Respondents opposed the contentions of the Complainants and argued that the complaints are not maintainable in view of the fact that all the constructions were completed and sale deeds were executed prior to commencement of the Act and the Occupancy certificate dated 03.02.2018 was produced before this Authority. The Respondents also argued that the pond in the project was polluted on account of laches from the part of the complainants in maintaining it properly. The premises were also not cleaned up by forming an Association. The compound wall was already built , a portion of which was damaged by certain members of the public in rift with the owners. Therefore the Respondents are not responsible to revive. There was no meeting of minds on the part of the complainants. According to the Respondents, the whole project is already completed and no work is yet to be done.

6. 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** . So the said 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 allottees 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. Here, the photographs produced by the Respondents themselves clearly reveals the present status of the project as well as its amenities. It is evident that the Complainants were running from pillar to post for getting solved these issues related to non-completion of the project and even before the constitution of this Authority, they were constrained to approach Hon’ble High Court of Kerala praying to issue a writ of mandamus directing the Government of Kerala to establish and incorporate the Real Estate Regulatory Authority as contemplated under section 20(1) of the Act, 2016 and after constitution, to direct the Authority to redress the grievances of the Complainants. In the building permit issued initially on 23.12.2008 and extended later till 2017, clearly specifies the conditions, subject to which it was issued, such as 1) should not violate Kerala Municipality Building rules 1999, 2) protection walls/grills up to the specified height shall be provided to the pond, 3) Sewage Treatment Plant of suitable size and specifically prescribed by the Pollution Control Board is to be provided, 4) Proper, sufficient and scientific arrangement for surface water

drainage, solid waste treatment and rain water harvesting are to be provided, 5) Children Play Area as shown in the map should be provided in the mandatory open space, 6) Car parking for each villa/ apartment are to be separately earmarked. While extending the validity till 2017, the LSGD engineer of Guruvayoor Municipality specifically mentioned that it was being issued subject to conditions as follows 1) the Completion of works of STP, Rainwater harvesting, Recreation spaces, etc. shall be completed before submitting the completion plan, 2) Earlier conditions imposed by the Town planner, Trissur shall be complied with by the promoter, 3) the pending dispute regarding the boundary shall be solved and as the boundaries of the land are not clear, the boundaries should be fixed after measuring the project land.

7. An application numbered as IA No. 21/2020 has been filed by the Complainant in Complaint No. 15/2019 for an order attaching the unsold units in the project. It is noticed that the same complainant had filed another IA No.1/2020 earlier seeking the same relief. After hearing both parties, this Authority directed both parties to arrive at a final conclusion in the joint meeting, regarding the completion of total works, by using funds to be received from the sale of the unsold units also, as the Respondent informed their difficulty to raise funds in case of attaching the unsold units. So the Complainants were advised not to pursue on the said application for attachment of unsold units as it may affect the completion of the whole project. Through interim orders passed by this Authority, the Respondents were directed to convene a joint meeting with all the allottees at the project site, in the presence of counsels of both parties and submit a detailed report regarding the current status of the project, works to be completed as committed to the allottees, amount required to complete the pending works and the time period within which the whole project could be completed and also to produce the minutes of

meeting before the Authority. After the final direction given by this Authority in this regard on 23.09.2020, a Report has been submitted by the Respondents stating that the meeting was held on 11.10.2020. But as per the direction, the minutes of meeting has not been produced by the Respondents. In the report submitted by the Respondents, it is undertaken that the pending works will be commenced on 01.11.2020 which will be completed by 28.02.2021. Without producing the minutes of meeting signed by both parties, we cannot conclude that the contents of the said report submitted by the Respondents are 'decisions' taken with mutual consent of both parties. The averments of the Respondents that it is the responsibility of the Allottees/purchasers to form an Association are not admissible. It is the sole responsibility of the Respondents/Promoters to enable the formation of Association of allottees and register it as per the laws concerned.

8. During the hearing, the Respondent requested a time period of 4(Four) months for completion of the project in all respects and handing over it to the allottees.. The Complainants also agreed to wait for this period, subject to conditions being imposed by this Authority. Hence invoking Section 34(f) & 37 of the Act, we have decided to issue following directions to the Respondents :

(1) The Respondents shall enable the formation of a proper Association of allottees and register it in accordance with the law and the Respondents shall complete and hand over, the project 'Kerala Gramam' with all the sanctions / approvals required to be received from the Authorities concerned, all the amenities and facilities as offered to the allottees and complete registrations of sale deeds, if any, related to individual units to buyers and common area to the Association, within 4(four) months from the date of this order.

(2) The Association shall monitor the progress of works and make sure that it is being carried out by the Respondent without fail and in case of any failure from the part of the Respondent, the Association can approach this Authority. In the event of any non-compliance of this order by the Respondent, this Authority shall initiate severe penal actions as provided under the Act.

This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation, for the loss sustained to them, in accordance with the provisions of the Act and Rules.

Sd /-

Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/



OU

Secretary (Legal)

APPENDIX

Exhibits of the Complainants

- Exhibit A1 - True copy of Brouchure issued by the Respondents
- Exhibit A2 - Copy of agreement for sale dated 30.05.2011
- Exhibit A3 - Copy of Sale dees dated 05.10.2012
- Exhibit A4 - Copy of building permit No.618/08-09
- Exhibit A5 - Copy pf advertisement published in Jyothisharatnam magazine

Complaint No.
12/2020

Exhibits of the Respondents

- Exhibit B1 - Photographs of building
- Exhibit B2 - Occupancy Certificate dated 03.02.2018

AO