



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

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

Complaint No. 242/2021
Dated 27th May, 2023

Complainants

1. Vidhya Hills Plot Owners Association
(Reg No.EKM/TC/278/2021)
House No. 27/362, Kochuplackal,
University- Temple Road, Kochi University P O,
Ernakulam, represented by the President
Smt. Baby Rekha Mathews, 5/50E (ENRA 30),
Pazhoor House, Elavakkatt Nagar,
Thrikkakara P O, Ernakulam- 682021

[By Adv. P O Thomas Puthuserry

Respondents

1. Vidhya Buidarchs Pvt Ltd,
XI/181,Civil Lines Road,
Padamughal, Kakkanadu, Kochi 682021

represented by its Managing Director, Rani Jojo W/o Jojo Paul,
Door No II/348, Alukkal House, Mythripuram, Kakkanad,
Thrikkakkara P.O. 682021

2. Gijo Antony, S/o Antony
Thattarkunnel House, Bless Homes Pvt. Ltd,
Chembarakky, South Vazhakulam, Aluva- 683105
3. Jaibee, S/o P.P.Varghese,
Kollarmalil House, Pandikad,
Vengoor P O- 683546.
4. Rani Jojo, W/o Jojo Paul,
Door No. II/348, Aluckal House,
Mythripuram, Kakkanad, Thrikkakara P O,
Ernakulam- 682021
[By Adv. Sabu P. Joseph]

Both parties were present along with their Counsels in the virtual hearing on 02-05-2023. A Bench consisting of Chairman and two members heard the matter in detail and all the parties raised their contentions and arguments. One of the members had a different view. Finally, the Bench, by majority (2:1) held that the Complaint filed by the Complainant Association is not maintainable before the Authority. The dissenting order is attached separately.

ORDER

1. The case of the Complainant is as follows: -
The Complainant is the Association of plot owners and the Respondents are the owners of 200 Ares of property located at Vazhakulam village in Ernakulam District. The Respondents

developed the property into 48 plots of various extents and executed sale deeds to the members of the complainant Association reserving their rights over 10 Meters wide way from the main entrance and 5 Metres wide way in round shape and the link roads having width of 4 Meters inside the entire two-hectare property which is a common area of the Vidhya Hills project. In 2008-2011 the respondents developed a residential project called Vidhya Hills which consists of residential plots. As per the sale deed, the Respondents have assured exclusive joint access right for the plot owners over the common areas, comprising of internal roads, 1 Meter wide landscape area on the eastern boundary, common well and central recreation area to the extent of 30 cents. Out of 48 plots, 28 plots were held by 19 members of the Complainant Association and 7 plots were owned by the Respondents, who have not joined in the Association. The Respondents never had the intention to form the Association of the plot owners, they did not publish or disclose contact details of plot owners and after a long period of 10 years, some of the plot owners took initiative and compiled the names and details of the present members of the Complainant Association, the 28 plot owners, and formed this Association among the plot owners of the Vidhya Hills project. The selling of plots was started in the year 2008. During September 2012, the adjoining plot of Vidhya Hills property owned by the Respondents under a different prior deed including around 3 acres of land was sold to a commercial establishment

'Bless Homes Pvt. Ltd.' owned by the 2nd Respondent and clandestinely gave access rights to the said establishment to the common areas of the project in question without the knowledge or consent of the Vidhya Hills plot owners, whereas the registered sale deeds had clearly assigned rights of the common areas only to the Vidhya hills plot owners. The "Bless Homes" is a paid retirement home, which is purely a commercial project, staying around 80 inmates and the Respondents advertised and promoted the paid retirement home claiming that the entity is a part of Vidhya Hills project which was purely a residential property, which gained them a definite competitive advantage in the promotion of the said retirement home which is a commercial project

2. The Complainant further submitted that the Respondents have not provided a security cabin and have not fixed a name board at the project site in the main entrance. There will be a significant reduction in the undivided share of common areas in the project if Bless Homes Pvt Ltd is given access to common areas of Vidhya Hills. Since the plot owners are all living in other locations, the Respondents are misusing the property in many ways such as the backyard of the said retirement home and did unauthorised farming in the common recreation area and even in the plots owned by the Complainant Association. The 2nd Respondent running a labour camp for migrant labourers in one of the plots, claiming that the plot belongs to him in an individual

capacity. The hygiene around the plot and the common area has become a concern to the Complainants and this is a nuisance for the other plot owners and is affecting the sale of the plots by those plot owners who are trying to sell their plots. The 2nd Respondent had even put up a pig sty on 6 cents within the Vidhya Hills claiming that the plot is belonged to his staff member in the individual capacity and then same was shut down under instructions from Vazhakulam Grama Panchayat based on a Complaint from a neighbouring plot owner and they are still dumping the construction waste and food waste in the plots and premises. The Respondents excavated soil on the north side of the of the property of Vidhya Hills without providing lateral support which cause severe threat and the panchayath issued stop memo on the unauthorised excavation on intervention of the members of the Association. The Complainants also alleged that the common well is situated on the south-west portion of the property and the Respondents are trying to divert water from the well to the retirement home. For avoiding the external interference, construction of the boundary wall for the property is highly necessary. The security cabin area is still under the possession and control of the Respondents. Despite collecting 24 lakhs from the plot owners for the maintenance of the common area, the Respondent have neither done any proper maintenance nor furnished any audit accounts for its expenditure. After registration of the Association the Respondents are obliged to hand over the

