



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM

Complaint Nos. 170/2022, 171/2022, 172/2022, 173/2022 & 174/2022

Present: Sri. M. P Mathews, Member

Dated 29th December 2022

Complainants

1. Kumar Chand, : Complaint No.170/2022
Sree Bhavan,
TC.20/1181(VRA-27),
Melarannur, Karamana,
Thiruvananthapuram-695002.
(Represented by his Power of Attorney Holder,
Regi Mathew, Oonnukallumthottiyil (H),
Thamburattiparambu, Second Cross Road, T.S Road,
Edapally P.O, Ernakulam.
2. Raveendran K R & : Complaint No.171/2022
Sindhu Raveendran,
698, Soumya Nivas,
Kousalya Nagar, Elamakkara P.O,
Ernakulam-682026.
3. Fathima Ahad, : Complaint No.172/2022
Sukoom, 35/521,
Elamakkara Road,
Edapally, Ernakulam-682024.
4. Lea Tony, : Complaint No.173/2022
71/898B, Chackola House,



Valiyaparambu Road,
Keerthy Nagar, Elamakkara,
Kochi-682026.

5. Thariq Husain, : Complaint No.174/2022
Minara, 50 247 G, CMRRA,
113, Al Ameen Road,
Edapally P.O, Ernakulam-682024.

(By Adv.Srinath V)

Respondents

1. Anvita Builders Pvt. Ltd.
Represented by its Managing Director-,
Mr.P.G.Anil Kumar, having registered office at
Second Floor, Kadavil Castle,
Toll Junction, Edapally, Kochi-682024.
2. P.G.Anil Kumar,
Managing Director,
Anvita Builders Pvt. Ltd.
Second Floor, Kadavil Castle,
Toll Junction, Edapally, Kochi-682024.

(By Adv.K.R.Vinod)

3. P.T.Joseph,
49/845, M2(34/2812),11C,
CVC, Calista,
Raghavan Pillai Road,
Elamakkara P.O-682026, Ernakulam.

(By Adv.Philip T Varghese)

The above Complaints came up for virtual hearing today.
Counsel for the Complainants, Counsel for the Respondents 1 & 2 and
Counsel for the 3rd Respondent attended the hearing.



ORDER

1. As the above 5 Complaints are related to the same project developed by the Respondent/Promoter, the cause of action and the reliefs sought in all the Complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No:170/2022 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Complainants are the allottees of the project named 'Anvita Royal Grande' located at Edappally village, Ernakulam district, developed by the Respondents. The said project is registered before the Authority under section 3 of the Real Estate (Regulation & Development) Act, 2016. (Registration No. KRERA /PRJ /ERN/ 072/2022).

3. The case of the Complainant is as follows:- The 3rd Respondent is the owner in possession of the landed property having a total extent of 7.78 Ares comprised in sy.Nos.177/12-A & 177/12-B of Edappally village, Kanayannur Taluk. The 1st Respondent is the builder company who has developed the above said property of the 3rd Respondent and constructed a multi-storied residential building under building permit No.EYP2/COC/EYP/0721/13. The 2nd Respondent is



managing director the 1st Respondent / Builder company. The Complainant entered into an agreement for construction with the Respondents on 02/02/2017 where in the Respondents have agreed to construct an apartment for the Complainant which has been particularly described as schedule B in the agreement for construction dated 02/02/2017 in the above property and also agreed to sale the proportionate undivided share in the land scheduled as A in the agreement. The total cost of the construction as well as the sale consideration for schedule A undivided share and B schedule apartment was Rs.32,00,000/-, which has to be paid by the Complainant as per the payment schedule.

4. The Complainant further submitted that he had paid the entire sale consideration of Rs.32,00,000/- to the 1st Respondent. The construction of the apartment complex was already over and the Complainant was allotted 4.756 % undivided share and the apartment No.7D along with a covered car park and share in the common amenities and facilities. But even after completing the construction of the apartment complex and after the receipt of the full sale consideration from the Complainant, the possession of the apartment allotted to the Complainant was handed over to him but without executing the sale deed so far. In the construction agreement dated 02/02/2017 it was categorically agreed by the Respondents that after completing the construction of the apartment complex on or before October 2017, they would complete the sale proceedings



within 30 days from the date of receipt of full sale consideration from the Complainant. But even after the expiry of years from the receipt of full amount from the Complainant, neither the builder / 1st Respondent nor the land owner / 3rd Respondent has taken necessary steps to execute the sale deed in favour of the Complainant.

