



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM.**

**Complaint No: 159/2023
Dated 10th January, 2024**

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

Complainant

1. Siji Jose
D/o P.T. Joseph,
Villa No. 4, Palm village,
Koduvazhanga
PuthiyaRoad Junction, Alangad,
Ernakulam 683511.
2. G. Shivkumar
S/o VGK Menon
Villa No. 28, Palm village,
Koduvazhanga
PuthiyaRoad Junction, Alangad,
Ernakulam 683511.
3. Lizzy John,
W/o T.D. John,
Villa No. 32, Palm village,
Koduvazhanga
PuthiyaRoad Junction, Alangad,
Ernakulam 683511.

[Adv. Uthara P.V & Adv Bharath
Mohan]



Respondents

1. Paul Antony Builders and Developers Pvt Ltd.,
Represented by its Managing
Director Sibi Paul, Malikampeedika,
Alangad P.O. Cochin 683511.

2. M/s Deodate Builders and Developers Pvt Ltd.
WNo.VII, Building No 203, Valiyaveetil building.
Chirakkakam Varappuzha P.O., Ernakulam,
Represented by its Director
Mr Saju Simon
Malikampeedika,
Alangad P.O. Cochin 683511.

- 3.Sibi Paul,
S/o Late Paulose,
Paul Antony Builders and
Developers
Pvt Ltd Malikampeedika,
Alangad P.O. Cochin 683511
Residing at Manavalan house, 10/343,
Alangad Panchayath
Alangad P.O. 683511.

- 4.Saju Simon,
S/o V.V. Simon,
Director,
Paul Antony Builders and
Developers
Pvt Ltd Malikampeedika,
Alangad P.O. Cochin 683511
Residing at Vithayathil House,
Cherthanad Road, Malikampeedika,
Alangad, Paravur Taluk, Ernakulam,
P.O- 683511.



5. Sibi Paul,
S/o Late Paulose,
Director,
M/s Deodate Builders and Developers Pvt Ltd.
W No.VII, Building No 203, Valiyaveetil building.
Chirakkakam Varappuzha P.O., Ernakulam,683517
Residing at Manavalan house, 10/343,
Alangad Panchayath
Alangad P.O. 683511

6. Saju Simon,
S/o V.V.simon,
Director,
M/s Deodate Builders and Developers Pvt Ltd.
W No.VII, Building No 203, Valiyaveetil building.
Chirakkakam Varappuzha P.O., Ernakulam,683517
Residing at Vithayathil House,
Cherthanad Road, Malikampeedika,
Alangad, Paravur Taluk, Ernakulam,
P.O- 683511.

[Adv. Jijo Joseph & Adv. Vincent K.D. for R1, R3 and Adv C.
Dileep and Adv. Pradeep. R and Adv. Anushka Vijayakumar for
R2 and R4].

The above Complaint came up for hearing on 10.01.2024. The
Counsels for the Complainants and the Counsels for Respondents
appeared.

ORDER

1. Facts of the case are as follows: The Complainants are
allottees of Villa project named 'Palm Village' promoted by the 1st



& 2nd Respondents conjointly. First Complainant and her husband have jointly purchased land with an extent of 3.03 Ares, numbered as villa No. 4. Second Complainant and his wife have jointly purchased land with an extent of 2 Ares and 80 Sq. mtrs, numbered as villa No. 28. Third Complainant purchased land having an extent of 4.13 Ares, numbered as villa No. 32. The 1st and 2nd Respondent are builders who have jointly undertaken the development of the project by constructing villas and other amenities in the project as advertised. The 1st Respondent had constructed 26 villas and other amenities like swimming pool and a half- constructed club house in the project and the 2nd Respondent had constructed 1 villa i.e., Villa No. 32 in the project. The 3rd Respondent is the Managing Director of the 1st Respondent and the Director of the 2nd Respondent. The 4th Respondent is the Director of the 1st and 2nd Respondent. The project is an ongoing one and not complete as on date, out of the 97 villas advertised only 27 had been constructed by the promoters. According to the Complainants, as the project is incomplete and no completion certificate or even occupancy certificate granted before 01.05.2016 and hence project is registrable under RERA. The Complainants alleged that the Respondents have failed to hand over the Occupancy Certificate of the completed villas, and thus violated the provisions of Sec 11(4) (b) of the RERA Act. Further, the Complainants alleges that the Respondents failed to provide essential services, including waste management facilities at the project site, repair and maintenance of street lights, provisioning



CCTV at the gate etc, despite payment of monthly maintenance charges. The allottees along with the Complainants have paid a sum of Rs 7,00,000/- towards maintenance activities. Thus, the Respondents violated the provisions of Sec 11 (4) (d) of the RERA Act. The club house, waste management plan and swimming pool, constructed differs from the one advertised by the Respondents. Also, the Respondents promised to construct a private garden for each villa, lotus pond, common amenities like badminton court, basketball court, gym and health center are not provided. The project is not registered under Sec 3 of the Act.