amount collected for common area maintenance to the account of the Association. After registration of the Association, the Complainants officially informed the Respondents about the formation of the Association of plot owners of the project through a registered letter dated 13-09-2021 and requested to hand over the common areas to the association, also requested to provide security cabin, name board in the entrance, dismantle labour accommodation in the Vidhya Hills, removal of excavated earth and waste materials, separation of two projects with compound wall, repair of damaged roads etc., Even after receiving the notice, the Respondents have not taken any steps to comply with any of the demanded necessary functions. The 2nd respondent is still controlling the gate of Vidhya Hills with lock and key and is still dumping food and other waste materials belonging to around 200 inmates and staff within the project premises. The 3rd and 4th Respondent are silently permitting the 1st Respondent to encroach the common area of the association. The relief sought by the Complainants are *(i) to direct the Respondents to hand over the common area of Vidhya Hills including security cabin area to the Complainant Association (ii) to direct the Respondents to do the activities such as providing security cabin and name board, compensation for the area lost, dismantle the labour accommodation, removal of excavated earth and waste materials dumped by the 2nd respondent, segregate vidya hills and Bless Homes Pvt Ltd premises by proper compound wall, restrain the 2nd*

respondent, the managing director of Bless Homes from further excavating at the boundary of Vidhya Hills, to handover the maintenance fund of Rs. 24 Lakhs, to repair the damaged roads and compound walls, to rebuild the recently failed canal side retaining wall adjoining the common well area, to provide overall layout drawings, panchayat permit for plot development, development certificate, drainage, and water supply, formal handover/transfer of ownership of the common area as they are obliged to do as the promoters of the project (iii) to direct the 1st Respondent to pay a reasonable compensation to the Association for allowing the Bless Homes Pvt. Ltd in the last 5 years for the unauthorized use of Vidhya Hills property and (iv) if the Respondents fail to do the said activities even after directions, the Complainant may be allowed to carry out any of the above said priority activities and realize the cost of proceeds with interest from the respondents and their assets. The copies of the Registration Certificate of the Association issued by the Registrar of Societies on 08-09-2021, the layout of the Vidya Hills project, sale deed dated 04-05-2011 executed by the Respondents in favour of Sreekanth. S, member of complainant association, registered letter dated 13-09-2011 issued by the Respondents, postal acknowledgment receipts, stop memo issued by the Panchayath to the 1st Respondent were produced by the Complainant.

3. The Respondents No. 2,3 & 4 filed preliminary objection to the Complaint along with I. A. 293 of 2021 for hearing

the question of maintainability & I. A. 294 of 2021 for deleting the name of the 1st Respondent. The Respondents submitted that the Complaint is not maintainable either in law or facts and the formation of the Complainant Association itself is illegal and had no locus standi to file the Complaint. The Complaint is bad for misjoinder of parties. The 1st respondent is shown as Vidhya Hills, a partnership firm represented by its Managing partner, Gijo Antony. The Respondents submitted that there is no such entity as alleged by the Complainant and the Complainant has purposefully made the first Respondent in the party array, falsely making the second Respondent its representative. The Respondents submitted that the reliefs sought by the Complainant are not coming within the purview of the Authority and purely come within the sphere of Civil court. The Respondents were the owners of 3.292 Hectors land in Vazhakkulam village and during 2008, they planned to sell the property, at that time there was no prospective buyers to purchase the whole extent of property, hence the Respondents decided to sell the property dividing in to plots by giving adequate facility to the intending purchasers. Accordingly, the entire property divided into 48 plots in the year 2008 and sold the entire property during the period 2008 to 2012. The estate business of the Respondents was completed in the year 2012 when the last sale deed was executed. The entire property had been sold to different purchasers giving entire rights in the specified plots and common facilities and they have taken possession of the said plots then and

there and these Respondents have no interest in the said property sold to the respective parties. The entire property was sold between 2008 to 2012 much before the enactment of the Act, 2016 and the establishment of this Authority and the sale of plot was not within the ambit of the said Act and hence there required no registration under the said Act. There was no ongoing project at the time of commencement of the Act and thereafter. The Respondents had never offered the construction of any security cabin or displaying of any board and for identifying the property, the name Vidhya Hills was given for the purpose of convenience and identification. The Respondents prayed to hear the question of maintainability as a preliminary issue before proceeding further with the Complainant.

4. Thereafter the Complainant filed objection to the maintainability petition along with I. A. 2/2022 for amending the Complaint, wherein it was stated that the name of the 1st Respondent in the Complaint was entered 'Vidhya Hills project represented its Managing Director Gijo Antony' because of the misrepresentation on the part of Respondent 2 to 4. The I.A. 2/2022 was filed by the Complainant to remove the 1st Respondent's name and to include the name as 'Vidhya Buildarchs Pvt. Ltd' whose Managing Director is the 4th Respondent. According to the Complainant, the actual name of the company who was the promoter of Vidhya Hills was purposefully not incorporated in the title deed of the plot owners by the Respondent. The contention of

the Respondent that the entire property of 3.292 Hectors of land had been divided in to 48 plots was not true, the Complainant is concerned only about the 2 Hectors of land. The Respondents have admitted that they had divided the property into plots by giving adequate facilities for the purchasers. When the development of land into plots is done for the purpose of selling all or some of the said plots and it includes the common areas with all easement, rights, and appurtenances belonging thereto is a real estate, and the person who develops land for the purpose of selling to others all or some of the plots in the said project is a promoter. The Respondents have collected funds from the members of the Complainant association for maintaining the common area amenities and the same has not been handed over to the Complainant Association. The responsibility of promoters extends till the execution of the conveyance deed of the common area to the Complainant Association. The project cannot be considered complete without the formation of the Association and the execution of the conveyance deed for the common areas in the name of the Association. Without discharging the liability, the Respondent should not utilize the common area exclusively allotted to the members of the Complainant for other commercial purposes. A development plan with extent of each plot was shown to the members of the Complainant Association in which, security cabin and recreation area and common pathways, but they are neglecting the plan now. The Respondents wilfully suppressed the

promoter's company name 'Vidhya Build Arch Pvt. Ltd' and stated that they gave name 'Vidhya Hills' for convenience and identification. The Respondents have no right to indulge any third party to enjoy the common amenities specifically and exclusively allotted to the Complainant members as per registered deeds of the plot owners. The Respondents have no right to put waste in the plots and make inconvenience to the other plot owners and it was prayed to dismiss the maintainability petition with cost.