5. It was further submitted that even though the Complainant has informed the Respondents his readiness and willingness to purchase the apartment allotted in his favour at any time by obtaining necessary stamp papers and paying statutory registration charges, neither of the Respondents have turned up to execute the sale deed in favour of the Complainant even after the expiry of many years from the agreed period. The Complainants came to know that there exists some disputes between the Respondents No.2 & 3 and the difference of opinion between them is causing undue delay in executing the sale deed in favour of the Complainants. The Respondent No.3 ought to have executed the sale deed in favour of the Complainant irrespective of the personal disputes between him and Respondent No. 2. The Complainant cannot be put under hardships for the issues existing between the Respondents. Hence the above Complaints are filed before the Authority.

6. The reliefs sought by the Complainant is to direct the 3rd Respondent to execute the sale deed of the apartment allotted to the Complainants, proportionate right in the common



facilities and amenities along with undivided share in the landed property, in favour of the Complainants or to such persons as decided by the Complainants expeditiously as possible, within a time limit to be fixed by the Authority.

7. The Respondents 1 & 2 have filed written statement and submitted that the 1st Respondent had executed a joint venture agreement having nomenclature 'Memorandum of Understanding' with the 3rd Respondent to construct an apartment complex in the landed property owned by the 3rd Respondent. Following to the said MOU, power of attorney was executed by the 3rd Respondent in favour of the 2nd Respondent on 22/06/2018 itself granting all the powers pertaining to the construction of apartment complex except of the execution of sale deed in favour of prospective buyers of the respective apartments on completion. The copy of MOU dated 22/06/2018 is produced. It was also submitted that the 1st Respondent has completed the construction of apartment complex on 15/10/2018 and certificate of completion was obtained by him from the statutory Authority. Thereafter he has taken steps to draw KSEB connection as well as KWA water connection in to the said apartment complex. However the registration of sale deed pertaining to the apartments being purchased by the prospective buyers can only be signed and executed by the 3rd Respondent. The said fact is very much evident from the clause No.11 of the MOU dated 22/06/2018. As per the said clause, the prospective buyer



should pay value of the land as specified in Clause No.11 of the MOU dated 22/06/2018 to the 3rd Respondent and the registration shall be carried out by the 3rd Respondent at the expenses of the prospective buyer. As per the said MOU, the 3rd Respondent is entitled to get the total amount of Rs.1,24,95,600/- towards the total cost of the landed property in which undivided ownership would be created in the event of purchase of individual apartments by the prospective buyer. The said amount has to be paid by the 1st Respondent.

8. The Respondents 1 & 2 further submitted that the 1st Respondent has constructed 24 individual apartment units in the complex and the land owner would be entitled to get the cost of the land. After completing the construction, in view of the clause 11 of the MOU, the 1st Respondent has paid a total amount of Rs.1,40,75,300/- to the 3rd Respondent while he has signed and execute the sale deeds pertaining to 17 individual apartments. Therefore the 3rd Respondent is entitled to get an amount of Rs.34,20,300/- from the Respondents 1 & 2. The said amount could be paid by the Respondents 1 & 2 subject to the execution of sale deeds in favour of remaining 7 prospective buyers of the said apartment complex.

9. In this connection it was further submitted that, in view of the above factual matrix, the 1st Respondent cannot be found fault for the non execution of the sale deeds as the said process



can only be carried out by the 3rd Respondent, being the owner of the landed property. The Complainants are entitled to get the sale deed be registered in their name and the 1st Respondent is absolutely helpless with respect to the execution of the sale deed as such power has not been granted by the 3rd Respondent in favour of the 1st Respondent. The Respondents 1 & 2 have filed two commercial suits against the 3rd Respondent with respect to the totally different subject matter and debt and the said suit are yet to be disposed off. The present attempt of the 3rd Respondent by abstaining from executing the sale deeds in favour of the prospective buyers of the individual apartments is to put pressure on the 1st Respondent to withdraw the commercial suits filed against the 3rd Respondent. Those suits and claims therein are having no nexus with the apartment construction executed by the 1st Respondent in the landed property of the 3rd Respondent. However the 3rd Respondent by taking the advantage that he can execute sale deeds in favour of the individual apartments apartment owners, deliberately put burden on the 1st Respondent, so that the 1st Respondent would be compelled to accede with the illegal demands of the 3rd Respondent.

