



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM.**

Complaint No: 122/2022

Present: Sri. P.H. Kurian, Chairman
Dr. B. Sandhya, Member

Dated 20th February, 2025

Complainant

Geena Rani S,
Apartment no. 2C3, Artech Futura,
Venpalavattom, Kadakampally Village,
Anayara P.O, Thiruvananthapuram
Pin- 695029.
[Adv. K. Shaj & Arun Chand]

Respondents

1.Artech Realtors Private Limited,
Artech House, T.C No. 24/2014(1)
Thycaud, Thiruvananthapuram- 695014
Represented by its Directors.

2. T.S Ashok.
Managing Director,
Artech Realtors Private Limited,
Artech House, T.C No. 24/2014(1),
Thycaud, Thiruvananthapuram — 695014.



3. Lekha Thankamony Amma,
Director, Artech Realtors Private Limited,
Artech House, T.0 No. 24/2014(1) - Thycaud,
Thiruvananthapuram
[Adv. A. Santhosh Kumar & Rias S. Kandala.]

The above Complaint came up for final hearing on 05.02.2025. The Counsels for the Complainant Adv. K. Shaj & Adv. Arun Chand and the Counsel for Respondent Adv. A Santhosh Kumar attended the online hearing. The project in question herein "Artech Futura" Kadakampally village, Thiruvananthapuram taluk is registered before this Authority under Section 3 of the Real Estate (Regulation & Development) Act, 2016 [herein after referred to as 'the Act, 2016'] vide Reg. No. K-RERA /PRJ /TVM/ 151/2022. As per the website maintained by the Authority Form 6 is seen filed on 15.11.2022.

ORDER

1. The Complaint was originally filed on 13.04.2022 seeking following 16 reliefs:

(a) to direct the Respondents No. 1 to 3 to execute sale deed in favour of the Complainant transferring the Apartment No - 2C 3 admeasuring 1150 square feet of built up area on the second floor of the project named Artech Futura, Venpalavattom, Thiruvananthapuram along with covered car parking area together with undivided share in 114.900 cents of total landed property equivalent to 0.986 cents situated at Kadakampally Village, Thiruvananthapuram District comprising of land having



an extent of 30 cents in Survey No. 1782/1, 29 cents in Survey Nos. 1783/1, 55.90 cents in Survey No. 1783/3 and register the same at Sub Registrar Office, Thiruvananthapuram District without insisting with any revised tax liability or other charges within a period of 30 days;

(b) to declare that the demand of charges levied by the Respondents under the head cable charges, KSEB deposit, KSEB meter, KWA connection, Drainage connection, Owners Association Deposit, Corporation assessment fees, Maintenance charge for one year (Rs.1.25/sq.ft) as null and void;

(c) to direct the Respondents to produce proof of payment with respect to each different head that the Respondents had allegedly paid towards the apartment of the Complainant as indicated in the purchase bill or as per the actual charges levied by the concerned statutory authorities concerned;

(d) to declare the alleged handing over of possession of Apartment No.2C3, Artech Futura, Venpalavattom, Thiruvananthapuram by the Respondents to the Complainant on 31-10-2016 without obtaining a valid Occupancy Certificate and in view of prior cancellation of building permit for the said residential/commercial project of the Respondents as illegal and void;



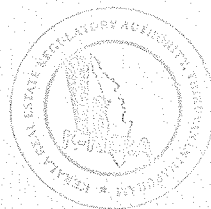
(e) to direct the Respondent to furnish the Complainant copies of all documents pertaining to her apartment viz., sanctioned plan, layout plans, specification of construction, valid occupancy certificate;

(f) to declare the demand of alleged tax, if any arose which exceeded the date of handing over of alleged possession as stipulated in the agreement and interest on delayed payment as unjustified and to declare the same as null and void

(g) to direct the Respondent to provide adequate parking space, open space, recreational space (mandatory 35% on the ground), and other amenities as mandated by then Kerala Municipality Building Rules, 1999;

(h) to direct the Respondents herein to construct the rain water harvesting and to properly construct the drainage holes in the aforesaid residential/commercial building as per terms of the agreement adhering with the sanctioned plan, permit

(i) to direct the Respondents to remove the illegal guest parking space provided in the open terrace meant for firefighting and to direct them to properly construct and provide adequate open terrace space meant for firefighting for easy maneuverability of the fire engine all around the building after removing the covered parking roof in the open space and



thereafter obtain the report of the structural engineer pertaining to the withstanding load of fire engine in the open terrace obtain fresh NOC from the Department of Fire and Safety in order to safeguard the life of the allottees living in the apartment

(j) to direct the Respondents 1 to 3 to rectify the structural defects incurred within 5 years in the residential/commercial apartment which was noted by the Structural Engineers, CET as per their preliminary report at the cost of the Respondents herein with a time period fixed by this Hon'ble Regulatory Authority and direct to refund the Complainant an amount of Rs. 20,000/- paid for rectifying the same

(k) to direct the Respondents 1 to 3 to obtain a valid permanent occupancy certificate from the Corporation of Thiruvananthapuram after carrying out the constructions/providing facilities as mandated in the sanctioned lay out plan, building permit and under the Kerala Municipality Building Rules, 1999 and the RERA Act of 2016

(l) to direct the Respondents 1 to 3 to register the real estate project "Artech Futura" being constructed in 114.90 cents of land situated at Venapalavattom, Kadakampally Village, Thiruvananthapuram District with the Kerala Real Estate Regulatory Authority as they had violated Section 3 of the Real



Estate (Regulation and Development) Act, 2016 (herein after referred as Act, 2016)

(m) to initiate prosecution proceedings against the Respondents under Section 59, 60, 61 and 62 of the Act, 2016 as the Respondents had violated Sections 3, 4, 11, 14, 17 and 18 of the Act of 2016 and punish them accordingly;

(n) to pass order directing the Respondent to pay the rental amount of Rs. 10,000/- per month for a period commencing from 01.11.2015 to 01.11.2016, for the delay in handing over the possession to the Complainant;

(o) to allow Rs. 50,000/- towards cost and litigation expenses to the Complainant;

(p) to pass any other appropriate order as this Regulatory Authority deemed fit and proper in the facts and circumstances of the Complaint.

2. Later through I.A No. 6/2023 filed on 06.01.2023 another relief was added to amend the relief portion of the Complaint by adding following relief as :- (q) Direct the Respondents to pay interest in delayed possession at the rate of interest of State Bank of India's Benchmark Prime Lending Rate plus two percentage (+2%) for a period of 11 months, 23 days starting from



09.11.2015 to 31.10.2016 i.e., the agreed date of handing over the possession of the apartment till the alleged date of possession or in the alternative for a period of 3 years, 6 months, 23 days starting from 09.11.2015 to 31.05.2019, i.e., the agreed date of handing over the possession of the apartment till the temporary occupancy certificate is obtained, in compliance of Section 18 of the Act of 2016 r/w Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018.

3. In the hearing held on 21.09.2023, as the Counsels for both the parties agreed to settle the dispute as regards the payment and accordingly Complainant agreed to pay Rs. 3,50,000/- and registration and legal charges at actuals. Thus, the Authority passed order dated 31.10.2023, in which the Complainant was directed to pay Rs. 3,50,000/- to the Respondents and registration and legal charges at actuals within 15 days as full and final settlement of the payment due against Exhibit A4 agreement. The Respondent was directed to execute the sale deed transferring the undivided share and apartment as stated in Exhibit A4 agreement within 15 days on receipt of the above payment. It was also specified in the order that the Complainant to approach this Authority for delay interest under Section 18 of the Act, 2016 with all relevant details

4. The said order of the Authority was challenged in appeal by the Complainant before the Hon'ble Kerala Real Estate



Appellate Tribunal [herein after referred to as 'the Appellate Tribunal'] as REFA No. 87 of 2022. The Appellate Tribunal found that the order was passed without obtaining the Complainant's consent in writing. The Complainant's Counsel submitted in appeal that no such offer was made orally during the proceedings. By allowing the contentions of the Complainant/Appellant in Appeal, the Appellate Tribunal in its Order dated 28.02.2024 set aside the order passed by the Authority on 31-10-2023 in the above Complaint and the Complaint was remanded back for fresh enquiry and disposal according to law. It was mentioned in the said order that orders will have to be passed on application for amendment of relief as IA No 6/2023 with prayer for interest for delay in handing over possession of the apartment which will have to be examined and considered by this Authority. It was also observed that there are as many as 16 reliefs and one more is added by amendment and may be many of them cannot be granted, and cannot entertain many of such prayers, anyhow as part of enquiry those factual aspects have to be examined.

5. The factual matrix of the Complaint in brief is as follows: The Complainant is an allottee in the real estate project, "Artech Futura", Venpalavattom, Thiruvananthapuram promoted by the Respondents. The 1st Respondent a private limited company engaged in construction of residential/commercial buildings, the



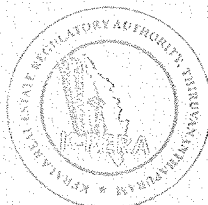
2nd and 3rd Respondents are the Managing Director and Director of the 1st Respondent Company. The 2nd and 3rd Respondents approached the Complainant and her husband with fanciful advertisements of the 1st Respondent in respect of the construction of a residential/commercial complex named "Artech Futura" consisting of basement + ground and thirteen floors with spacious customizable apartment with a super luxurious ambience and other amenities offered including infinity swimming pool with deck, multi-purpose hall, gym/health club children's play area, lounge, intended to be constructed in 114.9 cents of land. The 2nd and 3rd Respondents entered into a joint venture development agreement with the land owners of the aforesaid land for constructing the residential/commercial complex having a total plinth area of 15050.62 Sq. mts. Attracted by the advertisements, including confirmation regarding issuance of building permit by the Corporation of Thiruvananthapuram in the month of August 2012 and the progress of construction work, the Complainant agreed to purchase apartment No. 2C3 with built up area of 1150 sq.ft. in the second floor in the residential/commercial complex named Artech Futura. As such, on 10-08-2012 Complainant paid booking amount of Rs. 1,00,000/- to the 1st Respondent company by Cheque bearing No. 046086 and filled up the form of the application for registration after agreeing to purchase the said apartment for a total cost of Rs. 41,02,500/- including covered car parking area, out of which the cost of apartment comes around Rs.