5. The Respondents No. 2, 3 & 4 filed objection to the amendment petition and an additional objection to the Complaint and submitted as follows: The Complaint is not maintainable either in law or facts and the formation of the Complainant Association itself is illegal and had no locus standi to file the Complaint. The Complaint is bad for misjoinder of parties. The 1st respondent is shown as Vidhya Hills, a partnership firm represented by its Managing partner, Gijo Antony. The Respondents submitted that there is no such entity as alleged by the Complainant and the Complainant has purposefully made the first Respondent in the party array, falsely making the second Respondent its representative. The Respondents submitted that the reliefs sought by the Complainant are not coming within the purview of the Authority and purely come within the sphere of Civil court. The Respondents were the owners of 3.292 Hectors land in Vazhakkulam Villge and during 2008, they planned to sell the property, at that time there was no prospective buyers to

purchase the whole extent of property, hence the Respondents decided to sell the property dividing in to plots by giving adequate facility to the intending purchasers. Accordingly, the entire property divided into 48 plots in the year 2008 also other 5 plots adjacent to it by providing way started sale in 2008 itself and sale of plots completed by 2012, and the last sale deed was executed on 27-07-2012 to Smt. Lija Gijo who is the wife of R2. The last sale deed executed to third parties was on 20-08-2011, to Smt. Dolly Joseph. The first sale deed executed was on 08-02-2008, from the recitals of the first and last sale deeds it could be seen that the division of plots and arrangement of common area and facilities had been completed before the execution of the first sale deed itself. Since the Building Rule in the Vazhakkulam Grama panchayath was implemented only on 14-02-2011, much after the division and started sale of plots, there was no requirement for obtaining any development permit, NOC and development certificate during 2008. The entire sale of plot were done in the individual capacity of Respondents 2, 3 and 4 and there was involvement of any company or partnership firm. The entire property had been sold to different purchasers giving entire rights in the specified plots and common facilities and they have taken possession of the said plots then and there and these Respondents have no interest in the said property sold to the respective parties. The entire property was sold between 2008 to 2012 much before the enactment of the Act, 2016 and establishment of this Authority

and the sale of plot was not within the ambit of the said Act and hence there required no registration under the said Act. There was no ongoing project at the time of commencement of the Act or thereafter and there is no jurisdiction to entertain the Complaint of this nature and hence the Complaint is to be dismissed. The copies of sale deeds, copies of the application submitted to the Grama panchayat under RTI Act and its reply and the copies of the encumbrance certificate were produced by the Respondents along with the additional objection to the Complaint.

6. The Complainant filed an affidavit on 06-09-2022 and submitted as follows: As per the sale deed executed in the name of the members of the Complainant Association, the Respondents agreed to provide various common facilities as part of the real estate project. According to the Complainant the sale deed clearly mentions about the internal roads, common roads, and common areas are intended for the use of the persons purchasing the plots. From the recitals in the sale deed, it is manifestly evident that the Respondents conceived a real estate project in the name and style Vidhya Hills and developed the property, and sold it to different persons who are members of the Complainant Association. As per the land tax receipt dated 5.05.2022 received by the Association under RTI Act from the Vazhakullam Village office, the Respondent/promoters still hold land of 60.35Ares (149 cents) which are the common areas and the project cannot be considered as completed without the formation of the Association and the

execution of the conveyance deed for the common areas in the name of the Association. The Complainant submitted that the plot development also comes under section 3 of the Act, 2016 and is liable to be registered and the contention to the contrary raised by the Respondents by filing the preliminary objection is unsustainable under law. It was submitted that the development permit, NOC, and completion certificate from the panchayat are applicable for this project. The promoters have not applied for the same by regularizing the land development including common areas. The Complainant submitted that even after 10 years, the facilities required to be provided as part of the Real Estate project are not yet provided by the Respondent and the relief sought by the Complainant in the Complaint be allowed. The items which are pending for completion includes; not providing of security cabin and name board, association not formed, electricity and water connection not available for common area, the conveyance deed for 149 cents of common area were not executed, hence the maintenance of common area by the Complainants were not possible.

7. The Complainant later filed I.A. No. 212/2021 for an injunction, restraining the Respondents from using the entrance gate of the project and its internal roads by 1st Respondent's owned company and from dumping the waste and other materials in the Vidhya Hills plots and also from interfering with the work of putting the name board of Vidhya hills by the Complainant

Association. The Respondents were directed by the Authority on 28/02/2022 to produce the list of all allottees, sale deed details, Development permit/ NOC obtained from the concerned authorities, and Development certificate to prove that the project is completed and the case was posted for hearing on the question of maintainability on 25-03-2022. When the case came up for hearing on 25.03.2022 on the issue of maintainability, the Counsel appeared for the Respondent was not ready to argue the case and the Authority vide interim direction, again directed the Respondents to produce the list of all allottees, sale deed details, Development permit/NOC obtained from the concerned authorities, and Development certificate related to the project in form of a detailed affidavit along with their argument notes. But the Respondents failed to produce documents and sought further time for its submission. The Authority issued show-cause notice to the Respondent/Promoter on 02-06-2022 for not registering the project u/s 3 of the Act. The Authority also issued notices under Section 35(2) of the Act 2016, to the local Authority, Vazhakulam Grama Panchayath and the Town Planner, Ernakulam to appear before Authority with all the documents related to the status of the plot development permits, if any, issued to the project in question. But the Vazhakkulam Grama Panchayath did not respond. The Town planner, Ernakulam submitted an interim report stating that no documents are available as on date in this regard.