10. The Respondents 1 & 2 further submitted that the monetary disputes between the 1st Respondent and the 3rd Respondent with respect to a different subject matter cannot be used as a tool by the 3rd Respondent for not executing the sale deeds in favour of the individual apartment buyers. These Respondents have



made several request to the 3rd Respondent to execute the sale deed in favour of the Complainants and other two prospective buyers on several occasions but none of those communications have been affirmatively attended by the 3rd Respondent. Copies of MOU dated 22/06/2018, statement of accounts with respect to the payment of Rs.1,40,75,300/- to the 3rd Respondent, copy of sale agreements, copy of email communications are the documents produced from the part of the Respondents 1 & 2.

11. The 3rd Respondent / Land Owner has filed written statement stating that, the Complaint is not maintainable in law or on facts and the Complainant is a total stranger to the 3rd Respondent and the Respondent has never had any transaction with him. All the five Complaints are filed collusively by the Complainants and Respondents 1 & 2. It is true that the 3rd Respondent is the owner of 7.78 Ares of property. The 1st Respondent approached the 3rd Respondent with a proposal for the construction of a multi storeyed residential apartment complex in the said property. The terms of understanding between the 3rd Respondent and the 1st Respondent were reduced in writing as per the agreement dated 24/04/2013 and the 3rd Respondent issued a Power of Attorney dated 24/04/2013 in favour of the 1st Respondent for the purposes entailed in the said documents. The terms of understanding were thereunder modified on the agreement dated 10/07/2014 and thereafter on 22/06/2018. As



on date the revised Memorandum of Understanding dated 22/06/2018 iterates the terms and understanding between the parties.

12. The 3rd Respondent further submitted that the building permit for the construction of the real estate project was issued on 12/12/2013 and revised in the years 2017 & 2019. To the knowledge of the 3rd Respondent, the Occupancy certificate for the said project was issued on 31/01/2019. The registration of 17 of 24 apartment units were carried out prior to September 2021. The 3rd Respondent is unaware of the agreements entered into between the Complainants and the Respondents 1 & 2 and the 3rd Respondent is not a signatory to the said agreements. The 3rd Respondent has not received a single penny from the Complainants till date and he is unaware of the payments made by the Complainants to the Respondents 1 & 2.

13. It was further submitted that, the 3rd Respondent was not aware about the handing over of possession of apartment to the Complainant. The Respondents 1 & 2 had inducted some strangers into the apartment project unit from the year 2018 itself without the knowledge or consent of the 3rd Respondents and they have been illegally occupying the said apartments since then. As per clause 11 of the agreement, the 1st Respondent was obligated to convey the entire amount due to the 3rd Respondent as per the revised Memorandum of Understanding by 22/12/2018. The 1st and 2nd Respondents have failed to effect the payment of the said amount



to the 3rd Respondent despite having amassed considerable sums from innocent purchasers who had entered into sale agreements following misrepresentation with dishonest intentions. The 1st Respondent by lawyers notice dated 12/03/2020 admitted that Rs.1,07,20,300/- was outstanding and payable to the 3rd Respondent from the 1st Respondent and expressed their willingness to pay the amount. The 3rd Respondent had issued reply dated 16/07/2020 to the said notice stating that Rs.1,07,20,600/- with interest @ 12 % per annum on the said sum with effect from 22/12/2018 is due to him. But the payment due was not been effected till date.