38,52,500/-. On 17.08.2022, after encashing the booking amount by the 1st Respondent, a receipt dated 17.08.2012 bearing No. 4462 was issued to the Complainant acknowledging the receipt of an amount of Rs. 1,00,000/- paid by the Complainant to the 1st Respondent Company. Thereafter an agreement for sale dated 09-11-2012 was executed between the Complainant and the 1st Respondent Company, through the 2nd Respondent in the capacity of being the Managing Director for the sale of proportionate undivided share of 0.986 cents of landed property mentioned in Schedule "A" of the said agreement and the Apartment Type No. 2C3 on the second floor with a built up area of 1150 sq. feet and one car parking space together with undivided right in common built-up area of the said development namely the staircases, passages to the staircase and open terrace and the rights in the common amenities mentioned in the said agreement. That on the date of agreement as provided in the "Schedule of Payment – H" in the agreement aforesaid, the balance amount of Rs. 9,25,625/- was paid by the Complainant to the 1st Respondent Company by way of Cheque bearing No. 04094 dated 09/11/2012 drawn at Andhra Bank, Anayara Branch, Thiruvananthapuram District. The Complainant was issued with receipt dated 09.11.2012 bearing No. 4941 acknowledging the receipt of an amount of Rs. 9,25,625/- paid by the Complainant to the 1st Respondent Company. It was specifically stipulated in the said agreement that the 1st Respondent company will complete the individual



apartment block within a period of 36 months from the date of agreement, more specifically on or before 08/11/2015, for a total sale consideration of Rs. 41,02,500/- including an amount of Rs. 2,50,000/- for covered car parking, and which also includes the undivided interest in the landed property to which the building was to come up. Moreover, the said agreement also stipulated that the Complainant had to pay maintenance cost calculated at Rs.1/- per square feet, which came to Rs. 1,150/- per month. As per the agreement, the Complainant had paid an amount of Rs. 10,25,625/- at the time of agreement and the next instalment became due when the roof slab of the booked flat was to be laid. However, the 1st Respondent Company, along with the 2nd and 3rd Respondents, deliberately delayed the laying of roof slab and the said work was carried out only in month of February, 2014. As such, the Complainant after verification, paid the next instalment amounting to Rs. 10,25,375/- to the 1st Respondent company by way of Cheque bearing No. 085994 dated 24.02.2014 drawn at Andhra Bank, Anayara Branch, Thiruvanthapuram District. The Complainant was issued with receipt dated 24.02.2014 bearing No. 2521 acknowledging the receipt of an amount of Rs. 10,25,375/- paid by the Complainant to the 1st Respondent Company. Subsequently, in the month of February 2015, when the full structure of the building was completed, the Respondents demanded the next instalment due towards the Respondents and as such the Complainant paid an amount of Rs. 6,25,500/- on



12.02.2015 by way of Cheque bearing No. 037331 dated 12.02.2015 drawn on the erstwhile State Bank of Travancore, Anayara Branch, Thiruvananthapuram District. The Complainant was issued with receipt dated 12.02.2015 bearing No. 2283 acknowledging the receipt of an amount of Rs. 6,25,500/- paid by the Complainant to the 1st Respondent Company. That on 12.02.2015, the Complainant paid another lumpsum amount of Rs. 4,00,000/- by way of Cheque bearing No. 085998 dated 12.02.2015 drawn at Andhra Bank, Anayara Branch, Thiruvananthapuram District. The Complainant was issued with receipt dated 12.02.2015 bearing No. 2284 acknowledging the receipt of an amount of Rs. 4,00,000/- paid by the Complainant to the 1st Respondent company. Thus, an amount of Rs. 10,25,500/- was paid by the Complainant on 12.02.2015 to the 1st Respondent company. The 2nd and 3rd Respondents further assured to complete the outstanding work within the deadline of 36 months, i.e, on or before 08.11.2015, as stipulated in the agreement after engaging workers working in both day and night shifts. Despite the ending of deadline as stipulated in the agreement, the Respondents 1 to 3 violated the conditions and delayed the constructions so as to divert the hard- earned money of the Complainant to the other businesses and building projects of the 2nd and 3rd Respondents. The Complainant had telephonic discussions with the 2nd and 3rd Respondents and the Respondents assured to complete the apartment of the Complainant within April 2016 during Vishu



festival so that the Complainant could conduct the house warming ceremony during the festival period and owing to the delay in handing over the completed apartment, Respondents assured waving off a substantial amount at the time of handing over of apartment. On 5.9.2016, Complainant received email from the Respondents claiming there was revision in taxes from 1.09.2016 and the complainant had to remit at the end of contract period. The Complainant cannot be held liable to any additional burden of tax for the default of the Respondents' in completing the apartment before 08.11.2015. The Complainant on 31.10.2016 after due inspection of her apartment handed over Rs. 9,84,225/- towards the last instalment to the 1st Respondent and the Complainant was issued with receipt bearing no. 2318 dated 31.10.2016. Despite payment of Rs. 40,60,725/- towards apartment the Respondents completed the apartment 11 months after assured date vide intimation letter dated 31.10.2016 and handed over alleged possession of apartment to the Complainant after full satisfaction of total cost of Rs. 40,60,725/- and waived of Rs. 41775/- on account of admitted delay in handing over the apartment. However, the said alleged handing over possession will not stand in the eye of law without a valid occupancy certificate, the complainant and other allottees remained as unauthorized occupant as such the alleged possession cannot be treated as a valid handing over possession. At the time of handing over of



apartments the Respondents assured completion of registration after obtaining the occupancy certificate from the Corporation.

6. According to the Complainant, by virtue of Clause 7 of the agreement for sale entered between the 1st Respondent company and the Complainant, the 2nd Respondent had given the alleged possession of the said accommodation to the Complainant on payment of all dues payable by the Complainant. The registration of the flat in the name of the Complainant got delayed owing to the failure on the part of the Respondents 1 to 3 to obtain the occupancy certificate from Thiruvananthapuram Corporation as they had constructed the aforesaid residential/commercial building contrary to the approved layout and building plan and thereby committed gross violation to the erstwhile Kerala Municipality Building Rules, 1999. Pursuant to the surprise vigilance inspection at the residential/commercial building. Subsequently, the Secretary, Corporation of Thiruvananthapuram had issued stop memo and show cause to the Respondents for not cancelling the permit issued to them. However, the Respondents illegally completed the construction despite the said stop memo. It was submitted that residential/commercial complex "Artech Futura" was a high-rise building having a height of 41.20 meters from the ground level. A road was situated abutting the eastern side of the residential/commercial complex having a width of 4.8 meters to 5 meters and a length of approximately 130 meters goes



to a residential plot and the road ends there. Hence by virtue of Rule 25(1) of the Kerala Municipality Building Rules, 1999 a setback of 3m is required in the building abutting a road. The Respondents had illegally constructed the aforesaid building leaving a setback of only 1.04 meters to 2m instead of 3m as mandated under the Rules of 1999. The Respondents had failed to maintain the requisite open space as required under the Rules. By virtue of Rule 24(4), 24(5) and 24(8) of the KMB Rules 1999, applicable as on 04.08.2012 (date of building permit), the rear setback required for the building with a height of 41.2m is 7.5m (2+5.5m) and the side setbacks required are 6.5m (1+5.5m) and 6.7m (1.2+5.5m). However, in the said residential/commercial building, the Respondents only left a setback of 1.04 to 2 meters on the eastern side. On the rear portion (northern side), the setback is 1.50m and on the western side, a setback of 2.20m to 2.8 m is only provided. Hence, the construction in the aforesaid residential/commercial building is carried out deviating from the permit which by itself is in violation of KMBR, 1999 and specifically violated Rule 24(4), 24(5), 24(8) of KMBR, 1999 and thus even the temporary occupancy certificate obtained by the Respondents was fake and as per law, a valid occupancy certificate was yet to be issued. The Respondents had constructed the basement floor in the said residential/commercial building above the ground level leaving a depth of only 60 cm below the ground level in the rear portion of the building and the basement

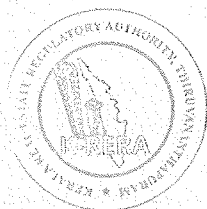


specified in the plan is completely exposed at the ground level and as such the basement floor cannot be considered as a basement but the ground floor itself. The height of the ground floor in the said building itself is about 3m above the ground level in the front portion. As per Rule 117 of Kerala Municipality Building Rules 1999, open terrace is to be used as the access for firefighting. However, in the said residential/commercial building, open space available at the rear is less than 5 m and the open space provided is not sufficient for easy maneuverability of the fire engine all around the building and furthermore no access is provided for the fire engine to pass through the rear option of the building at the ground level. The Complainant and other allottees are deprived of fire protection and in the vent of any mishap the life of residents is at stake. The project consists of 99 apartments for which sufficient car parking has to be provided.

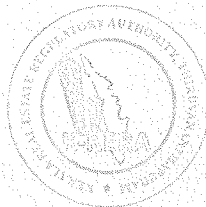
7. The Complainant further states that despite the repeated oral and email requests since November 2016 to the 2nd and 3rd Respondents, for the registration of apartment after getting the temporary occupancy certificate from the authorities concerned, the Respondents had deliberately failed to act upon the request and had been demanding illegal amounts from the Complainant on the pretext of statutory charges paid by the Respondents towards the aforesaid project Artech Futura, despite failing to comply with the statutory mandates. It was submitted that the



Complainant had requested for a detailed split up of the statutory charges allegedly levied by the Respondents 1 to 3 towards the apartment which they failed to do so. In the interregnum, after the continuous request of the complainant, the Manager Customer Relations, upon the direction of the 2nd and 3rd Respondents issued a detailed statement of accounts dated 13.10.2017 pertaining to the outstanding amount due from the Complainant towards the 1st Respondent company without any proof for corroborating the same. It was pertinent to note that in the balance amount shown towards the total cost, it was shown an "NIL" as the Respondents were gracious enough to admit that no dues remained. However strangely the Respondents had shown various split-ups payments towards cable charges, K.S.E.B meter and deposit, K.W.A connection, drainage connection, owners Association deposit, Corporation assessment fee and maintenance charge for 1 year. While so, when the Complainant demanded the payment receipt towards the individual payment towards the expenses incurred in the above-mentioned heads before the authorities concerned from the Respondents 1 to 3, along with the Manager Client Relations of the 1st Respondent company couldn't furnish the payment receipts and demanded for payment and assured to provide the payment receipts paid towards the statutory authorities for cross checking after payment of the entire amount. Moreover, it was pertinent to note that as agreed in the agreement, the maintenance charge is Rs. 1/- per



square feet, however the Respondents had arbitrarily charged an amount of Rs. 1.25/- per square feet without any authority and an excessive additional amount under the head tax was also levied, which was also illegal and arbitrary for no fault of the Complainant and as such an un-sustainable amount of Rs. 4,53,183/- was excessively sought from the Complainant. Under clause (d) of Schedule F, in the agreement for sale dated 09.11.2012, it was admitted that the first Respondent shall pay the Complainant rent at Rs. 4/Sq. Ft/month for the apartment for the delayed period, whereas in the said agreement itself under clause (6) it was stated that the Complainant shall be liable to pay the Respondent a penalty of 18% interest per month per annum for the total amount due, for which the Complainant had duly paid the entire the total amount mentioned in schedule of payment – H and the Respondent had handed over the alleged possession of the flat. The Respondent had deliberately committed delay of 11 months in handing over the apartment to the Complainant, which was in clear violation as per the terms of the agreement. However, the Respondent with malafide intention arbitrarily drafted ex-facie one sided, unfair and unreasonable clause limiting the liability of the Respondents to Rs.4/Sq. Ft/Month whereas for the default, if any from the part of the Complainant, she shall be liable to 18% interest per month per annum for the total amount due, which constitutes unfair practice on the part of the Respondents who was in dominant position as the Complainant. Owing to the



delay in getting the possession of the apartment, the Complainant was constrained to spend 12 more months in her rented premises. However, the Respondents jointly and severally failed to provide copy of the temporary occupancy certificate and failed to register the apartment in the name of the Complainant which had caused her irreparable injury, loss and hardships. That again when the Complainant sought for the payment receipt from Respondents and their associates, the Manager Customer Relations had issued another statement of accounts dated 10.08.2021 to the Complainant. In the said statement, it is pertinent to note that an amount of Rs. 41,275/- is shown as balance amount in the total cost which was a quite contrary to the prior statement dated 13.10.2017 wherein the balance amount in the total cost is shown as "NIL". Moreover, in the present statement of accounts dated 10.08.2021, an amount of Rs. 8,88,727/- was charged towards the Complainant, which was double the prior amount arbitrarily charged by the Respondents herein from the Complainant. It was submitted that the Respondents herein with malafide intentions had illegally and fraudulently tried to cheat and hoodwink the Complainant by making a huge and unconscionable demand, despite having failed to deliver to a building apartment without any flaws and without violating any rules and laws. It was pointed out that the defendants had demanded cable charges from all the apartment owners, including the Complainant i.e., Rs. 40,000/- from each apartment owner, whereas, at the most, the cable laying