8. The preliminary issue of maintainability of the above Complaint and thus the registrability u/s 3 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred to as the 'Act, 2016') came up for hearing. We heard both parties and their counsels and perused the documents submitted by the parties. Exhibits A1 to A12 were marked on the side of the Complainants and Exhibits B1 to B7 were marked on the side of the Respondents. **Exhibit A1** is the true copy of the Registration Certificate of the Association issued by the Registrar of Societies dated 08/09/2021. **Exhibit A2** is the true copy of the sale deed dated 04/05/2011 executed in favour of Sreekanth S. **Exhibit A3** is the true copy of the layout of the Vidhya Hills Project which is seen attached to the sale deeds executed with members of the Complainant Association, and this is the same for all 48 plots. **Exhibit A4** is the copy of web page of Vidya Buildarchs Pvt. Ltd. Vidya Buildarchs Pvt. Ltd., who was impleaded as the 1st Respondent based on the order in IA No. 2/ 22. **Exhibit A5** is the true copy of the registered letter dated 13/09/2021 sent by Vidhya Hills Plot Owners Association to the Respondents. **Exhibit A6** is the true copy of the postal acknowledgment receipts. **Exhibit A7** is the true copy of stop memo dated 3-09-2021 issued by the Panchayath to the 1st Respondent. **Exhibit A8** is the true copy of sale deed dated 17-06-2011 executed in favour of Mariyamma Rajan. As per the recitals in the documents Exhibit A2 and A8, executed in favour of the plot owners, the total extent of land that

constitute Vidya Hills include 200 Ares purchased jointly by Respondents 2,3, and 4 vide document No 4952/2006 and other items of property belonging to them. **Exhibit A9** is the true copy of the application submitted under Right to Information Act to the Vazhakkulam Grama panchayath. **Exhibit A10** is the true copy of reply dated 07-11-2022 received under RTI Act, from the Vazhakkulam Grama Panchayath, confirming the fact that KMBR was made applicable to the state to all panchayats from 2007. **Exhibit A11** is the true copy of the gazette notification dated 06-06-2007 confirming the above. **Exhibit A12** is the true copy of sale agreement dated 27/05/2011 executed by Praveen Abraham John with Joseph Jerome & Dolly Joseph produced by the complainant and that is not connected to the respondents and therefore has no relevance. **Exhibit B1** is the true copy of sale deed No 1271/2008 dated 08-02-2008 executed in favour of Jaya Raman V. Iyer, and the recitals in sale deeds B1, A2 and A8 are identical. **Exhibit B2** is the true copy of sale deed No 3692/2011 dated 20/08/2011 executed by respondents 2, 3, and 4 in favour of Dolly Joseph. **Exhibit B3** is the copy of sale deed dated 27-07-2012 executed in favour of Lija. **Exhibit B4** is the copy of application dated 2-3-2022 submitted under Right to Information Act to Vazhakkulam Grama Panchayath. **Exhibit B5** is the copy of reply received under Right to Information Act from the Vazhakkulam Grama Panchayath, to the effect that Kerala Panchayat Building Rules were applicable in the panchayat from 2011. **Exhibit B6** is the

copy of Encumbrance Certificate of the property that constitute Vidhya Hills from 01/01/2005 to 03/03/2022. It is seen from the encumbrance certificate that 200 Ares of property was purchased jointly by the 2nd 3rd and 4th respondent on 29/06/2006, and they started selling the property from 08/02/2008 to 04/09/2012 transferring an extent of 145.66 Ares of land in 43 transactions **Exhibit B7** is the copy of registration certificate issued to Vidhya Hills welfare and Development Society dated 11-01-2023 by the Registrar of Societies.

9. The learned Counsel appearing for the Complainant Association argued that the Respondents who were the joint owners of 200 Ares of landed property started developing it since 2008 and divided it into 48 plots with common facilities such as roads, recreation area, lawn etc. which are specified in detail in each sale deed. The Counsel for the Complainants invited our attention to page 4 & 5 of the Exhibit A8 Sale deed and in Page 4 of the said Deed states that “Whereas the Vendors herein have, including other items of properties belonging to them, divided the property into plots of different areas under the common name of ‘Vidhya Hills’ and provided common internal roads, common areas; the common roads and common areas are intended for the use of the persons purchasing the plots in ‘Vidhya Hills’”. According to the learned Counsel for the Complainants, from the recital of the sale deed, it is manifestly evident that the Respondent conceived a real estate project in the name and style of ‘Vidhya

Hills' and sold the plots to the members of the Complainant association and therefore the contentions of the Respondents that it is not a real estate project are absolutely false. The arguments of the learned Counsel appeared for the Respondents that since the sale deeds are already executed the said project is no more a real estate project and therefore this Authority does not have jurisdiction to entertain the complaint were also strongly objected by the learned counsel for the Complainants stating that as per Section 2(zn) of the Act 2016, the development of building and selling plots or building which includes common areas and other development works are included in the definition of a real estate project. For the Complainants, it was argued that unless and until the amenities required to be provided are not provided, the project cannot be said to be completed. The Complainant argued that in the sale deeds executed by the Respondents, various common facilities were offered and in Exhibit A8 sale deed executed, it was stated that the common recreation area and landscaping etc within the project is intended exclusively for the use and enjoyment of purchasers of plots within the project alone, but the Respondents are proposing to use it for another project of the Respondents. The Complainant also produced a copy of sale agreement with Praveen Abraham John with One Joseph Jerome and Dolly Joseph, wherein it was agreed to provide electricity connection to the common area, common well, pipeline from the well and drainage rain water etc. Also produced copies of application under Right to Information