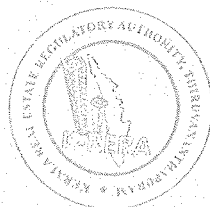
Reliefs sought by the Complainant: -

1. Declare the 1st Respondent and 2nd Respondent that they are liable to register the project.
2. Issue show cause notice u/s 59(1) of the RERA Act to the Respondents for non-registration of the incomplete project.
3. Direct the 1st Respondent and 2nd Respondent to register the project.
4. Declare and direct the 1st and 2nd Respondents that they are liable to undertake all maintenance activities in the project for plots that are sold and unsold.
5. Direct the Respondents to reimburse Rs 7,00,000/- spend by the allottees on maintenance activities out of their pockets.
6. Declare that the 1st and 2nd Respondent is liable to undertake to construct the project as advertised and direct to reconstruct the same.



7. Declare and direct that the Respondents are liable to pay penalty of Rs 7,00,000/- on account of violation of Sec 11,12,18 and 19 of the Act.
8. Declare and direct that the Respondents are liable to pay interest to the Complainants on the consideration paid by the Complainants towards the construction of the project at the rate of 18% p.a from the date of allotment of plot, on account of the 7-year delay in completion of the project.
9. Direct the Respondents to hand over the occupancy certificate to the Complainants.
10. Any other reliefs that the Authority thinks just and fit in the eyes of justice.

2. The Complainants also filed IA No 2/2023, on 10.01.2024, submitting that the Respondents are attempting to sell the area within the incomplete project, especially the area form part of common amenities to third parties, causing immense hardships to the Complainants and the prayed for direction to the Respondents not to sell or transfer to any third party, any part of the project. The Respondents are also denying access to the Complainants to the waste management facilities, causing immense hardships to the Complainants and prayed for direction to the Respondents not to restrain the Complainants from accessing the waste management facilities. The Respondents are also restraining the Complainants from entering areas of common amenities, the



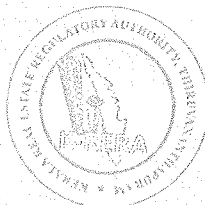
same has caused immense hardships and prayed for a direction to the Respondents not to retrain the Complainants from accessing to common amenities.

3. The 3rd Respondent filed preliminary counter affidavit on behalf of the 1st Respondent Company regarding reliefs No 1 to 3 sought for in the Complaint regarding maintainability of the Complaint. It was stated that the Complaint is not maintainable as the Complaint was filed not as per Section 31 r/w Section 2(zg) of the RERA Act. The above Complaint was preferred by three different individuals raising their independent claims. There is no provision in the Act to prefer a single Complaint for three separate Complainants. In such situations, an association of persons or body of individuals, whether incorporated or not, alone can file Complaint on behalf of its members. So, the above Complaint is liable to be dismissed at the threshold. The Complainants have purchased independent landed properties from third parties and thereafter entered in to separate agreements with the Respondents 1 and 3 for construction of their independent houses. So the Respondents 1 and 3 are not involved any selling activities and hence they cannot be termed as promoters as defined in section 2 (zk) of RERA Act. The limited engagement of the Respondents was construction of independent houses at the expense of the land owners. So mandatory registration under Section 3 of the Act, is not



applicable to the Respondents. Further, it was submitted that construction of a residential house is not a real estate project. The Company constructed houses on pre-occupies/ purchased land in the name of the Complainants. The land was purchased by the Complainants much earlier than the construction agreements. The development of land or building for the purpose of selling only comes under the definition of the real estate project. It was also stated that the registration of the project u/s 3 of the RERA Act is applicable only for projects in planning area. The term planning area is defined in Section 2(zh) of the Act. The Residential houses are situated at Alangad Grama Panchayath which was not a notified planning area at any point of time and are exempted from the purview of the Section 3 of the Act.

4. When the Complaint came up for hearing on 10.01.2024, both the Counsels for the Complainants and the Respondents appeared. On this day this Authority considered the limited question of admissibility of the Complaint in view of the contention of the Respondents that the Complaint filed was not as per Section 31 r/w Section 2(zg) of the RERA Act as the same was preferred by three different individuals raising their independent claims and that there is no provision in the Act to prefer a single Complaint for three separate Complainants, and in such situations, an association of



persons or body of individuals, whether incorporated or not, alone can file Complaint on behalf of its members and hence the above Complaint is liable to be dismissed at the threshold.

5. Section 31 of the Real Estate (Regulation and Development) Act, 2016 stipulates as follows:

31.(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

6. As per Section 31 of the Act, 2016, any person aggrieved, which includes the Association of Allottees can file a Complaint with the Authority. In this particular case, three Complainants have approached this Authority to consider their grievances through a single Complaint as regards the common



area development and utilization is concerned. It is always better that the Association of Allottees formed under Section 11(4) (e) and 19 (9) of the Act, 2016 to approach this Authority for redressal of their grievances, as regards to the common areas.

7. The Counsel for the Complainants submitted that she is withdrawing the Complaint leaving open the contentions with liberty to file fresh Complaint and subsequently confirmed vide her e-mail dated 10.01.2024.

8. After hearing the learned Counsels and perusing the documents provided, the Authority dismisses the Complaint as withdrawn with liberty to file fresh Complaint through the Association of Allottees or Individual Allottees.

Sd/-
M.P. Mathews
Member

Sd/-
P. H. Kurian
Chairman

True Copy/Forwarded By/Order/

Secretary (Legal)