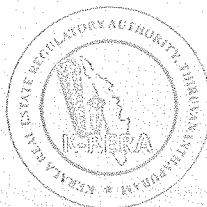


charges, including the cost of the cable, will not come to more than Rs. 1,00,000/- for the entire apartment complex and thus, on this count alone, the Respondents had tried to make undue gain of Rs. 39,60,000/-. It was further submitted that the Respondents had exorbitantly demanded Rs. 16,000/- as deposit of KSEB from the Complainant, whereas the Respondents had remitted a deposit of only Rs. 3,000/- to the KSEB. Even though the alleged possession of the apartment was given to the Complainant on 31.10.2016, it was learnt that the Respondents were able to obtain a temporary occupancy for the aforesaid building only on 31.05.2019 and until such period, the Complainant and her family remained as an unauthorized occupant. It was submitted that the Respondents after having obtained the temporary occupancy for the said apartment, they had made a fresh demand to the Complainant for an amount of Rs. 41,275/- apart from the other exorbitant charges, which was illegal demands which the Respondents were not entitled to claim any of the illegal exorbitant charges. The Complainant issued legal notice dated 07.09.2021 to furnish detailed breakup of all the payments alleged, however in reply dated 30.09.2021 issued without providing the detailed breakup and proof of payments charges paid by the Respondents. The Complainant is duty bound to remit cost as per purchase bill if any provided by the Respondents or as per the actual charges levied by the authorities. The Respondents failed to hand over documents related to sanctioned plan etc to

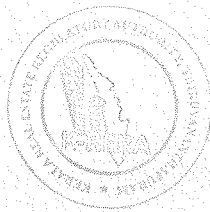


the Complainant. The Respondents are duty bound to transfer title by way of sale deed in favour of the Complainant within 3 months from the date of occupancy certificate. The project is a continuing project liable to be registered under Section 3 of the Act, 2016. The Respondents are yet to construct open terrace for fire-fighting, to provide sufficient parking, recreational facilities rain water harvesting and drainage facility. Severe structural defects were noticed and as authorized by the Association team of engineers conducted preliminary enquiry and distress was noticed in the structural stability of the apartments. The Respondents are evading from their responsibility and the Complainant and other allottees are constrained to pay Rs. 2,00,000/- respectively for rectifying defects. The Respondents obtained a temporary occupancy certificate in the year 2019 and the Respondents are duty bound to rectify structural defects in five years from date of giving possession at their own cost. The handing over possession without valid Occupancy certificate would not suffice for legal possession.

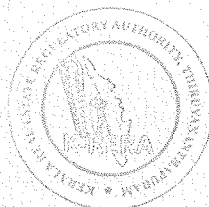
8. The Respondents 1, 2 and 3 on 03.08.2022 filed reply statement in which it was stated as follows: The building construction in question was fully completed in all respects, on 04-12.2015, as is evident from the Occupancy Certificate dated 31.05.2019 produced by the Complainant herself. The said building project namely 'Artech Futura' was not a new one or an



ongoing project, and hence registration under the RERA Act is not required. The completion plan and completion certificate were issued by the competent authority certifying that the real estate project had been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws and the occupancy certificate already issued, took the possession by owners of the apartments and enjoying the same years back including the Complainant. Services have been handed over to the authorities concerned, common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance, all development work have been completed and sale deeds of majority apartment have been executed. It was submitted that RERA Act was introduced among other objects is also to balance the interests of consumers and promoters by imposing certain responsibilities on both. The, building, the present subject matter, was complete along with Occupation Certificate long ago, but the Complainant had not fully paid the consideration. The revised permit was obtained on 04.08.2012. The work was executed as per the completion plan, certified by Thiruvananthapuram Corporation. The construction was completed on 04.11.2015. The amount was due to the Respondents by the Complainant even on the said date of completion. The Complainant was in possession of the apartment and enjoying the same for the last several years. The present



Complaint was with an evil intend and a calculated endeavor to cover up her illegality in not paying her lawful dues, to the Respondents. The intimation regarding ready for handing over letter was issued to the Complainant on 20.10.2016. The Complainant took the possession of the apartment on 31.10.2016. The occupancy certificate was issued to residential apartments as per the Hon'ble Kerala High Court Judgment dated 03.10.2018. The Resident's Association was formed and they took the maintenance responsibilities. The Complainant had not paid an amount of Rs. 8,88,727/- as on 30.09.2021, out of the total sale consideration. The Complainant filed the present Complaint with unclean hands suppressing the vital aspect that she was a chronic defaulter of the amount due to the Respondents, by not paying the cost and expenses of the apartment and committing breach of the agreement and legal obligations cast upon the Complainant. A petition as CCP No. 31 of 2022 for compensation was also filed by the Complainant before the Adjudicating Officer. The Section of law stated in the Complaint was under 3, 11, 14, 17(1), 18 and 19 of the Act, 2016. Section 3 shall not be attracted for the grounds detailed above. The functions and duties as promoter were duly acted upon by the Respondents and hence Section 11 will not be attracted. The Respondents had already obtained completion certificate/ occupancy certificate as provided under Section 11(4)(b) of the Act. Section 14 of the Act is not attracted for the reason that the



Respondents never made any alteration or additions in the sanctioned plan or to any specifications, amenities offered by the Respondents and there is no Complaint of structural defect or defect in workmanship by any of the allottees other than raised by the present defaulter. The demand of execution of sale deed by the Complainant can be made only on performing the part of the obligation by paying all the dues towards sale consideration. The Respondents are always ready and willing to perform their part of the obligation in registering the sale deed, if the consideration is fully paid. Hence Section 17(1) will also not be attracted. The apartment was completed in due time and possession was handed over and hence Section 18 of the Act was also not attracted. The relief sought for by the Complainant on the allegation of delay in handing over, non-adherence of building plan, evasion on rectification of structural damages were without any substance of truth or precision. Section 19 of the Act will not be attracted for the reason that the construction was completed in time and handed over to the allottee within the time specified in the agreement and there is no discontinuance of the business as a developer either on account of suspension or revocation of the registration under the Act. There is no defect of title and no delay in handing over. The Respondents never failed to discharge any other obligation under the Act or the rules or regulations or in accordance with the terms and conditions of the agreement for sale. The Respondents completed the construction



of the apartment and offered for possession before the date fixed for completion as stated in the agreement. As per clause 3 of the agreement, it was specified that the construction would be completed within 36 months from 09.11.2012, provided there was no hindrance from the purchaser in the progress of construction. The construction was completed within the agreement period i.e., on 04.11.2015 and the Complainant possessed the same as early on 31.10.2016 by certifying that the Complainant has personally verified and all work has been carried out to their full satisfaction and completed in all respects. The age of the apartment was now 7 years old. The said agreement was with reciprocal promises which include the schedule of payment as per stage of construction. The Complainant had not completed the payment schedule and an amount of Rs. 4,53,183/- was due to the Respondent as on 13.10.2017, i.e., after two years of the date of completion, which was evident from the demand made by the Respondents through email on 13.10.2017 and the one which was produced by the Complainant. On 10.08.2021, the Respondents again requested for the payment of the balance amount vide e-mail dated 10.08.2021 for an amount of Rs. 8,88,727/- towards the balance cost and other expenses and statutory charges excluding the amount required for the registration of the sale deed, which was evident from the record submitted by the Complainant. The possession of the apartment has already been taken by the



Complainant on 31.10.2016. For the last 6 years, the Complainant had not performed the part of the agreement by paying for the cost of the apartment. Again, on email dated 26.08.2021 it was informed to the Complainant to pay the due amount for facilitating the execution and registration of the Sale Deed, which was also produced by the Complainant. Instead of paying the due amount the Complainant opted to send legal notice which was properly replied by the Respondents. Thus, it was clear that the Complainant still owe to the Respondents towards the cost of the apartment, as per the agreement. The Complaint, it seems to be a shield not to pay the due. After receipt of the reply notice dated 30.09.2021 through the Lawyer of the Respondents, the Complainant instead of paying dues and one who have defaulted her duties and responsibilities as an allottee, opted to file the present Complaint, with a view to exploit this Authority, and the Act, 2016. It was submitted that, the Respondents had completed the construction with the specifications offered by them, even prior to the agreed period. RERA Law was a law for regulation and development of the real estate sector. Under the scheme of the RERA, the promoter's interests are also safeguarded. Unless a professional promoter making genuine efforts is not protected, then very purpose of development of real estate sector would be defeated. The duties, responsibilities and obligations cast upon to the Complainant as an allottee towards the promoter, was not satisfied as on date.



The Complainant is a defaulter, by not paying the dues to the Respondents, but was advantageous by possessing the apartment unit, admittedly from 31.10.2016 onwards by issuance of apartment hand over report and handing over certificate signed by the Complainant, after joint inspection with the Complainant and the Respondents. The Respondents never failed to discharge any obligation imposed under the RERA Act and Rules and hence not liable for any of the relief prayed. The present Complaint was filed to harass the Respondents. The Complainant had instituted false and frivolous complaint on an experimental basis, suppressing the real facts, with a view to harm the Respondents, and hence the Respondents are entitled for compensation and compensatory cost. As stated earlier, the date of completion of the construction was on 04.11.2015 and the possession of the apartment was taken over by the Complainant on 31.10.2016 by accepting the keys and certified that the Complainant had personally verified and all works carried out was with full satisfaction and was complete in all respect. The Complainant opted to acknowledge the "apartment hand over report" along with its certification signed by her. The copy of the Apartment handover report was produced. The Complainant produced was a preliminary report of the structural stability dated 19.07.2021, i.e., 6 years after the date of completion of the construction. On receipt of the report a joint inspection was conducted by the residence association and the promoter was



found that no structural defect had occurred as alleged by the Complainant. Moreover, the defects now stated are only wear and tear due to usage for more than 7 years and for not up keeping the maintenance by the residence association or the allottees. The allegation that the allottees were constrained to pay Rs. 20,000/- to the association was not known to this Respondent and it may be towards the maintenance charges to be collected by the association, which was a regular affair. Hence Section 14 of the Act will not at all be attracted.

9. This Authority, earlier after hearing both the Counsels on 04.08.2022 found that the project is registrable under Section 3 of the Act, 2016 and the Complaint is maintainable before this Authority and as per interim order dated 04.08.2022, the Respondents/promoters were directed to register the project under section 3 of the Act, 2016 and the Respondents/promoters have registered the project. As per interim order dated 29.03.2023, the Respondents were directed to produce details of statutory payments made with supporting documents to the Complainant and the Complainant was directed to settle all statutory payments within seven days on receipt of details from the Respondents as above. The Respondents were also directed to execute sale deed as per agreement, in favour of the Complainant on receipt of balance payment and statutory charges and other charges detailed in page 3 clause (2) of the agreement.



10. However, the Respondents on 18.04.2023 filed additional reply statement in which it was stated as follows: - The admitted outstanding payment towards cost of the apartment is Rs. 41,275/-. As per clause 6 of the sale agreement the payment on its due date was the essence of contract and in the event of failing to pay the installment on due date of the stage of construction, the purchaser was liable to pay the interest at the rate of 18% amounting to Rs. 47,673/- for 77 months. The total amount due by the Complainant on this count comes to Rs. 88,948/-. As per conditions of the agreement cost of all works not covered by the specification had to be paid by the purchaser. An amount of Rs. 40,60,000/- was paid by the Respondent to M/s Modern Electricals for electrical common expenses. The proportionate amount towards this count was Rs. 41,010/- rounded to Rs. 40,000/-. As per clause 2 of the agreement, the purchaser had to pay 12 months maintenance charges from the date of hand over or till an association was formed, @ of Rs. 1 per Sq. Ft. The Complainant was liable to pay Rs. 1,150 x 15 months, comes to Rs. 17,250/-. The total tax payable amounts to Rs. 3,14,409/- was due from the Complainant. The then prevailed taxes under the heads of Service tax, Value Added tax and Labour cess was liable to be paid by the Complainant. An amount of Rs. 16,000/- spent as KSEB Deposit, which includes the proportionate share of Fixed Deposit made to KSEB for 3 phase connection and installation charges of transformer. Also, Rs.