14. The 3rd Respondent further submitted that he had not made any assurance to the Complainant as regards the project or execution of the sale deed, since the 3rd Respondent had no occasion to have an interaction with the Complainant. the 1st Respondent had delayed the completion of the project despite collected exorbitant amount from the purchasers and failed to effect the payments to this Respondent. The Respondents 1& 2 have collected more than 90% of the amounts from the purchasers, but failed to pass the proportionate share to the 3rd Respondent. However, the 3rd Respondent carried out registration of 10 such apartment units to the respective purchasers in the months of December 2020 and January 2021. The said registrations were carried out by the 3rd Respondent on a humanitarian consideration without even having received the entire proportionate share payable



to the land owner for the registration. The 3rd Respondent is not duty bound to carry out any registrations to which he is not a party and for which he has not received any amount as advance sale consideration. In fact the 3rd Respondent had submitted a Complaint before station house officer Elamakara, alleging that the Respondents 1 & 2 have been misusing the power of attorney granted in their favour, allotting the same apartment to multiple persons, amounting to criminal acts, cheating and misappropriation. But the said complaint was not acted upon on account of the political clout of the Respondents 1&2.

15. It was further submitted that the execution of the sale deed was not carried out on account of the non-fulfilment of the obligations of the 1st Respondent towards the 3rd Respondent as per the terms of the Memorandum of Understanding dated 22/06/2018. A sum of Rs.71,22,852/- is due and payable by the 1st Respondent to the 3rd Respondent as on 20/09/2022. If the 3rd Respondent is directed to execute sale deeds without getting the amount due, he will be put to unlawful laws. Copies of Memorandum of Understanding dated 22/06/2018, lawyers notice dated 12/03/2020 issued by the 1st Respondent, copy of reply notice dated 16/07/2020 issued by the 3rd Respondent & copy of complaint dated 27/01/2021 are the documents produced from the part of the 3rd Respondent.

16. The Respondents 1 & 2 have filed additional written statement and submitted that there is no fault on the side of



the Respondents 1 & 2 in delaying the execution of sale deeds in favour of the Complainants. A final Memorandum of Understanding was prepared and signed between the 1st Respondent and 3rd Respondent on 22/06/2018, after completion of major portion of the proposed Apartment complex which was originally constructed pursuant to Memorandum of Understanding dated 10/07/2014. However, the said MOU was cancelled and a final MOU was signed and executed on 22/06/2018. The 1st Respondent is a builder who has agreed to construct the apartment complex in the landed property owned by the 3rd Respondent. It is pertinent to see that the 3rd Respondent is also having the status of a co-promoter of the said project. The 3rd Respondent had executed 17 sale deeds in favour of the respective apartment owners and collected the amount covered by the Memorandum of Understanding till now. However, without any just cause he has abstained from executing the sale deed in favour of remaining 7 persons including the Complainants.

17. The Respondents 1 & 2 further submitted that from 02/02/2019 onwards the 1st Respondent is sending communications to the 3rd Respondent including the submission of draft sale deed proposed to be signed by him. But in spite of receipt of the said communications the 3rd Respondent did not respond and was failed to execute the sale deeds. Copy of the said communications is also produced. Being aggrieved by the inaction of the 3rd Respondent, in executing the sale deeds, the 1st Respondent



approached the Elamakkara police station by filing a complaint. But the same was closed due to the influence of the 3rd Respondent. One of the named Mr. Manoj Kumar has purchased the stamp paper expecting the execution of sale deed by the 3rd Respondent. But the 3rd Respondent has abstained from executing the deed. Copy of the stamp paper also produced. Copies of MOU dated 10/07/2014, revised MOU dated 22/06/2018, copy of email communications, letter dated 05/10/2021, copy of Complaint filed by the 1st Respondent before the Elamakkara Police station, copy of stamp part purchased by the one of the allottee and copy of sale agreement dated 09/08/2021 are the additional documents produced from the part of the Respondents 1 & 2.

18. The Authority heard the learned counsel for both the parties on 13/12/2022 and gave careful consideration to the submissions, and perused the documents available on record. The documents produced by the Complainants are marked as Exbt.A1 & A2. The documents produced by the Respondents are marked as Exbt.B1 to B15. Exbt.A2 series are the agreements for sale entered into between the Complainant 1) 1st Respondent represented by the 2nd Respondent, 2) Respondent No.3 represented by its power of attorney Holder.