Act addressed to the Public Information Officer, Vazhakkulam Grama Panchayath and its reply dated 07-11-2022, from the Public Information Officer, Vazhakkulam Grama Panchayath, confirming that the Kerala Municipality Building Rules were applicable in the Vazhakkulam Grama panchayath with effect from 06-06-2007. As per rule 5 of the said Rules development permit is a pre-requisite for developing the property. The Complainant argued that the Respondents had not produced completion certificate to the real estate project and the execution of sale deed did not exonerate the promoter from carrying out the portion of work to be completed as part of real estate project, unless and until the amenities required are not provided the project is not completed. The Complainant further argued that the extent of land involved is less than 2 Hectors and therefore the width of street should be 5 Meters as per the Kerala Panchayath Building Rules 2019, the width of present access road is 4 Meters, in respect of a few plots and the owners of the above plots are ready to surrender property to make width of internal road as 5 Meters. Without the knowledge and consent of the Complainant association, the promoter formed another association, the rights over the common area and other amenities provided to the members of the Complaint Association had been given to the newly formed association. The new association formed during January 2023 cannot claim such rights. The second Respondent is the vice president and his wife are the secretary of the new association. The new Association is formed to defeat the

rights of the members of the Complainant Association. Two companies, M/s Bliss Homes Pvt. Ltd. And Blissful Living Pvt. Ltd are formed by the second Respondent and his wife is the member of the newly formed associations. The rights created in favour of the new association, which is a third party is void ab initio.

10. With respect to the maintainability of the above complaint raised by the Respondents herein, the Authority has to examine the issue “Whether the sale of land into plots by giving a name “Vidhya Hills” by the Respondents herein between the year 2008 and 2012 is registerable under the Act 2016 or not?”

11. According to Section 2(zn) of the Act 2016, from 01/05/2016, the date on which the Act was notified "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto." Hence it is clear that development of land into plots for sale with common areas and easement rights and appurtenances belonging thereto after 01/05/2016 will come under the definition of the term “real estate project”. Where plots were sold before the date on which the Act,

2016 was made applicable the definition cannot be made applicable for registration of the project under Section 3 of the Act, 2016. Section 3 (1) of the Act 2016 stipulates that *“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”*. The provisions under Section 3 of the Act 2016 came into force on 01.05.2017, and this can be made applicable only to projects that are ongoing and the test for ongoing project is whether development certificate was obtained for the project before 01/05/2017. When there was no development permit obtained before subdivision of land into plots and sold before 01/05/2017, the question of development certificate does not arise. There is no pleading to the effect that the promoters have advertised, marketed, booked, sold, offered for sale or invited persons to purchase in any manner any plot, apartment or building in the project or part of it, after 01/05/2017.

12. This is a case where the project executed without obtaining Development Permit was purchased by the Complainants, and the

sale deed were executed as early as 2008 to 2012. The consideration paid by the Complainant as per the sale deed is inclusive of the cost of the plot and the rights enumerated therein. Once the sale deed is executed paying full consideration before the commencement of this Act those who have purchased plots are not entitled to the benefits of the Act, 2016 which is only for ongoing projects. To prove that the project is ongoing, there should be a completion certificate/occupancy certificate issued by the competent Authority after 1.05.2017. The Completion certificate/occupancy certificate is issued by the Competent Authority certifying that the construction has been carried out in conformity with the permit given. In the case of plot development, the competent Authority issues a development certificate certifying that the development of land has been effected in conformity with the permit given. Those who have purchased plots without development permits have no right to claim that the project is an ongoing project without entering into any agreement required to confirm that promises were made by the Respondents. The Competent Authority can regularize certain constructions under rule 92 of the Kerala Panchayat Building Rules 2021 which states that “ *the Secretary shall have the power to regularize construction or reconstruction or addition or alteration of any building or digging of any well or telecommunication tower or any structure or land development or any other work for which permission of the Secretary is necessary under this rule commenced, being carried*

on or completed without obtaining approved plan or in deviation of the approved plan. Provided that such work shall not be in violation of any of the provisions of the Act or these rules.” It is evident from the drawing attached to the sale deed that the layout does not satisfy the requirements of the building rules. *As per Rule 31(1)(iii) every street in the layout shall have not less than 7 meters width and shall be motorable provide that in the case of Cul-de-sacs with length not exceeding 250 meters it is sufficient if the street(cul-de-sac) has not less than 5 meters width [and in the case of cul-de-sacs not exceeding 75 meters, it is sufficient if the street(cul-de-sac) has not less than 3 meters width].* Here, in this case, the maximum road width is only 5 meters. All the documents produced by the Complainant can prove that the project was executed violating the Kerala Municipality Building Rules 1999 and are not sufficient to prove that the project is an ongoing project. In *Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & others*, the Hon’ble Supreme Court has the following observations- “From the scheme of the Act, 2016, its application is retroactive in character and it can be safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Sec. 3 of the Act, 2016 to prospectively follow the mandate of the Act, 2016. This is a completed project as is evident

from the fact that the plots were developed and purchased before 2012 itself. The contention of the Respondent that the registration of the sale deed was completed in 2012, is not seen disputed by the Complainant. As per sec 4(2) of the Act, 2016, the promoter has to enclose certain documents along with the application for registration of the Real Estate Project. One of the documents under Section 4(2)(c) is an authenticated copy of the approvals and commencement certificate from the competent Authority obtained in accordance with the laws as may be applicable for the Real Estate Project. The commencement certificate is defined under Sec. 2(m) of the Act, 2016 as "*commencement certificate*" means *the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan*".