8,000/- under the head of KSEB meter which includes the cost of 3 phase meter and testing charges for the same. Cost of KWA connection includes the fixed deposit (Acc No: PTT/19760/D) made to the authority, Meter Charges, Road cutting charges and connection expenses, all sums up to Rs. 15,000/-. Drainage connection (Sewage treatment plant) was the cost of installation of STP which was liable to be borne by the allottees Rs. 15,000/- Owner's Association Deposit of Rs. 25,000/- was already transferred by the Respondents towards the Owner's Association. It was also submitted that the charges incurred towards KSEB deposit, KSEB meter, KWA connection, Drainage connection, Corporation Assessment fee etc would not be substantiated with documents as these were currently untraceable and these payments were made in the initial stages of construction back in 2016. The fact is that all these facilities were availed by the Complainant. Absence of substantial documents related to the cost incurred for these facilities did not mask the presence of the facilities and its utilization by the Complainant. The Respondents submitted that the Authority may fix an amount for the same if not satisfied with the Respondent's claim and the Complainant may be directed to pay Rs. 5,39,607/- In addition, the Complainant was liable to pay for the stamp duty, registration fees and documentation charges at the time of registration of the sale deed. The copy of quotation from modern electricals showing electrical common expenses of Artech



Futura, communication from Kerala Water Authority, Form 1E, permission to pay tax under compounding Scheme category were produced.

11. Thereafter, the Complainant filed rejoinder on 15.05.2023 to the additional reply statement filed by the Respondents in which it was stated as follows: - As per the direction of the Authority when the Complainant's Counsel contacted Mr. Parameshwaran from the legal wing of the 1st Respondent company on 09.01.2022 at about 10.00 a.m for enquiring the scheduled time for meeting to arrive at a settlement and execution of sale deed, it was communicated that the Respondents were taking all possible efforts for collecting statutory bills incurred towards "Artech Futura" and requested a week's time for scheduling the meeting, after collecting all the bills, on the pretext of having a fruitful talk. However, even after completing the agreed period of 1 week as stated, no communication whatsoever was intimated by the Respondents regarding the scheduled date fixed for settlement talk. Thereafter, an email communication dated 16.01.2023 was forwarded to the 2nd Respondent for a settlement talk and for verifying the alleged statutory bills and records. Despite directions issued by the Authority, no proof evidencing the alleged statutory dues was produced by the Respondents. The alleged amount of Rs. 88,948/- claimed towards the outstanding amount due was not



legally sustainable and was solely to enrich the Respondents. The total consideration payable was Rs. 41,02,500/- out of which Rs. 40,60,725/- was paid and this was confirmed by the Respondent by email dated 13.10.2017. The Complainant was constrained to remain as a tenant and pay rent for the said period and the Respondents herein was duty liable to compensate him. The Respondent taking into consideration of their dominant position drafted one sided, unfair and unreasonable clause limiting their liability to pay rent at Rs. 4/Sq. ft/Month towards the apartment for the delayed period, whereas in the event of default from the part of the purchaser, a penalty of 18% interest per month per annum for the total amount due was fixed. The Complainant had entirely paid the total sale consideration and in full satisfaction to the same, the Respondent issued intimation for taking possession. Once the Respondents admitted the full and final payment towards his apartment and issued with intimation thereafter, the Respondents with malafide intentions cannot turn back and claim any outstanding amount or their admitted delay in completing the apartment within the specified period, as time was the essence of an agreement. No amount towards alleged common electrical expenses was due from the Complainant. The amount claimed was not raised under any statutory head rather a quotation and work order from a private electrical shop claiming towards the common electrical expenses in Artech Futura apartment. It was submitted that unless and until agreement

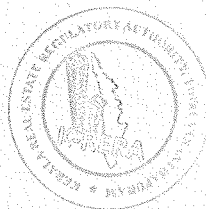


discloses any additional charges towards common electrical expenses, the Respondents cannot arbitrarily according to their whims and fancies claim charges any further amount. It was submitted that the amount claimed under the head maintenance charges were being paid by the Complainant to the Artech Futura Apartment Owners Association. Further it was also admitted by the Respondents in the additional statement that Owners Association Deposit of Rs. 25,000/- was transferred to the Owner's Association. It was submitted that no amount under the head tax payable was due from the Complainant. The documents produced by the Respondents allegedly claiming an amount of Rs. 3,14,409/- from the Complainant under the head tax payable in order to fasten him with so called "statutory dues". The documents produced by the Respondents would go to show that none of the documents produced before the Authority pertains to Artech Futura, Venapalavatttom, Thiruvananthapuram. The Respondent is taking all possible measures to misguide the Authority and claim illegal and un-sustainable amount from the Complainant. The alleged amount claimed by the Respondents towards KSEB deposit, KWA and Drainage connection were without any payment receipt and baseless. The security deposit and other payments details to KSEB service connection for Consumer No. 1145145022495 pertaining to his apartment No.2C3 was only Rs. 3,350/- against which the Respondents were arbitrarily claiming an amount of Rs. 24,000/-. It was



submitted that the Complainant is not liable to pay the alleged amount of Rs. 5,39,607/- to the Respondents without any supporting documents or receipt of payments made towards the statutory charges. The Complainant is liable to pay the stamp duty, registration and legal charges at the time of execution of the sale deed pertaining to Apartment No.2C3, Artech Futura, Venpalavattom, Thiruvananthapuram. As a result of the willful prolonging in executing the sale deed to the Complainant by these Respondents, he was now constrained to register the deed with the escalated charges in registration and stamp duty. It was submitted that the Respondents may be directed to execute the sale deed in his favour without any further delay.

12. After remanding the matter, the Authority heard the Complaint afresh on 16.04.2024 as per orders of the Appellate Tribunal. According to the Complainant, occupancy certificate was given as per direction of the Hon'ble High Court which is only a provisional one and connected case is still pending before the Hon'ble High Court which is suppressed by the Respondents/Promoters. According to the Complainant the Respondents are demanding unreasonable claims. On 16.04.2024 the Respondents were directed to produce reliable documents regarding their claim of payments, with the support of an affidavit. The Complainant filed three petitions as IA No. 34/2024, 35/2024 and 36/2024. IA 34/2024 is for accepting



additional documents, IA 35/2024 is for appointing consultants' team of Engineers to make an enquiry on structural defects, pending work etc., of apartment and the IA No. 36/2024 is for amending the pleadings and the reliefs in the Complaint. The Authority has allowed IA No. 34/2024 & IA No 36/2024. However as per IA No. 73/2025 filed on 01.02.2025, the Complainant sought permission to file a consolidated amendment application to incorporate all necessary pleadings afresh after not pressing IA No. 6/2023 and IA No. 36/2024.

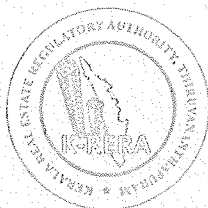
13. When the Complaint came up for hearing on 29.05.2024, the Respondents filed statement of objections in the three petitions filed by the Complainant. With regard to IA No. 34/2024, for accepting additional documents, the Respondents submitted that the application to accept additional documents is not maintainable and even the present Complaint itself is not maintainable which is barred by the principle of *Res judicata* and *constructive Res judicata*, in view of order passed by the Authority in Complaint No. 201/2022 filed by the Association in the same project. The allegations as regards structural defects pointed out by the Association had been withdrawn and the allegations were brushed away. It was submitted that the Complainant took possession of the apartment in question on 31.10.2016 and responsibility for maintenance was taken over by the Association and hence the IA is not maintainable. With



regard to IA No. 35/2024 for appointment of expert team for inspection, the Respondents submitted that the IA is not maintainable because as per order in Appeal as REFA No. 87/2023 the relief of interest for delay can only be incorporated. The Complainant took possession of apartment in question on 31.10.2016 and the maintenance responsibility was taken over by the Residence Association on that ground also the petition to appoint Expert is not maintainable. With respect to IA No. 36/2024 for amending the Complaint, the Respondents submitted as follows: That the relief of interest for delay can only be incorporated as per order in Appeal as REFA No. 87/2023 and no fresh allegation of facts or reliefs can be added. The averments are new case pleaded after the defence taken by the Respondents which are barred under civil proceedings and hence not sustainable. The amendment changes the nature of complaint and foreign to the pending Complaint. The main issues of controversy have been incorporated and the amendment is not necessary for effective adjudication of the present complaint. However, the Respondents have not produced reliable documents with regard to the payments done, with an affidavit, as directed on 16.05.2024. This Authority allowed petitions IA No 34/2024 and IA No. 36/2024 since the amendment incorporated are found necessary on the circumstances of the case.

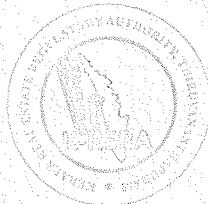


14. When the Complaint came up for hearing on 01.08.2024, the Complainant again raised the issue of obtaining of final occupancy certificate and also alleged that no action has been taken by the Respondents/Promoters to rectify violations on Building Rules with regard to the construction of the apartment building. The Authority, vide order dated 02.09.2024 has directed the Respondents' Counsel to submit status of the issuance of final occupancy certificate and to furnish details of proceedings if any, pending before any court/authority/forum, in this respect, in the form of an affidavit before the next posting date. The 2nd Respondent/promoter was directed to appear in person on the next hearing date and explain why he has violated the provisions of Section 17 of the Real Estate (Regulation & Development) Act, 2016 by not handing over possession of apartment within three months of receipt of occupancy certificate, if occupancy certificate is received as claimed by the Respondents and why this Authority cannot initiate penal action against him in this regard. The Respondents/ promoters were also directed to produce reliable documents regarding their claim of payments with the support of an affidavit. The Secretary of the Thiruvananthapuram Corporation was directed vide letter dated 02.09.2024, by enclosing the copies of building permit No. Zk2/BA/38/2012 dated 04.08.2012 and occupancy certificate dated 31.05.2019 issued by the Secretary Thiruvananthapuram Corporation, to submit the present status of issuance of



occupancy certificate to the project and a detailed report regarding the alleged violation of provisions of Building Rules in the construction of the apartment in question. The Secretary of the Thiruvananthapuram Corporation was also directed to appear in person or through authorized officer representing him for the next hearing.

15. When the Complaint came up for hearing on 10.10.2024, the Respondent No. 2/promoter did not appear in person despite specific direction for his personal appearance. Instead, one Mr. Govind M. G, Assistant Manager (Legal) of the 1st Respondent company appeared with an authorization letter from the 2nd Respondent, which is totally improper as the Counsel engaged by the said Respondent was already present. The Authority expressed its displeasure towards such reluctant attitude of the 2nd Respondent who neglected the direction of this Authority and opted to send one of his employees instead of him. As authorized by the Respondents/promoter, their representative submitted two affidavits, as follows: The Respondents obtained revised permit on 04.08.2012 and the work was executed as per completion plan certified by the Thiruvananthapuram Corporation and construction was completed on 04.11.2015. The intimation regarding handing over was issued to the Complainant on 20.10.2016 and the Complainant took possession on 31.10.2016. The Complainant had not paid Rs. 8,88,727/- as on 30.09.2021 out of the total sale consideration. The occupancy certificate No



ZK2/4014/15 was issued to residential apartments as per the Hon'ble Kerala High Court Judgement dated 03.10.2018 in WP(C) No. 8693/2017, legal opinion dated 28.12.2018 and consequent order of Government of Kerala vide GO(Rt) No. 436/2019. The occupancy certificate dated 31.05.2019 issued was final and Government has directed to assess the building for collecting tax and door numbers were allotted. There is no pending litigation with respect to the issuance of the occupancy certificate. The Respondents have completed the construction with the specifications offered even prior to the agreed period. Under the scheme of RERA law promoter's interests are also safeguarded and unless a professional promoter, making genuine efforts, is not protected the very purpose of development of real estate sector would be defeated. The copies of High Court order dated 03.10.2018 and the legal opinion dated 28.12.2018 and copy of Government order dated 27.02.2019 were produced.