19. Exbt. B1 is the copy of Memorandum of Understanding dated 10/07/2014 entered in to between the 1st Respondent represented by the 2nd Respondent and the 3rd



Respondent / Land Owner. It is mentioned in the MOU that all matters related to the construction of the building, third party claims that may arise as a result of entering into agreement with third party or third party claims that may arise against the construction activity to be carried out shall be settled by the builder at his own responsibility and expense and the land owners shall not be responsible for any such actions / claims. It was also stated in the MOU that the land owners have received Rs.50 Lakhs towards the total consideration in addition to the flats to be handed over to the land owner. Exbt.B2 is the another MOU dated 22/06/2018, entered into between the 3rd Respondent / land owner and the 1st Respondent / Promoter represented by 2nd Respondent. This MOU has made it clear that all the terms and conditions in Exbt.A2 series shall stand revised and superseded. It is also stated that the time fixed for the completion of the project had lapsed and the said event amongst others has necessitated a revision of the earlier terms of understanding. Under the modified MOU, the 3rd Respondent was to hold apartment No.2B & 4B along with the proportionate undivided share over the land and the remaining apartments along with the proportionate share over the A schedule property was to be conveyed to the builder, and in addition to the 2 apartments the 3rd Respondent / land owner was entitled to a sum of Rs.50 Lakhs which was already paid and appropriated towards the total consideration due towards the land owner. It was further stated that 'the terms for completion of the project as per the earlier Memorandum of Understanding has



expired, the Builder undertakes to complete the entire project in all respects as expeditiously as possible, at any rate within two months from the date of MOU. Further the builder undertakes to obtain so as to make the same fit for occupation, by prospective purchasers, within a period of four months from the date of completion mentioned above. In the event of failure of the builder to obtain the above clearances within the time specified herein, the land owner shall not be bound to execute the deed of conveyance in favour of the builder or his nominee.

20. As per the said MOU the landowner relinquished his claim for 2 apartments / dwelling units as was previously agreed in the MOU dated 10/07/2014 and agrees to accept a further sum of Rs.1,24,95,600/- from the builder for conveying his rights over A schedule property in its entirety. The said amount would be payable to the land owner over and above the sum of Rs.50,00,000/- mentioned in clause 9. As per clause 15 of the said MOU 'The landowner and the builder have entered into four agreements for sale and agreement for construction respectively with third party purchasers who were nominated by the builder. Notwithstanding the terms of the said agreements for sale and construction, the land owner shall receive the amount as specified in para 11 of this agreement upon execution of the deed of conveyance relating to those transactions. As per clause 18 of the MOU, the lands owner shall revoke the earlier power of attorney executed on



03/06/2013 and execute a new Power of Attorney on this date authorising the builder to obtain all necessary permits and sanctions and authorizing the builder to represent the land owner before such authorities in connection with the said matters in accordance with the terms of this agreement.

21. Exbt.B3 is the Power of Attorney dated 22/06/2018 executed by the 3rd Respondent in favour of the 1st Respondent, represented by the 2nd Respondent. It is specified in the Power of Attorney that the Power of Attorney earlier issued by the executant in favour of the attorney holder dated 03/06/2013 is hereby revoked and the terms of this Power of Attorney shall herein after prevail. It was stated that it has become necessary to execute this Power of Attorney to enable the Power of Attorney holder to obtain all required permits, sanctions and related certificates for developing the property and for construction from the various authorities by submitting necessary applications statements, affidavits or other documents as necessary. It was also mentioned that the power of attorney holder shall make necessary steps to communicate the same to any third party before whom the same had been presented and furnish a copy of this power of attorney to the said persons. It was further agreed by the 3rd Respondent that he shall ratify and confirm all acts, deeds and things what so ever which the said attorney shall do purport to do or caused to be done in good faith as if he had personally done it.



22. Ext.B8. is the copy of the stamp paper dated 10/09/2019 purchased in the name of one Mr.Manoj Kumar, who is another allottee of the project and it is stated that the 3rd Respondent No.3 has refused to execute the sale deed.