13. It is accepted that the development permit was not obtained by the developers and the plots were purchased by the Complainant Association members without verifying the requirement of a development permit from the competent Authority. Regularization of the project on an application by the owners of the plots who constitute the Complainant Association also cannot help in obtaining a development certificate as there is a violation in the provisions of the Kerala Panchayat Building Rules, 2019. The Respondents cannot be called upon to register the project that was

executed before commencement of the Act, 2016. In *Neelkamal Realtors Suburban Pvt Ltd and Another v. Union of India and others*, the Hon'ble Court has the following observations- "The Parliament felt the need for including ongoing project within the ambit of the Act,2016 because it was noticed that all over the country in large number of projects the allottees did not get possession for years together. Huge sums of money of the allottees is locked in. Sizable section of allottees had invested their hard-earned money, life savings, borrowed money, money obtained through loan from various financial institutions with a hope that sooner or later they would get possession of their apartment/flat/unit. There was no law regulating the real estate sector, development work/obligations of promoters and the allottee. Therefore, the Parliament considered it to pass a Central law on the subject. In this case, the Complainants have purchased the plot and are in possession of their plots ever since 2012. Hence the question 'whether the sale of land into plots by giving a name "Vidhya Hills" by the Respondents herein between the year 2008 and 2012 is registerable under the Act 2016 or not' is answered as not registrable.

14. In this case, the contract is not subsisting between the Complainants and the Respondents since sale deed has been executed in favour of the Complainants selling, transferring and assigning all the right, title and interest over the plot. When a sale deed is executed, the contract for sale became concluded and the

Complainant gets the right, title interest over the properties sold. Adjudication of civil rights is not the area of the function of the RERA. Once the Respondents executed the sale deed and it is registered under the law all legal consequences will follow and any matter or dispute after the execution of the sale deed will have to be pursued and adjudicated appropriately. As per section 31 of the Act, 2016 any aggrieved person can file a Complaint before the Authority for any violation or contravention of the provisions of the Act, 2016 or the Rules & Regulations made there under and not for violation of Kerala Municipality/Panchayat Building Rules, if any. Here no violation or contravention of the provisions of the Act, 2016, Rules 2018 or Regulations is pointed out by the Complainants except violation of the Kerala Municipality Building Rules. Now, the Complainants are the owners of the property and the Respondents are the owners of the common areas including the roads over which the Complainants have a right of way. The Complainant has not been able to establish that the project is an ongoing project and registrable under section 3 of the Act, 2016. Hence, the Complaint filed by the Complainant Association is found not maintainable and dismissed.

Sd/-
M.P. Mathews
Member

Sd/-
P.H.Kurian
Chairman

Preetha P. Menon, Member (Dissenting):

ORDER

1. The case of the Complainant is as follows: -The Complainant is the Association of plot owners and the Respondents are the developers of the project named 'Vidhya Hills' consisting of 48 plots with an area of 200 Ares of property located at Vazhakulam Panchayath of Ernakulam District. The Respondents developed the said property and executed sale deeds to the members of the Complainant Association, reserving their rights over 10 meters wide way from the main entrance and 5 meters wide way in round shape and the link roads having the width of 4 meters inside the entire two-hectare property which is a common area of the project. As per the sale deed, the Respondents have assured exclusive joint access right for the plot owners over the common area. In 2008-2011, the Respondent developed a project of a residential area called "Vidhya Hills" consisting of 48 residential plots out of which 28 plots were held by 19 members of the Complainant Association and 7 plots are held by the Respondents, who have not joined in the Association. The Respondents never had the intention to form the Association of the plot owners and after a long period of 10 years, some of the plot owners took initiative and compiled the names and details of the present members of the Complainant Association, the 28 plot owners, and formed this

Association. In the year 2012, the adjoining plot of Vidhya Hills property owned by the Respondents under a different prior deed including around 3 acres of land was sold to a commercial establishment 'Bless Homes Pvt. Ltd.' owned by 2nd Respondent and given access rights to the said establishment to the common areas of the project in question without the knowledge or consent of the plot owners, whereas the registered deeds had clearly assigned rights of the common area only to the plot owners. The "Bless Homes" is a paid retirement home with around 80 inmates and the Respondents advertised and promoted the paid retirement home claiming that the entity is a part of the project which was purely a residential property which gained them a definite competitive advantage in the promotion of said retirement home which is purely a commercial project.

2. The Complainant further submitted that the Respondents have not provided a security cabin and not fixed a name board at the main entrance. There will be a significant reduction in the undivided share of common areas in the project if it is shared with another project. Since the plot owners are all living in other locations, the Respondents are misusing the property in many ways such as unauthorised farming, usage of the property as the backyard of the said retirement home. The 2nd Respondent is running a labour camp for migrant labours in one of the plots, claiming that the plot belongs to him in an individual capacity. The hygiene around the plot and the common area has become a

concern to the Complainants which is a nuisance for the other plot owners and it affects the sale of the plots by the plot owners who are trying to sell their plots. The 2nd Respondent had even put up a pig sly on 6 cents within the property, claiming that the plot belonged to his staff member in an individual capacity which was shut down under instructions from Vazhakulam Panchayat based on a Complaint from a neighbouring plot owner but they are still dumping the construction waste and food waste in the plots and premises. The Respondents excavated soil on the North side of the property in East-West direction along the sides of the plots 20,21 and 22, without providing any lateral support to these plots in which the members of the Association interfered and informed the unauthorised excavation to the Panchayath who issued the stop memo. The common well is situated on the south-west portion of the project and the Respondents are trying to divert water from the well to the retirement home. For avoiding the external interference, construction of the boundary wall for the property is highly necessary but the security cabin area is still under the possession and control of the Respondents. Despite collecting 24 lakhs from the plot owners for the maintenance of the common area, the Respondent have neither done any proper maintenance nor furnished any audited accounts with respect to its expenditure. The Respondents are obliged to hand over the amount collected for common area maintenance to the account of the Association. After registration of the Association, the Complainants officially