16. On 10.10.2024, the Counsel for the Complainant submitted that the occupancy certificate issued is only provisional and a Writ Petition on the matter is still pending before the Hon'ble High Court of Kerala, but the Counsel for the Respondents has strongly denied. The Assistant Engineer of the Corporation who appeared was not aware of the present status of issuance of occupancy certificate to the project and alleged violation of provisions of the Building Rules. It is seriously noted that the Secretary of the Corporation also failed to produce the



exact file with respect to the issuance of occupancy certificate for the project in question, as directed or to submit a detailed report with respect to the same, in compliance of the direction vide order dated 02.09.2024. The Assistant Engineer of the Thiruvananthapuram Corporation was directed to submit a report with respect to the issuance of final occupancy certificate to the project and status of cases, if any, pending with respect to the occupancy certificate of the project in question before the next hearing. They were also directed to produce the actual file with respect to the issuance of occupancy certificate in 2019. The Respondents/promoters despite direction did not produce reliable documents regarding their claim for Rs. 8,88,727/- as on 30.09.2021, expended for the exclusive use of the Complainant. In the circumstances, the 2nd Respondent/promoter was directed to appear in person on the next hearing date without fail and explain why he has violated the orders of the Authority dated 02.09.2024 and why this Authority cannot initiate penal action against him in this regard. The Respondents/ promoters were again directed to produce reliable documents regarding their claim for Rs. 8,88,727/- expended for the exclusive use of the Complainant, with the support of an affidavit. A report was called from the Secretary, Thiruvananthapuram Corporation with respect to (i) the details of issuance of final occupancy certificate to the project in question and status of cases, if any, pending in the Hon'ble High Court of Kerala or any other Forum with respect



to the occupancy certificate of the project, (ii) the actual office file of the Corporation with respect to the issuance of occupancy certificate in 2019 and (iii) the details regarding the alleged violation of provisions of Building Rules in the construction of the apartment and its regularization if any, before the next hearing. The Secretary, Thiruvananthapuram corporation has not furnished the required details. However, vide report dated 03.02.2025 by referring the Hon'ble High Court order dated 30.10.2018 in WP(C) No. 8693/2017 and the Government order No GO (Rt) 436/2019 dated 27.02.2019, informed that the rule violations pointed out in Notice 161/15 of CTP Vigilance were rectified and as per the joint inspection of site by the Building Inspector, Assistant Engineer, Assistant Executive Engineer and Executive Engineer the rectification works mentioned in the govt order were completed and based on which the occupancy certificate was issued by remitting the regularization fees.

17. As per the petition IA No. 73/2025 filed on 01.02.2025, the Complainant sought permission to amend the pleadings and reliefs as follows: The Respondents have deviated from the approved plan and have violated the provisions of the Kerala Municipality Building Rules, 1999 etc, which prevailed at the time of the obtaining the building permit. They have not provided sufficient parking spaces and recreational spaces as mandated under the KMBR, 1999. Many other mandatory spaces were

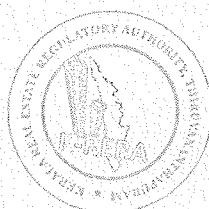


converted by the Respondents. These were found out in Report No. CTP VIG/161/15 submitted by the Chief Town Planner (Vigilance), Local Self Government Department, Government of Kerala before the Secretary to Government, Local Self Government Department, Government of Kerala. The structural stability of the building is also under stake and the defective construction has left the life of the entire allottees at danger owing to the improper constructions and illegalities committed by the Respondent. However, no steps have been taken by the Respondent builder to rectify the same. The building has structural defects as well, which has occurred due to the violation of the provisions of the law by the Respondents. As per Section 11(4) of the Real Estate (Regulation and Development) Act, 2016, the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and Regulations made thereunder or to the allottees as per the agreement for sale, till the conveyance of the apartment to the Complainant and will also be responsible for any structure defect within a period of five years. The promoter will also be responsible for obtaining the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force. The promoter is also responsible and liable to execute a registered conveyance deed of the apartment in favour of the Complainant along with the undivided proportionate title



in the common area. As per section 14 (1), the project had to be completed and developed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by competent authorities. As per Section 14 (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 is brought to the notice of the promoter within five years from the date of handing over possession, the promoter is bound to rectify such defects without further charge within thirty days. The promoter also failed to execute a registered conveyance deed in favour of the complainant as mandated under Section 17(1) of the Act on the pretext of claiming false charges and claims, which are not sustainable under law. The Respondents promised to complete and hand over possession of apartment before 08.11.2015 and to execute conveyance deed. The complainant is entitled for interest towards the payment made until the Respondents obtain a valid occupancy certificate. Till date the Complainant and her family are residing in the apartment as an unauthorized occupant who are denied with civic amenities. The details of payment are:

Sl No	Date	Receipt No.	Amount Rs.
1	17.08.2012	4462	1,00,000
2	09.11.2012	4941	9,25,625
3	24.02.2014	2521	10,25,375
4	12.02.2015	2283	6,25,500

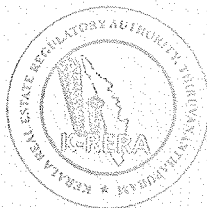


5	12.02.2015	2284	4,00,000
6	31.10.2016	2318	9,84,225
	Total Amount Paid		40,60,725

Pursuant to the preliminary Report dated 19.07.2021 by the Department of Civil Engineering, College of Engineering, Trivandrum, the Respondents, though were intimated of the structural damage caused in the said apartment as a result of defect in workmanship, poor quality materials and lack of supervision, evaded from their responsibilities and on the other hand, put pressure on the members of the association to rectify the structural defects at their own costs in order to safeguard lives of the dwellers of the said apartment. Thus, the association was constrained to collect an initial amount of Rs.20,000/- respectively from each individual allottees, including this Complainant, for rectifying the defects which were caused due to the faulty construction carried out by the Respondents. While so, in order to arrive at an estimate of the costs for the rectification of the structural defects noted in the said structure and for the safety of the lives of the allottees, the association had issued a paper publication dated 28.11.2021 inviting tender from experienced repair and rehabilitation work contractors who could provide expert solution and execution of work for the said building and the contact numbers of the Secretary of the Association was also given in the said advertisement. Thereafter a company named Hivetech headed by group of Senior Engineers



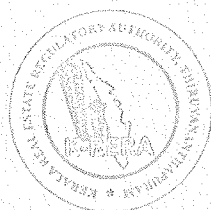
who are also retired Government Servants expressed their interest in the tender and submitted their willingness to proceed with the project. Thus, after site inspection they concurred with the Preliminary Report and suggested various methods for rectifying the structural and other defects in the building as a result of defect in workmanship, poor quality materials and lack of supervision. Pursuant to the Preliminary Report and after oral intimation, the Secretary of the association issued a letter dated 13.01.2022 to the 2nd Respondent along with the Preliminary Report and requested them to engage an Engineer for a joint inspection along with the team of experts from Department of Civil Engineering, College of Engineering Trivandrum. Pursuant to the letter dated 13.01.2022, the 2nd Respondent issued communication dated 19.01.2022 to the association acknowledging the said letter and stated that the Respondents agreed to share a part of the cost of rectification works only for reinforcing concrete on the exterior as a measure of their goodwill. Letter dated 19.01.2022 would show that the 2nd Respondent stated that the building was handed over to the Complainant association in August 2016. However, it could be seen that the alleged taking/handing over the building by the Association was in the year 2018 even though mere handing over without obtaining Occupancy Certificate would not withstand the eye of law. Thus, the said letter would itself show the malafide intention of the 2nd Respondent in shifting the burden



from their shoulder to the Association. By virtue of Section 14(3) of the Act of 2016, the promoter was duty bound to rectify the structural defects incurred within five years of knowledge from the date of giving possession at his own cost within 30 days from the date when the same was brought to the notice of the promoter, without further charge. Mere alleged handing of possession cannot be considered as actual handing over of the possession of the respective apartments. It was learnt that on 31.05.2019, the Respondents managed to obtain a provisional occupancy for the apartments in a dubious manner by suppressing all these irregularities and until such period the members of the association remained as unauthorized occupants in the apartment complex. Since the Respondents have deliberately failed to carry out the constructions so as to clear the structural damage that arouse in the apartment complex ignoring the life and safety of the allottees including their children residing in the said apartment, the Association was constrained to engage contract of work to the company named Hivetech headed by group of Senior Engineers for rectifying the structural defects and other pending works to be completed in the building which the Respondents 1 to 3 are duty bound to rectify. As of now, the association has to incur an amount of more than Rs. 10,00,000/- in rectifying the acute structural defects. The amounts required for such rectification is being collected by the association from the allottees/members. It was specifically stated in the agreement



that the individual apartment block to the Complainant would complete within 36 months, ie, on or before 08.11.2015 for a consideration of Rs. 41,02,500/- including covered carparking and undivided interest in the landed property. Despite payment of Rs. 40,60,725/- the respondents failed to complete and hand over apartment within the agreed period. Hence by virtue of proviso to Section 18(1) of the Act, 2016 the complainant is entitled to the interest for every month of delay on the paid commencing from 08.11.2015 till date of actual handing over at the SBI's Benchmark Prime Lending Rate plus two percent. There occurred delay in giving possession of a fully constructed flat and failed to execute sale deed. The Complainant do not wish to withdraw from the project and awaiting execution of sale deed. Therefore, the Complainant is entitled to delayed interest till date when the conveyed to her at the rate of 15% per annum, which is the present SBI's Benchmark Prime Lending Rate plus two percent. As prescribed under rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018. The Complainant claimed a total interest Rs. 70,85,502/- as the total interest payable as on 16.11.2024 and thereafter of Rs. 58,035/- monthly interest payable from 17.11.2024. According to the Complainant, all these would show that the Respondents failed to comply with the mandatory provisions of Sections 11, 14, 17 and other provisions of the Act and also failed in their statutory duty and obligations under the Act. As the Respondents have violated the



provisions of the Act, this Authority ought to take action as contemplated under the Act and penalise and punish them under the Act. As per Section 34(C) of the Act, the functions of the Authority shall also include to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters who have been penalised under the Act for access to the general public. Under Section 34(f) of the Act, this Authority can ensure compliance of the obligations cast upon the Respondents under the Act, Rules and regulations made thereunder. Therefore, this Authority may be pleased to take appropriate action against the Respondents as contemplated under the Act. This Authority may also compensate the Complainant as contemplated under the Act for the continuing failure of the Respondents in executing the registered conveyance of the apartment in the name of the Complainant. The copy of the Report No. CTP VIG/161/15 dated 30.03.2016 submitted by the Chief Town Planner (Vigilance), Local Self Government Department, Government of Kerala before the Secretary to Government, Local Self Government Department, Government of Kerala, the copy of the advertisement inviting tenders for the repair and rehabilitation work pertaining to the project in question, the copy of the letter dated 13.01.2022 issued by the Association to the 2nd Respondent, the copy of letter dated 19.01.2022 from the Respondent to the Residence Association



raising objection on the allegation of defects in construction, were produced.

