



# KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

I.A No. 109/2023

IN

Complaint No. 121/2022

Present: Sri. P. H Kurian, Chairman  
Sri. M P Mathews

Dated 22<sup>nd</sup> August, 2023

## Complainant

1. Vipindas K R  
Karipadath House,  
Angamaly Village,  
Aluva Taluk,  
Ernakulam,  
Angamaly P O-683572
2. Anumol Abraham  
Nedumkallel House,  
Edavetty P O 685588,  
Thodupuzha, Karikkode Desom,  
Idukki

## Respondents

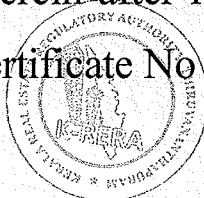
1. ERA Homes and Projects Pvt Ltd,  
S-5, Sunu Plaza,  
XVIII/627, Kottaram Junction,  
Maradu, Cochin-682308  
Represented by its Managing Director



2. Susan  
House No. 4/225, Karimankulam,  
Kandanad P O, Manakunnam Village  
Ernakulam- 682305
3. Eliyamma Markose  
Pallivathukkal, Kandanad P O  
Manakunnam Village,  
Ernakulam- 682305
4. Mini  
Pulickaparambil House,  
Mulakulam North P O,  
Piravom Village  
Ernakulam- 686664
5. Reena  
Thoyalumkara Puthenpurayil House,  
Kadathi P O,  
Velloorkunnam, Muvattupuzha,  
Ernakulam-686673
6. State Bank of India  
P B B, Ernakulam,  
S C Bose Road, Jawahar Nagar,  
Kadavanthra, Ernakulam- 682020  
Represented by its Authorized Officer and Branch Manager.

### **ORDER**

1. The Complainant is the allottee in the villa project "Era Prime" registered under Sec 3 of the Real Estate Regulation and Development Act (Herein after referred to as Act, 2016), 2016 having registration certificate No K-RERA/PRJ/201/2021 valid



till 30/06/2023 situated at Ernakulam developed by the Respondents. As per order dated 14.12.2022, the Authority issued the following directions: -

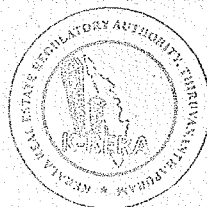
(i) The complainant and the 1<sup>st</sup> respondent shall execute the revised agreement for construction, incorporating the revised area as per the permit and the total amount agreed for the revised area, with the payment schedule for settling the balance payment in 3 installments as agreed, within 15 days and produce the same before the Authority on or before 04/01/2023.

(ii) The 1<sup>st</sup> respondent shall complete the villa and hand over possession of the villa after obtaining the occupancy certificate within 6 months from 14/12/2022 and complete the common amenities as per the undertaking produced before the Authority.

(iii) The complainant shall settle the balance payments due to the 1<sup>st</sup> respondent upon completion of the works as mutually agreed and stated above.

(iv) The Complainants are entitled to claim delay interest from the Respondent under sec. 18 of the Act, 2016, if the handing over possession of the villa as per the terms of the agreement is not completed on or before 14/05/2023

2. The above IA was filed by the 1<sup>st</sup> respondent seeking extension of the period stipulated for completion of the villa in all respects by a period of three months. The reasons submitted in support of the interlocutory application, is as detailed below: -



- (i) Shutting down of quarries due to the strike called by quarry owners in Ernakulam district from 20.01.2023 to 24.04.2023
- (ii) Shutting down of quarries due to the strike called by the quarry owners all over Kerala from 17.04.2023 to 24.04.2023 due to which there was shortage in supply of building materials, they are crushed stones, M-Sand, P-Sand, Solid cement blocks etc.
- (iii) Lorry strike conducted by lorry owners and their workmen, which brought the transportation activity of cement, steel and other construction materials to a halt
- (iv) additional requirement as decided by the complainant in the specifications offered, further variations in the floor finishing as well as construction of additional structures, complainant wanting to execute changes with his own workmen, due to which variation of rates that needs to be accepted by both the parties.
- (v) The flooring tiles promised to be supplied by the complaint was delivered only on 10.05.2023.