informed the Respondents about the formation of the Association of plot owners of the project through a registered letter dated 13/09/2021 and requested to handover the common areas of the project to the association. Even after receiving the notice, the Respondents have not taken any steps to comply with any of the demands. The 2nd respondent is still dumping food and other waste materials belonging to around 200 inmates and staff within the project premises and the 3rd and 4th Respondent are silently permitting the 1st Respondent to encroach the common area of the Association. The relief sought by the Complainants are *(i) to direct the Respondents to hand over the common area of Vidhya Hills including security cabin area to the Complainant Association (ii) to direct the Respondents to do the activities such as providing security cabin and name board, compensation for the area lost, dismantle the labour accommodation, removal of excavated earth and waste materials dumped by the 2nd respondent, segregate vidya hills and Bless Homes Pvt Ltd premises by proper compound wall, restrain the 2nd respondent, the managing director of Bless Homes from further excavating at the boundary of Vidhya Hills, to handover the maintenance fund of Rs. 24 Lakhs, to repair the damaged roads and compound walls, to rebuild the recently failed canal side retaining wall adjoining the common well area, to provide overall layout drawings, panchayat permit for plot development, development certificate, drainage, and water supply, formal handover/transfer of ownership of the common area as they*

are obliged to do as the promoters of the project (iii) to direct the 1st Respondent to pay a reasonable compensation to the Association for allowing the Bless Homes Pvt. Ltd in the last 5 years for the unauthorized use of Vidhya Hills property and (iv) if the Respondents fail to do the said activities even after directions, the Complainant may be allowed to carry out any of the above said priority activities and realize the cost of proceeds with interest from the respondents and their assets. The copies of the Registration Certificate dated 08/09/2021 of the Association, the layout of the Vidhya Hills project attached with the sale deeds of the members of the Complainant, sale deed dated 04/05/2011, registered letter dated 13/09/2011, acknowledgment receipts, stop memo issued to the 1st Respondent by the Panchayat were produced by the Complainant.

3. The Respondents No. 2,3 & 4 filed preliminary objection to the Complaint along with I. A. 293 of 2021 for hearing the question of maintainability & I. A. 294 of 2021 for deleting the name of the 1st respondent. The Respondents submitted as follows: The Complaint is not maintainable either in law or facts and the formation of the Complainant Association itself is illegal and had no locus standi to file the Complaint. The Complaint is bad for misjoinder of parties and the 1st respondent is shown as Vidhya Hills, a partnership firm represented by its managing partner, Jijo Antony. But there is no such entity and the Complainant has purposefully made the first Respondent in the party array, falsely

making the second Respondent its representative. The reliefs sought by the Complainant are not coming within the purview of the Authority and purely come within the sphere of civil court. The Respondents were the owners of the land and during 2008, they planned to sell the property and searched for prospective buyers. As there were no buyers to purchase the whole extent of the property, they decided to divide the property into 48 plots and sold the entire property from 2008 to 2012, and the last sale deed was executed in the year 2012. The entire property has been sold to different purchasers and they have taken possession of the said plots then and there and these Respondents have no interest in the said property sold to the respective parties. The selling was done much before the enactment of the Act, 2016 and hence there was no requirement for registration under the Act. They never offered the construction of any security cabin or displaying of any board and, the respondents have given the name Vidhya hills plots for identifying the property. The Respondents prayed to hear the question of maintainability as a preliminary issue before proceeding further with the Complainant.

4. Thereafter the Complainant filed objection to the maintainability petition along with I. A. 2/2022 for amending the Complaint. The I. A. 2 of 2022 was filed to remove the 1st Respondent name and to include the name as 'Vidhya Build Arch Pvt. Ltd' whose Managing Director is the 4th Respondent. The

Complainant submitted in the statement of objection as follows: The petition is not maintainable and the name of the 1st Respondent in the Complaint was entered because of the misrepresentation on the part of Respondent 2 to 4. The actual name of the company who is the promoter of Vidhya Hills was purposefully not incorporated in the title deed of the plot owners by the Respondent. The Respondents have admitted that they divided the property into plots by giving adequate facilities for the purchasers. When the development of land into plots is done for the purpose of selling all or some of the said plots and it includes the common areas with all easement, rights, and appurtenances belonging thereto is a real estate project and the person who develops land into a project for the purpose of selling to others all or some of the plots in the said project is a promoter. The Respondents have collected funds from the members of the Complainant for maintaining the common area amenities and the same has not been handed over to the Complainant. The responsibility of promoters extends till the execution of the conveyance deed of the common area to the Complainant Association. The project cannot be considered as complete without the formation of the association and the execution of the conveyance deed for the common areas in the name of the association. Without discharging the liability, the Respondent should not utilize the common area exclusively allotted to the members of the Complainant to other commercial purposes. The development Plan shown was with the security

cabin and recreation area and common pathways, but the Respondents are neglecting the said plan now. The Respondents wilfully suppressed the promoters company name 'Vidhya Build arch Pvt. Ltd.' The Respondents have no right to indulge any third party to enjoy the common amenities specifically and exclusively allotted to the Complainant members as per registered deeds of the plot owners. The Respondents have no right to put waste in the plots and make inconvenience to the other plot owners and it was prayed to dismiss the petition with cost.