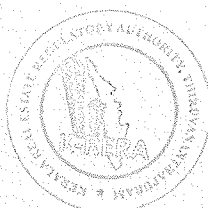
18. As per petition IA No. 73/2025, the Complainant sought permission to amend relief (j) and (k), to delete reliefs (n) and (o) and renumber relief (p) as (n) as follows:

(j) “to direct the Respondents 1 to 3 to comply with Sections 3,11,14,17 and all other provisions of the Real Estate (Regulation and Development) Act, 2016, its Rules and Regulations and all other agreements between the Respondents and the Complaint.” After relief (k) to incorporate the following sub-paragraph, namely,-

Relief (ki): to direct the Respondents to pay interest of Rs. 70,85,502/- on the delayed possession at the prevailing rate of interest of State Bank of India’s Benchmark Prime Lending Rate of 15% plus 2% on the amount advanced by the Complainants as shown in the payment schedule in compliance Rule 18 of the Kerala Real Estate (Regulation and Development) Rules, 2018 and further interest of Rs 58,035/- per month till the apartment flat is conveyed to the Complainant by way of a registered sale deed.

Payment schedule

Sl No	Date	Receipt No.	Amount Rs.	Interest till 16.11.2024
1	17.08.2012	4462	1,00,000	2,10,264



2	09.11.2012	4941	9,25,625	19,09,720
3	24.02.2014	2521	10,25,375	18,88,119
4	12.02.2015	2283	6,25,500	10,48,045
5	12.02.2015	2284	4,00,000	6,70,212
6	31.10.2016	2318	9,84,225	13,59,142
	Total Amount Paid		40,60,725	
Total interest payable as on 16.11.2024 Rs. 70,85,502/-				
Monthly interest payable from 17.11.2024 on Rs 40,60,725= Rs. 58,035				

(k-ii) to take appropriate action against the Respondents as contemplated under the Act for violation of the Sections 3,11,14,17 and all other provisions of the Real Estate (Regulation and Development) Act, 2016, its Rules and Regulations and all other agreements between the Respondents and the Complainant and to publish the same as contemplated under Section 34(C) of the Act.

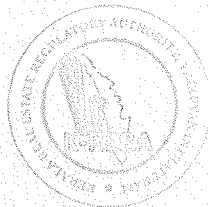
19. The Respondents filed counter statement on 04.02.2025 against the amendment to the Complaint filed as IA No. 73/2025. It was submitted that the present amendment sought is not as per direction of the Appellate Tribunal and the laches and laxity of the Complaint cannot be rectified by filling petition for amendment and no fresh allegation of facts can be introduced or added which is not even permitted by the Appellate Tribunal.



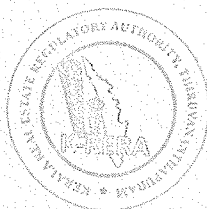
17. The Complaint was finally heard on 05.02.2025. Documents produced by the Complainant were marked as Exhibits A1 to A20. The copy of the brochure of the project is marked as Exhibit A1. The copy of the building permit dated 04.08.2012 vide No. ZK2/BA/38/2012 issued by the Secretary, Corporation of Thiruvananthapuram is marked as Exhibit A2. The Exhibit A2 building permit was obtained on 04.08.2012 in the name of the land owner for construction of residential apartment in 114.90 cents of land comprised in Kadakampally village for a plinth area 15050.62m². The copy of the payment receipt dated 17.08.2012 bearing No. 4462 issued by the first Respondent for a sum of Rs. 1,00,000/- to the Complainant towards Apartment No. 2C3, Artech Futura to the Complainant is marked as Exhibit A3. The copy of the agreement for sale and construction dated 09.11.2012 executed between the Complainant and the first Respondent represented by the second Respondent is marked as Exhibit A4. It is stated in the agreement that undivided share of the 114.900 cents of landed property equivalent to 0.986 cents and the apartment No. 2C3 on the second-floor admeasuring approximately 1150 Sq. m built up area and the proportionate common area and a car parking area of the proposed residential a commercial complex to be constructed thereon shall be conveyed to the Complainant after completion within a period of 36 months from the date of agreement for a total consideration of Rs. 41,02,500 /-. It is also stated that apart



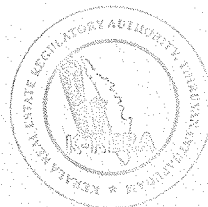
from the consideration set out, the purchaser shall be liable to pay the stamp duty, registration and legal charges in regard to the Schedule Property and all statutory charges. Maintenance charges at the rate of Rs. 1/- per square Foot per month (or appropriate amount as and when decided by the Owners Association) shall be payable in advance for 12 months at the time of taking possession or within 7 days of intimation of possession of the Schedule B Apartment. The Vendor shall use the amount for maintenance of the Building on the Schedule A property. The vendor was liable to maintain the building for 12 months from the date of first flat handed-over or till the Association was formed by the Apartment Owners, whichever was earlier and the balance, if any, shall be handed over to such Association. After completion of construction the vendor shall inform in writing to the purchaser that the apartment is ready for use and occupation and on receipt of such letter purchaser shall inspect the apartment in all respects and get satisfied according to the terms and conditions of the agreement. After the purchaser is satisfied themselves and at his request shall give possession on payment of all dues payable by the purchaser. The copy of the payment receipt dated 09.11.2012 bearing No. 4941 issued by the first Respondent for a sum of Rs. 9,25,625/- to the Complainant is marked as Exhibit A5. The copy of the payment receipt dated 12.02.2015 bearing No. 2283 issued by the first Respondent for a sum of Rs. 6,25,500/- to the Complainant is marked as Exhibit A6. The copy of the payment



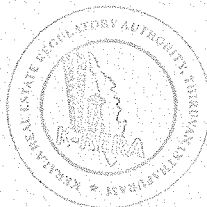
receipt dated 12.02.2015 bearing No. 2284 issued by the first Respondent for a sum of Rs. 4,00,000/- to the Complainant is marked as Exhibit A7. The copy of the email dated 05.09.2016 issued by the Respondents to the husband of the Complainant is marked as Exhibit A8. As per the Exhibit, the Respondents informed to remit tax along with each payment instead of remitting at the end of the contract period, in view of the change in the existing system of tax payment from 01.09.2016. The copy of the payment receipt dated 31.10.2016 bearing No. 2318 issued by the first Respondent for a sum of Rs. 9,84,225/- to the Complainant is marked as Exhibit A9. The copy of the intimation letter dated 31.10.2016 issued by the General Manager, Sales and Marketing of the first Respondent to the Complainant is marked as Exhibit A10. As per the communication the Complainant was informed that the apartment is ready to handover. The copy of the letter dated 30.07.2014 vide No.34665/RA2/2014/LSGD issued by the Secretary, Government of Kerala to the Secretary, Thiruvananthapuram Corporation is marked as Exhibit A11. As per Exhibit A11 letter Govt forwarded a copy of report of CTP Vigilance and directed the Corporation to cancel the permit as the construction is not in accordance with rule 25(1) of KMBR. The copy of the statement of accounts dated 13.10.2017 issued by the Manager Customer Relations of the first Respondent company to the Complainant is marked as Exhibit A12. As per Exhibit A12 payment details dated 13.10.2017 the total cost shown as



Rs.41,02,000/- and the Complainant paid Rs. 40,60,725/- The Respondents have not claimed balance consideration as per the payment details. The Respondents claimed, Cable charge Rs. 40,000/- KSEB Deposit Rs. 16,000/-, KSEB meter Rs. 8,000/- KWA connection Rs. 15,000/- Drainage connection Rs. 15,000/- Owners Association Deposit Rs. 25,000/- Corporation assessment fee Rs. 5,000/- Maintenance charge for one -year Rs. 17,250/- (Rs. 1.25 per sq ft) Tax Rs. 3,11,933/- The Respondents claimed total amount of Rs. 4,53,183/- The copy of the statement of accounts dated 10.08.2021 issued by the Manager Customer Relations of the first Respondent company to the Complainant is marked as Exhibit A13. As per Exhibit A13 the Respondents claimed balance consideration of Rs. 41,275/- Cable charge Rs. 40,000/- KSEB Deposit Rs. 16,000/-, KSEB meter Rs. 8,000/- KWA connection Rs. 15,000/- Drainage connection Rs. 15,000/- Owners Association Deposit Rs. 25,000/- Corporation assessment fee Rs. 5,000/- Maintenance charge for one -year Rs. 17,250/- (Rs. 1.25 per sq ft) Tax Rs. 3,11,933/- interest for delayed payment Rs. 3,94,269/- Thus, the Respondents claimed total amount of Rs. 8,88,727/- The copy of statement of security deposit and other payment details for service connection to the K.S.E.B. pertaining to Apartment No. 2C3, Artech Futura, Venapalavattom, Thiruvananthapuram is marked as Exhibit A14 as per which the Senior Superintendent KSEB Pattoor informed the remittance details of Rs. 3350/- towards service connection.



The copy of the occupancy certificate dated 31.05.2019 issued by the Secretary, Corporation of Thiruvananthapuram is marked as Exhibit A15. In Exhibit A15 occupancy certificate, the date of completion was shown as 04.11.2015. It was also recorded that the certificate is issued for the Residential apartment only as per Hon'ble High Court Judgement dated 3.10.2018 and the legal opinion dated 28.12.2018 and subject to the cases pending before the Hon'ble High Court and as per the Government order dated 27.02.2019. The copy of the email dated 26.08.2021 issued by the Legal Department of the first Respondent company to the Complainant is marked as Exhibit A16. The Exhibit A16 was in reply to a mail dated 13.08.2021 from the Complainant. The first Respondent informed the Complainant that "as per intimation mail dated 20.10.2016 you have taken over the same from us in full satisfaction after paying Rs. 9,84,225/- on 31.10.2016. With regard to the interest claimed, the Complainant was informed to refer clause 6 of agreement that "the purchaser shall be liable to pay to the vendor a penalty at the rate of 18% per annum for the total amount due" and with regard to cable charges the complainant was informed to refer clause 2 that "all statutory charges are to be paid by the purchaser" The copy of the legal notice dated 07.09.2021 issued by the Complainant to the Respondents is marked as Exhibit A17. In the legal notice the Complainant in par 5 admitted that "the project was to come up by 09.11.2015, but it took you 11 months more to complete the



project and hand over the apartment to my client”. In para 7 it was again admitted that “on 31.10.2016, on receipt of last instalment, the apartment was handed over to my client by you”. In para 10 it was stated that “even though possession of the apartment was given to my client on 31.10.2016, you were able to get occupancy for the building only in 2019.” The copy of the reply notice dated 30.09.2021 issued by the Respondents/promoters to the Complainant is marked as Exhibit A18. The copy of preliminary report by the Department of Civil Engineering, College of Engineering Trivandrum pertaining to the structural stability of Apartment – Artech Futura, Venpalavattom, Trivandrum is marked as Exhibit A19. The copy of the email communication dated 16.01.2023 given to the 2nd Respondent is marked as Exhibit A20. As per Exhibit A20, the Complainant informed the Respondents /promoters that they are ready for a settlement talk. The copy of report of CTP Vigilance dated 30.03.2016 is marked as Exhibit A21. The copy of tender inviting experienced persons for repair and rehabilitation work at the initiative of the Association is marked as Exhibit A22. The copy of letter dated 13.01.2022 of the Residence Association to the Respondents/promoters, to engage an engineer for joint inspection is marked as Exhibit A23. The copy of letter dated 19.01.2022 from the Respondents to the Residence Association raising objection on the allegation of “defects in construction” is marked as Exhibit A24 as per which the Respondents informed



that “we have handed over the building in good shape to you in August 2016 and since then the Residents Association is responsible for its maintenance and up keeping”

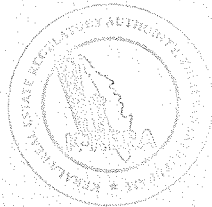
20. The copy of apartment hand over report dated 31.10.2016 signed by the Complainant and representative of the Respondents is marked as Exhibit B1. As per which apartment 2C3 having total area 1150 sq ft with an entrance lobby, living room, dining, kitchen, work area/toilet, bed 1,2 & 3, toilet 1,2 & 3, balcony, extra works, two keys of main door and 6 internal door keys were handed over on 31.10.2016 and the same has been accepted by the Complainant. The copy of a quotation obtained from Modern Electricals Thiruvananthapuram is marked as Exhibit B2. The copy of work order dated 21.05.2016 for electrical common expenses at Artech Futura given to Modern Electricals Thiruvananthapuram is marked as Exhibit B3 as per which the work order amount is Rs 40,60,000/- The copy of letter intimating the completion of work and request payment of bill amount of Rs 40,60,000/- issued by Modern Electricals Thiruvananthapuram in favour of the Respondents /promoters for electrical common expenses at Artech Futura is marked as Exhibit B4. As per letter, the modern electricals informed that they have completed electrical works in Artech Futura based on the work order and claimed Rs. 40,60,000/-. The copies of Form 1E, permission to pay tax under compounding Scheme category is marked as Exhibit B5 Series. The copy of water connection



work order dated 22.09.2016 from Kerala water Authority is marked as Exhibit B6. The copy of High Court order dated 03.10.2018 produced is marked as Exhibit B7. The copy of legal opinion dated 28.12.2018 is marked as Exhibit B8. The copy of Government order dated 27.02.2019 is marked as Exhibit B9.