23. The Respondents 1& 2 argued that they have completed the construction of the apartment complex on 15/10/2018 and completion certificate was obtained from the statutory Authority. However the registration of sale deed pertaining to the apartments being purchased by the prospective buyers can only be signed and executed by the 3rd Respondent. The said fact is very much evident from the clause No.11 of the MOU dated 22/06/2018. As per the said clause, the prospective buyer should pay value of the land as specified in Clause No.11 of the MOU dated 22/06/2018 to the 3rd Respondent and the registration shall be carried out by the 3rd Respondent at the expenses of the prospective buyer. The 1st Respondent has constructed 24 individual apartment units in the complex and the land owner would be entitled to get the cost of the land. After completing the construction, in view of the clause 11 of the MOU, the 1st Respondent has paid a total amount of Rs.1,40,75,300/- to the 3rd Respondent while he has signed and executed the sale deeds pertaining to 17 individual apartments. Therefore the 3rd Respondent is entitled to get an amount of Rs.34,20,300/- from the Respondents 1 & 2. The said amount could be paid by the Respondents 1 & 2 subject to the execution of sale



deeds in favour of remaining 7 prospective buyers of the said apartment complex and there is no fault on the side of the Respondents 1 & 2 in delaying the execution of sale deeds in favour of the Complainants.

24. After hearing the learned counsels representing the Complainants and the Respondents and perusing the documents produced before the Authority, the following issues are framed for consideration:-

1. Who are the promoters in the real estate project under consideration?
2. Who is responsible to execute the sale deed?

Issue No.1

25. The MOU dated 10/07/2014 and the power of Attorney dated 22/06/2018 were utilised by the promoter in obtaining the permit and entering into agreements with the allottees till the same was revised by virtue of MOU dated 22/06/2018 & Power of Attorney dated 22/06/2018. The allottee in Complaint No.170/2022 had executed an agreement for construction before revision of the MOU dated 22/06/2018. It is clearly mentioned in the POA dated 22/06/2018 that it is to be communicated to those who had been presented with the earlier power of attorney. The allottee in Complaint No.170/2022 who had entered into agreement for construction on 02/02/2017 was not communicated with the revised MOU & POA and he cannot be considered to be bound by the new Power of Attorney or the MOU.



26. As far as the allottees in Complaint No.171/2022 to 174/2022 are concerned they had executed the agreement subsequent to Ext.B2 & Ext.B3 (MOU & Power of Attorney dated 22/06/2018). The Act, 2016 came into force from 01/05/2017 and the Rules 2018 was in force from 14/06/2018. The new MOU and the POA were executed without considering the fact that the Act and Rules were in force at the time of execution of Ext.A1& A2 series. All the four agreements were executed in violation of section 13(2) which prescribes that the agreement for sale shall be in the prescribed form and the prescribed form is notified by Rules 2018. The payments received by the promoter against all the five agreements executed with the Complainant were in violation of Section 13(1) which stipulates that the Promoter shall not accept sum more than 10% of the cost of the apartment as an advance payment from a person without entering into a written agreement for sale with such person and registering the sale agreement for sale under any law for the time being in force. The promoter had collected more than 10% of cost of the apartments without registering the agreement for sale in the case of the Complainant in Complaint No.170/2022 and in all other complaints without entering into an agreement as per the prescribed format under Rule 10 of the Rules 2018 and thereby violating section 13(1) & 13(2).

27. The Hon'ble Supreme Court in (2008) 10 SCC 345 (Faqir Chand Gulati Vs Uppal Agencies P Ltd and Anr)



considered a joint venture agreement and held as follows. "The test to determine a building construction agreement between the land owner and builder to be treated as a joint venture agreement. When there is absence of control or participation in the management of the activity concerned, nonexistence of sharing of profit and loss and a requirement of each joint venture being the principal as well as agent of the other party, the agreement in question cannot be said to be a joint venture in the legal sense. Mere use "joint venture" in the title of the agreement or body part does not make a transaction a joint venture. The same view has been followed by the Hon'ble Supreme Court in Bunga Daniel Babu Vs M/s Sri. Vasudeva Construction and others. In the said decision also the Hon'ble Supreme Court held that "the land owner is neither a partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business and he is only entitled to a certain constructed area. The conclusion is that he is only a consumer under the consumer protection Act". In this particular case the Respondent land owner has received consideration from the Builder. As per the MOU dated 22/06/2018 the landowner relinquished his claim for 2 apartments / dwelling units as was previously agreed in the MOU dated 10/07/2014 and agrees to accept a further sum of Rs.1,24,95,600/- from the builder for conveying his rights over A schedule property in its entirety. The said amount would be payable to the land owner over and above the sum of Rs.50,00,000/- mentioned in clause 9. The land owner shall be paid the said amount at the rate of Rs.6,50,000/-



per cent of A schedule property totalling to Rs.1,24,95,600/-. This shall be payable to the land owner by the builder. The land owner shall be paid the aforesaid sum at the rate mentioned above and in proportion to the sale of undivided share of land in respect of each sale deed in favour of the Builder / third party purchaser or his / her nominee.