3. In the counter affidavit filed by the complainant, it is accepted that he had requested changes and additional construction were required and the change in position of an inner wall was also intimated to the respondents. Request for an additional structure, a stair case was conceded by the respondents and a sum of Rs. 40,000/- was paid to the respondents. It was also admitted that the complainant had an intention to get some works completed by using



his own workmen. The complainant had further stated that the exact quantity required for buying floor tiles was not timely informed and what was provided was erroneous. It was admitted by the complainant that the flooring tiles were supplied only on 10.05.2023.

4. From the Email Communication dated 04/04/2023 of the Complainant to the Respondent it is evident that the complainant is happy with the attention to detail and commitment to excellence shown by the respondent, and there is also negotiation of rates between the parties. Email communications produced by the complainant is also pointing to the fact that considerable time is spent on estimation of quantities required for purchase of materials to the choice of the complainant/allottee and rates of items that are not covered under the agreement

5. Considering the submissions of the learned counsels for the complainants and the respondents and the documents made available the Authority has the following clarifications, to offer Under section 31 of the Act, 2016 a complaint can be filed before the Authority by any person for any violation or contravention of the provisions of the Act or the Rules and Regulations made there under against any promoter/allottee. The real estate project under reference is registered under section 3 of the Act, 2016 and the parties shall come forward with specific violation or contravention as referred in Section 31 of the Act 2016. The Authority is not supposed to sit over the complaints considering it as a contract, and



decide the contentions raised by the parties. A real estate project is defined under section 2 (zn) of the Act, 2016 and it means the development of a building for the purpose of selling. The agreement is for sale cum construction and the land has already been sold to the complainant. There is no provision for withdrawing from the project under Section 18 of the Act, 2016, as the land in which the villa is under construction is owned by the complainant, and the permit is issued in the name of the complainant. Therefore, IA submitted by the complainant for withdrawing from the project was not considered. What is remaining is the construction of villa as per the sanctioned plans and project specifications. Under section 14(1) of the Act, 2016 the project shall be developed and completed by the promoter in accordance with sanctioned plans, lay out plans and specifications as approved by the competent authorities. It is seen from the submissions of the concerned parties that there are changes suggested by the complainant and approved by the respondent based on mutually agreed rates over and above the consideration shown in the agreement executed. In such cases, delay in execution of the work cannot be assessed under this Act.

6. Considering the above, the Authority hereby issue the following directions under section 37 of the Act, 2016.

- (i) the promoter shall complete the work as per order dated 14.12.2022 within a period of three months as prayed for and hand over the villa to the complainant




- (ii) the complainant shall ensure that the work is executed as per the approved drawings and specifications and any delay caused due to the change in specification suggested by the complainant shall not be considered under this Act, 2016
- (iii) the respondent shall enable formation of the association under section 11(e) of the Act, 2016.

The Interlocutory application is disposed of as above.

Sd/-  
Sri M P Mathews  
Member

Sd/-  
Sri. P H Kurian  
Chairman

True Copy/ Forwarded By/Order

  
Secretary (legal)

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**APPENDIX****Documents submitted by the Petitioner**

- Exhibit A1- True copy of Annexure to agreement for sale cum construction dated 02.01.2023
- Exhibit A2- True copy of E-mail regarding quarry strike dated 20.01.2023
- Exhibit A3- True copy of E-mail for discussion of installation and epoxy of villa dated 04.05.2023
- Exhibit A4- True copy of newspaper cuttings regarding quarry strike

**Documents submitted by the respondents**

- Exhibit B1- True copy of photographs showing the construction of Villa
- Exhibit B2- Copy of the E-mail communication dated 03.05.2023 between the Petitioner and the 1<sup>st</sup> respondent for transfer of Rs.40,000/- for staircase construction
- Exhibit B3- Copy of the E-mail communication dated 03.05.2023 between the Petitioner and the 1<sup>st</sup> respondent owing to the supply of Floor tiles
- Exhibit B4- Copy of proceedings issued by KSEB dated 21.04.2023 imposing fine to the 1<sup>st</sup> respondent for manipulating the electrical connection



# ANNALS

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