21. Heard both parties in detail on 05.02.2025. The Counsel for the Complainants argued that the Respondents/promoters are making unreasonable claims and the Respondents could not produce reliable documents to establish their claim for Rs. 8,88,727/- despite repeated direction from this Authority. Learned Counsel for the Complainant submitted that since they have filed petition IA No. 73/2025 to amend the pleading and the relief, they do not press for IA No. 6/2023 and 36/2024. This Authority, in order to avoid multiplicity of proceedings allowed withdrawal of IA No. 6/2023 and IA 36/2024 and decided to consider the consolidated amendment in IA No. 73/2025.

22. Exhibit A1, building permit was obtained on 04.08.2012 in the name of the land owner for construction of residential apartment in 114.90 cents of land comprised in Kadakampally village for a plinth area 15050.62m². As per A4 agreement for sale Construction dated 09.11.2012, the Respondents/promoters agreed to sell apartment No. 2 C3 unit on 2nd floor, comprising of 1150 sq.ft. of built up area and one car parking area together with undivided right in the common built



up area of the said development namely, staircase, passage, open terrace and rights in the common amenities for a total consideration of Rs. 41,02,500/- to be received periodically from the purchaser. Apart from sale consideration purchaser shall also be liable to pay Stamp duty, registration charges, and all statutory charges. Maintenance charges at the rate of Re.1 per sq ft per month shall be payable in advance for 12 months at the time of taking possession or within seven days of intimation of possession. The vendor is liable to maintain the building for the first 12 months from the date of first flat handed over or till the association is formed whichever is earlier, and balance if any handed over to the Association. The vendor assured to complete individual apartment block within a period 36 months from date of agreement. After completion of construction the vendor shall inform in writing to the purchaser that the apartment is ready for use and occupation and on receipt of such letter purchaser shall inspect the apartment in all respects and get satisfied according to the terms and conditions of the agreement. After the purchaser is satisfied themselves and at his request shall give possession on payment of all dues payable by the purchaser. As per Exhibit A17 legal notice issued by the Complainant, in para 5 it was admitted that "the project was to come up by 09.11.2015, but it took you 11 months more to complete the project and hand over the apartment to my client". In para 7 it was admitted that "on 31.10.2016, on receipt of last instalment, the apartment was



handed over to my client by you". In para 10 it was stated that "even though possession of the apartment was given to my client on 31.10.2016, you were able to get occupancy for the building only in 2019." Here, it can be seen that the promised date of completion and handing over was on 09.11.2015, but it took 11 months more to complete and hand over the project and possession was handed over on 31.10.2016. After obtaining possession of the apartment on 31.10.2016, as per Exhibit B1, now, the Complainant raised a strange claim of interest for Rs. 70,85,502/- from 09.11.2015 to 16.11.2024 and thereafter Rs. 58,035/- monthly interest payable from 17.11.2024 till date of realization on the pretext that the occupancy certificate obtained was not final. If the Complainant have such a feeling that without obtaining the obtaining possession without getting occupancy certificate, she ought to have abstain from taking possession of apartment on receiving Exhibit A10 intimation from the Respondents.

23. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as "the Act, 2016"] *"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for*



any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. With respect to the right of allottees to get interest for delay, the Hon’ble Supreme Court also made certain observation in the judgement of Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., which are as follows: *“Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit*



the consequence of a delay in not handing over possession.” Here, admittedly the Complainant obtained possession on 30.10.2016 and as such she is entitled to get interest from 09.11.2015, the promised date of completion, up to 30.10.2016, the date of handing over possession. In Exhibit A17 legal notice issued to the Respondents, the Complainant in paragraph 5 has pointed out that “the project was to come up by 09.11.2015, but it took you 11 more months to complete the project and hand over the apartment to my client”. Thus, claiming interest beyond 11 months is on an afterthought on the ground that the final occupancy certificate to the project has not been obtained. The claiming of interest beyond 31.10.2016, after taking possession and availing the benefit of accommodation for all these years, cannot be allowed. It is pertinent to note that the original claim for interest in IA No. 6/2023 was also up to 30.10.2016. As per Exhibit A10 e mail dated 31.10.2016 produced by the Complainant herself shows that the General Manager, Sales and Marketing of the 1st Respondent informed the Complainant that the “Artech Futura” was ready to hand over and as satisfied by the same, the Complainant as per Exhibit A9 receipt dated 31.10.2016 bearing No. 2318 paid a sum of Rs. 9,84,225/- to the Respondent without any hesitation and as per Exhibit B1, apartment hand over report, the Complainant after satisfaction obtained possession of the apartment on 31.10.2016 without recording anything. Hence it can be seen that the intimation from the Respondents, payment of money and taking

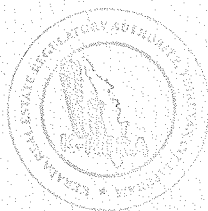


over charge were taken place on the same day, ie on 31.10.2016. As per the terms of Exhibit A4 agreement, the Respondents ought to have handed over possession of the apartment on 09.11.2015 to the Complainant. Admittedly possession of the apartment was handed over to the Complainant only on 31.10.2016. There is failure on the part of the Respondents to complete the construction and handover apartment as promised. However, the Authority found that the delay in handing was only up to 31.10.2016 and thus Complainant is eligible for interest for delay in handing over of apartment up to 31.10.2016 only. On getting eligible for interest, rental amount claimed cannot be considered.

24. The Respondents claims an outstanding payment of Rs. 41,775/- towards the cost of the apartment. As per Exhibit A4 agreement the cost of apartment was Rs. 41,02,500/- and the total payment done was for Rs. 40,60,725/- only. The Respondents also claims that as per clause 6 of the sale agreement the payment on its due date was the essence of contract and in the event of failing to pay the installment on due date of the stage of construction, the purchaser was liable to pay the interest at the rate of 18% amounting to Rs. 47,673/- for 77 months. According to the Respondents total amount due by the Complainant on this count comes to Rs. 88,948/-. The Complainant claims that owing to the delay in handing over of apartment, the Respondents waived off the last instalment of Rs. 41,775/- as per Exhibit A12 communication. On examining the A12 communication, it can be



seen that the Respondents had claimed Rs. 4,53,183/- on various other items as cable charges KSEB deposit etc. Through this Complaint, the Complainant is denying various other items of claims of the Respondents in Exhibit A12 communication. In that case, how can the Complainant claim that the Respondents waived off the last instalment of Rs. 41,775/-. Here it is to be noted that out of Rs. 41,02,500/- the Complainant had paid only an amount Rs. 30,76,500/- before the promised date of completion on 09.11.2015. That the Complainant had paid only $\frac{3}{4}$ portion of the agreed amount leaving a balance of Rs. 9,84,225/- which she paid only on 31.10.2016 ie after 11 months, despite Schedule H of the Exhibit A4 agreement allows only an amount of Rs. 4,10,250/- on handing over call. The principle that "one who seeks equity must do equity" squarely applies against the Complainant herein this case. As per clause 9.3 (i) in the prescribed format of agreement for sale in Annexure A, Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018 stipulates that in case the Allottee fails to make payments for ---consecutive demands made by the promoter as per the payment plan, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rates specified in the Rules. As per Clause 9.3 (ii) in the prescribed format of agreement for sale in Annexure A, Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018 stipulates that “(ii) in case of default by Allottee under the condition listed above



continues for a period beyond consecutive months after notice from the Promoter in this Regard, the Promoter shall cancel the allotment of the apartment/plot in favour of the Allottee and refund the amount of money paid to him by the Allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated". Even though, Exhibits A4 agreement was executed before the commencement of the Act, 2016 in other formats, the Respondents/promoters are duty bound to follow the format prescribed under the Kerala Real Estate (Regulation and Development) Rules, 2018 in the case of a project comes under the purview of the Act, 2016. Having considered the practical difficulty only this Authority has not insisted the promoters of such 'ongoing projects' to cancel the existing agreements and execute fresh agreements in the 'Annexure A' format. Hence, the provisions of the agreement format prescribed under the Kerala Real Estate (Regulation and Development) Rules, 2018 are applicable to all the projects come under the provisions of the Act, 2016. Here the Respondents without complying the provisions as above, handed over possession on 31.10.2016. The Authority found that still there is an outstanding payment of Rs. 41,775/- towards the cost of the apartment and the Complainant is bound to pay the same along with interest at the rate of 17% from 01.11.2016 to the Respondents till date of realization.

25. The Respondents claims that Complainant was liable to pay maintenance cost of Rs. 1,150 x 15 months, which comes to



Rs. 17,250/-. As per clause 2 of the Exhibit A4 agreement, the purchaser had to pay 12 months maintenance charges from the date of hand over or till an association was formed, @ of Rs. 1 per Sq. Ft. Since the built up area of the apartment is 1150 sq.ft, the maintenance cost calculated at Re. 1/- per sq.ft, comes to Rs. 1150 per month. This was also admitted by the Complainant in her legal notice as Exhibit A17. Thus, the Complainant is liable to pay 12 months maintenance charges from the date of hand over which comes to Rs. 13,800/-

26. According to the Respondents, as per conditions of the agreement cost of all works not covered by the specification had to be paid by the purchaser. The Respondents claims that an amount of Rs. 40,60,000/- was paid by the Respondent to M/s Modern Electricals for electrical common expenses. The proportionate amount towards this count was Rs. 41,010/- rounded to Rs. 40,000/-. From the quotation, work order and the completion letter produced by the Complainant as Exhibits B2, B3 and B4 it can be seen that an amount of Rs. 40,60,000/- was spent for electrical works for the whole apartment complex, Artech Futura, but it is not a work outside the contract or works not covered by the specification as claimed by the Respondents and they could not prove that it is a work not covered by the specification. The Authority found that the electrical works are covered within the agreement for the construction of apartment and the Respondents are not eligible for a separate claim Rs. 40,000/-for electricity.