28. The Permit was obtained in the name of the landowner through the power of attorney executed by the Respondents No.3 in favour of the 1st Respondent represented by the 2nd Respondent and all the agreements with the Complainants were executed on the basis of Ext..B2 Power Attorney. Section (zk)(i) of the Act, 2016 stipulates that *"a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees"*. Going through the above definition it is clear that the Respondent No.1 & 3 are promoters and were jointly liable to execute the sale deed in favour of the Complainants. Issue No.1 is decided accordingly and the Respondent No1 & 3 are jointly and severally the promoters.

Issue No.2

29. The Respondents 1 & 3 had entered into a revised MOU and power of attorney and the same is still in force. The terms and conditions of the said MOU are not binding on the allottees who have made the full payment to the promoter based on



the agreement entered into with the Respondent No.1/Promoter. Section 17(1) clearly says that *"The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate"*. Here in the above case the Respondents miserably failed to execute sale deeds in favour of the Complainants and thereby violated section 17 of the Act. As per the prescribed format of the agreement under Rule 10 of the Rules 2018, Clause 7.2 *"the promoter upon obtaining the occupancy certificate from the competent authority shall offer in writing the possession of the Apartment / plot to the allottee in terms of the agreement to be taken within 3 months from the date of issue of such notice and the promoter shall give possession of the Apartment / plot to the allottee"*.



30. Considering the above, Promoters have no reason to delay the execution of the conveyance deed and issue No.2 is decided accordingly. The Respondent No.1 & 3 are jointly and severally liable to execute the sale deeds in favour of the Complainants. The Complainants have specifically asked for the execution of the sale deed through Respondent No.3, but the 1st Respondent also needs to be a party in the execution of the sale deed. In view of the above facts and findings and invoking Section 37 of the Act, the Authority hereby issues the following directions:-

1. The Respondents / Promoters shall, execute the sale deed in favour of the Complainants within 30 days on receipt of this order.

2. The Complainants shall deposit the amount due on stamp duty and registration charges and all other incidental and legal expenses demanded as per the agreement, by the Respondents / Promoters within 15 days on receipt of such letter from the promoters.

Sd/-

Sri.M.P. Mathews
Member

/True Copy/Forwarded By/Order/



Secretary (legal)



38

Exhibits

Exhibits marked from the Side of Complainants

Ext.A1 - Copy of construction agreements.

Ext.A2 series - Copy of sale agreements.

Exhibits marked from the Side of Respondents 1 & 2

Ext.B1- Copy of Memorandum of Understanding dated 10/07/2014.

Ext.B2- Copy of Memorandum of Understanding dated 22/06/2018
(Revised).

Ext.B3- Copy of Power of Attorney dated 22/06/2018.

Ext.B4- Copy of Construction agreement.

Ext.B5 Series - Copy of sale agreements.

Ext.B6- Copy of statement of accounts with respect to the payment
of Rs.1,40,75,300/- to the 3rd Respondent.

Ext.B7 series - Copy of email communications.

Ext.B8- Copy of stamp paper purchased in the name of one Mr.Manoj
Kumar.

Ext.B9- Copy of letter dated 5/10/2021 issued to the 3rd Respondent.

Ext.B10- Copy of Complaint filed by the 1st Respondent before the
Elamakkara Police station.

Ext.B11 series – Copy of sale deeds.

Exhibits marked from the Side of 3rd Respondent

Ext.B12 - Copy of Memorandum of Understanding dated 22/6/2018.



Ext.B13 - Copy of Lawyer's notice dated 12/03/2020 issued to the
1st Respondent.

Ext.B14 - Copy of reply notice dated 16/07/2020 issued to the 3rd
Respondent.

Ext.B15 - Copy of Complaint preferred by the 3rd Respondent
Before the Station House Officer Elamakara dated
27/01/2021.