27. The Respondents claimed a total tax liability of Rs. 3,14,409/- due from the Complainant. They claimed that the then prevailed taxes under the heads of Service tax, Value Added tax and Labour cess was liable to be paid by the Complainant. In support of the claims the Respondents produced Exhibits B5 series copies of Form 1E, permission to pay tax under compounding Scheme category from 2011-12 to 2016-2017. The Complainants strongly objected the claim, stating that none of the documents produced pertains to Artech Futura. However, from the documents it can be seen that the documents are with respect to the trade name ARTECH REALTORS PRIVATE LIMITED, which pertains to the 1st Respondent company and it cannot be denied. It also pertinent to note that the documents produced were for the construction period from 2011-12 to 2016-2017 and the agreement was for the period from 2012- 2016. As per Exhibit A4 agreement in clause 2 it was specified that apart from the consideration set apart, the purchaser shall be liable to pay the stamp duty, registration and legal charges and all statutory charges. However, the Respondents have not produced the calculation statement as to how they arrived the figure of Rs.3,14,409/- It is a fact that one cannot evade from the statutory and mandatory payment of tax liability and hence the Complainant is liable to pay Service tax, Value Added tax and Labour cess etc. Hence this Authority on calculation arrived at Rs. 1,23,075 being 3% compounding rate of total consideration

of Rs. 41,02,500/- since the cost of construction is not separately mentioned in the Exhibit A4 agreement. The Authority found that the Complainant is also liable to pay that much amount and also to pay stamp duty, registration and legal charges.

28. The Respondents claimed an amount of Rs. 16,000/- as charges for KSEB Deposit, which includes the proportionate share of Fixed Deposit made to KSEB for 3 phase connection and installation charges of transformer. Also, claimed Rs. 8,000/- under the head of KSEB meter which includes the cost of 3 phase meter and testing charges. The Authority found that the claims made by the Respondents are without any payment receipt and the agreement does not disclose any additional charges towards any common electrical expenses. As per Exhibit A14, produced by the Complainant, the Senior Superintendent KSEB Pattoor informed the remittance details of Rs. 3350/- towards service connection and the Complainant admitted an amount of Rs. 3350/- towards security deposit for Consumer No. 1145145022495 pertaining to their apartment no 2C3 and thus the Complainant shall pay that much amount to the Respondents towards KSEB deposit.

29. The Respondents also claimed cost of KWA connection including the fixed deposit (Acc No: PTT/19760/D) made to the Water Authority, Meter Charges, Road cutting charges and connection expenses, all sums up to Rs. 15,000/-. Also claimed



Drainage connection (Sewage treatment plant), cost of installation of STP Rs. 15,000/-. It was also submitted that the documents with respect to the charges incurred towards KSEB deposit, KSEB meter, KWA connection, Drainage connection, were currently untraceable and these payments were made in the initial stages of construction back in 2016 and in fact all these facilities were availed by the Complainant. The Respondents submitted that the Authority may fix an amount for the same if not satisfied with the Respondent's claim. In the absence of substantial documents, other claims for KSEB connection, KWA connection, Drainage connection etc have not been considered.

30. As per Exhibit A4 agreement, the promised date of completion of the individual apartment block was on 09.11.2015 and the actual handing over was on 31.10.2016. Out of the total amount paid, the following amounts have been paid before the promised date of handing over.

Sl No	Date	Amount Rs.
1	17.08.2012	1,00,000
2	09.11.2012	9,25,625
3	24.02.2014	10,25,375
4	12.02.2015	6,25,500
5	12.02.2015	4,00,000
	Total	30,76,500



Out of the total amount paid, the following amount have been paid after the promised date of handing over on 09.11.2015.

Sl No	Date	Amount Rs
1	31.10.2016	9,84,225
	Total	9,84,225

31. As provided under the Proviso to Section 18(1) of the Act, 2016, read with Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018, the allottee is entitled to get interest for delay from the promised date of completion and handing over, till the date of actual handing over. To be more precise, a) for the amount paid before the promised date of completion, an allottee in such a case is eligible to get interest from the promised date of completion till the date of actual handing over and b) for the amount paid after the promised date of completion, he is eligible to get interest from the date of each payment till the date of actual handing over. Here, in this case, it is seen that the Complainant had paid only Rs. 30,76,500/- before the agreed date of completion and payment of Rs. 9,84,225/- was done on the actual date of handing over. Thus, the Complainant is eligible for interest on Rs. 30,76,500/- only. As per the provisions under Section 18(1) of the Act, 2016, an allottee is entitled to get interest from the promised date of completion and handing over, till the date of actual handing over, at the rate prescribed under Rule 18 (1) of the Kerala



Real Estate (Regulation and Development) Rules, 2018. The said Rule prescribes the annual rate of interest payable by the promoter to the allottee as SBI's Benchmark Prime Lending Rate plus 2%, to be computed as simple interest. The present SBI's BPLR is 15.15% per annum. The Complainant has claimed interest at the rate of 17%.

32. According to the Complainant, the Respondents failed to comply with the mandatory provisions of Sections 11, 14, 17 and other provisions of the Act and also failed in their statutory duty and obligations under the Act, for which they have to be penalized. The Authority found that as on 09.11.2015 Complainant had paid only $\frac{3}{4}$ portion of the agreed amount leaving a balance of Rs. 9,84,225/- which she paid only on 31.10.2016 ie after 11 months, despite Schedule H of the Exhibit A4 agreement allows only Rs. 4,10,250/- on handing over call. Moreover, an amount of Rs. 41,775/- towards the balance cost of the apartment is still pending to be cleared from the side of the Complainant. In a contract, both parties are equally responsible in fulfilling their part of obligations. Here, the Complainant also failed in fulfilling her part of obligation and the Respondents alone cannot be blamed.

33. The Complainant also raised concern with regard to the obtaining of occupancy certificate dated 31.05.2019. In Exhibit A15 occupancy certificate, the date of completion was shown as 04.11.2015. It was also recorded that the certificate was issued for the Residential apartment only as per Hon'ble High Court



Judgement dated 3.10.2018 and the legal opinion dated 28.12.2018 and subject to the cases pending before the Hon'ble High Court and as per the Government order dated 27.02.2019. The concerns with regard to structural stability/defects of the apartment or Building Rule violations the Complainant is at liberty to approach appropriate Forums.

34. In view of the above facts and findings, by invoking Section 34(f) & (g) and Section 37 of the Real Estate (Regulation & Development) Act, 2016, this Authority hereby directs as follows:

1) The Respondents shall pay to the Complainant, simple interest @17% per annum for every month of delay from the promised date of handing over on 09.11.2015 to the actual date of handing over on 31.10.2016, on the amount of Rs. 30,76,500/- paid before the promised date of handing over.

2) The Complainant shall pay Rs. 41,775/- towards the balance cost of the apartment along with interest at the rate of 17% from 01.11.2016 to the Respondents till date of realization.

3) The Complainant shall also pay Rs. 13,800/- as 12 months maintenance charges to the Respondents, Rs. 1,23,075/- towards the cost incurred for Service tax, Value Added Tax and Labour cess to the Respondents and Rs. 3,350/- towards KSEB deposit for Consumer No. 1145145022495 pertaining to apartment No.2C3.



4) The Respondent shall execute the sale deed in favour of the Complainant transferring the undivided share and apartment as stated in Exhibit A4 agreement within 15 days on receipt of the above payments, for which the Complainant shall bear the cost of stamp duty, registration fee and legal charges. The Respondents shall also give copies of prior documents, sanctioned lay out plan, building permit etc to the Complainant.

5) If the Respondents fail to pay the aforesaid sum as directed above **within a period of 60 days** from the date of receipt of this order, the Complainants are at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

The Complaint and the IA No. 73/2025 are disposed of accordingly. Both the parties shall bear their respective costs of these proceedings.

Sd/-
Dr. B Sandhya
Member

Sd/-
P.H. Kurian
Chairman

True Copy/Forwarded By/Order/



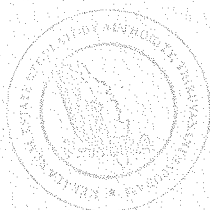
Secretary (Legal)

APPENDIX**Exhibits marked from the side of the Complainant**

- Exhibit A1: The copy of the brochure of the project.
- Exhibit A2: The copy of the building permit dated 04.08.2012 vide No. ZK2/BA/38/2012 issued by the Secretary, Corporation of Thiruvananthapuram
- Exhibit A3: The copy of the payment receipt dated 17.08.2012 bearing No. 4462 issued by the first Respondent.
- Exhibit A4: The copy of the agreement for sale and construction dated 09.11.2012 executed between the Complainant and the first Respondent.
- Exhibit A5: The copy of the payment receipt dated 09.11.2012 bearing No. 4941 issued by the first Respondent to the Complainant.
- Exhibit A6: The copy of the payment receipt dated 12.02.2015 bearing No. 2283 issued by the first Respondent to the Complainant.
- Exhibit A7: The copy of the payment receipt dated 12.02.2015 bearing No. 2284 issued by the first Respondent to the Complainant.
- Exhibit A8: The copy of the email dated 05.09.2016 issued by the Respondent to the husband of the Complainant.



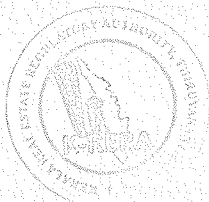
- Exhibit A9: The copy of the payment receipt dated 31.10.2016 bearing No. 2318 issued by the first Respondent to the Complainant
- Exhibit A10: The copy of the intimation letter dated 31.10.2016 issued by the General Manager, Sales and Marketing of the first Respondent to the Complainant
- Exhibit A11: The copy of the letter dated 30.07.2014 vide No.34665/RA2/2014/LSGD issued by the Secretary, Government of Kerala to the Secretary, Thiruvananthapuram Corporation
- Exhibit A12: True copy of the statement of accounts dated 13.10.2017 issued by the Manager Customer Relations of the first Respondent company to the Complainant
- Exhibit A13: True copy of the statement of accounts dated 10.08.2021 issued by the Manager Customer Relations of the first Respondent company to the Complainant
- Exhibit A14: True copy of statement of security deposit and other payment details for service connection to the K.S.E.B.L pertaining to Apartment No. 2C3, Artech Futura, Venapalavattom, Thiruvananthapuram
- Exhibit A15: True copy of the temporary occupancy certificate dated 31.05.2019 issued by the Secretary, Corporation of Thiruvananthapuram
- Exhibit A16: True copy of the email dated 26.08.2021 issued by the Legal Department of the first Respondent company to the Complainant.



- Exhibit A17: True copy of the legal notice dated 07.09.2021 issued by the Complainant to the Respondents
- Exhibit A18: True copy of the reply notice dated 30.09.2021 issued by the Respondent to the Complainant
- Exhibit A19: True copy of the preliminary report by the Department of Civil Engineering, College of Engineering Trivandrum pertaining to the structural stability of Apartment – Artech Futura, Venpalavattom, Trivandrum
- Exhibit A20: True copy of the email communication dated 16.01.2023 forwarded to the 2nd Respondent.
- Exhibit A21: The copy of report of CTP Vigilance dated 30.03.2016.
- Exhibit A22: The copy of tender inviting experienced persons for repair and rehabilitation work.
- Exhibit A23: The copy of letter dated 13.01.2022 of the Residence Association to the Respondents/promoters.
- Exhibit A24: The copy of letter dated 19.01.2022 from the Respondents to the Residence Association.

Exhibits marked from the side of the Respondents

- Exhibit B1: The copy of apartment hand over report dated 31.10.2016 signed by the Complainant and representative of the Respondents.
- Exhibit B2: The copy of quotation obtained from Modern Electricals.



- Exhibit B3: The copy of work order dated 21.05.2016 for electrical common expenses at Artech Futura given to Modern Electricals.
- Exhibit B4: The copy of letter intimating the completion of work and request payment of bill amount of Rs. 40,60,000/- issued by Modern Electricals.
- Exhibit B5: The copies of Form 1E, permission to pay tax under compounding Scheme category.
- Exhibit B6: The copy of water connection work order dated 22.09.2016 from Kerala water Authority.
- Exhibit B7: The copy of High Court order dated 03.10.2018.
- Exhibit B8: The copy of legal opinion dated 28.12.2018.
- Exhibit B9: The copy of Government order dated 27.02.2019
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