5. The Respondents filed an objection to the amendment petition and an additional objection to the Complaint and submitted as follows: The formation of the Complainant association is illegal which has no locus standi to file the Complaint and the Company by name Vidhya Buildarchs Pvt Ltd. has no connection with the sale of plots mentioned in the Complaint. The Respondents did not collect any maintenance amount as alleged. The sale of plots has been given right to each plot owner in the common areas, ways, and other common facilities. The Respondents cannot sell these rights to any association which will be illegal and since the entire rights have already been given, there is no requirement for executing any separate conveyance deed for that purpose. There is no merit and bonafide in the said petition which is liable to be dismissed with cost to the Respondents. The Respondents, in the additional

objection, further submitted that the first sale deed was executed in the year 2008 and the last sale deed was executed in the year 2012 from which it is proved that division of the plots and arrangement of common area and facilities have been completed before the execution of first sale deed itself. As the Building Rules in Vazhakkulam grama panchayat was implemented only on 14.02.2011, much after the division and started sale of the plots, there was no requirement for obtaining any development permit, NOC and development certificate from the Panchayat during 2008. The details of the purchasers were mentioned in the Encumbrance Certificate and the entire sale of the plots has been done in the individual capacity of the 3 owners who are the Respondents No. 2,3 & 4 and there was no involvement of any company or partnership firm in the development and sale of the above said plots. The Respondents have given entire rights in the specified plot and common facilities to the said purchasers which is specifically stated in the sale deeds according to which the maintenance expenses for the common facilities have to be met by the plot owners jointly. It was again submitted that as all the plots were sold much before the enactment of the Act 2016, there is no registration required under the Act. There was no ongoing project at the time of commencement of the Act or thereafter and there is no jurisdiction to entertain the Complaint of this nature and hence the Complaint is to be dismissed. The copies of sale deeds, copies of the application submitted to the grama panchayat and the

encumbrance certificate are produced by the Respondents along with the additional objection.

6. The Complainant filed an affidavit on 06.09.2022 stating that as per the sale deed executed in the name of the members of the Complainant Association, the Respondents agreed to provide various common facilities as part of the project. The sale deed clearly mentions about the internal roads, common roads, and common areas are intended for the use of the persons purchasing the plots in Vidhya Hills as per the sketch produced which is also a part of the sale deed. From the recitals in the sale agreement, it is manifestly evident that the Respondents conceived a real estate project in the name and style Vidhya Hills and developed the property, and sold it to different persons who are members of the Complainant Association. The Complainant further submitted that it is stated that the purchaser shall join as member of the residential association to be formed in Vidhya Hills and shall share proportionately the common expenses for maintenance of the common areas and shall not cause any inconvenience to the owners of other plots and in case any default on the part of the purchaser, the plot purchased by him shall be liable for all such loss and costs caused by the act of the purchaser. As per the land tax receipt dated 5.05.2022 received by the Association under RTI Act from the Vazhakullam village office, the Respondent/promoters still hold land of 60.35Ares (149 cents)

which are the common areas of the project and the project cannot be considered as completed without the formation of the Association and the execution of the conveyance deed for the common areas in the name of the Association. The Complainant submitted that the plot development also comes under section 3 of the Act 2016 and is liable to be registered and the contention to the contrary raised by the Respondents by filing the preliminary objection is unsustainable under law. It is true that the Kerala Panchayat Building Rules 2011 came into force with effect from 14/02/2011 only, but before that the Kerala Municipality Building Rules came into force with effect from 01/10/1999. The Government of Kerala, by issuing the notification dated 06/06/2007 made applicable the provisions of the Kerala Municipality Rules to all the Panchayat in the State of Kerala. As per the said rules, the Respondents are bound to obtain the development permit before developing a property. The encumbrance certificate shows that 16 deeds were after 14.02.2011, out of which 10 are in favour of the members of the Association and 6 are in favour of the spouse of Respondent No.2. The development permit, NOC, and completion certificate from the panchayat are applicable for this project. But the promoters have not applied for the same by regularizing the land development including common areas. The Complainant submitted that even after 10 years, the facilities required to be provided as part of the

Real Estate project is not yet provided by the Respondent and the relief sought for by the Complainant in the Complaint be allowed.

7. The Complainant filed an I. A. No. 212/2021 for an injunction, restraining and prohibiting the Respondents from using the entrance gate of the Project and its internal roads by 1st Respondent's owned company and from dumping the waste and other materials in the Vidhya Hills plots and also from interfering with the work of putting the name board of Vidhya hills by the petitioner/complainant. The Respondents were directed by the Authority on 28/02/2022 to produce the list of all allottees, sale deed details, Development permit/ NOC obtained from the concerned authorities, and Development certificate to prove that the project is completed and the case was posted for hearing on the question of maintainability on 25/03/2022. When the case came up for hearing on 25.03.2022 on the issue of maintainability, the Counsel appeared for the Respondent was not ready to argue the case and hence the Authority vide interim direction, directed the Respondents again to produce the list of all allottees, sale deed details, Development permit/ NOC obtained from the concerned authorities, and Development certificate related to the project in form of a detailed affidavit along with their argument notes. But the Respondent failed to produce the documents or details as directed and the counsel representing the Respondent sought further time for submitting the same. Then show-cause notice was

issued to the Respondent/Promoter on 02.06.2022 for not registering the project and violating Section 3 of the Act 2016. The Authority also issued notices under Section 35(2) of the Act 2016, to the local Authority, Vazhakulam Panchayath and Town Planner, Ernakulam to appear with all the documents showing the status of the plot development permits, if any, issued to the project in question. But the Vazhakulam Panchayath did not respond and the Town planner, Ernakulam submitted an interim report stating that no documents are available as on date in this regard.

8. The preliminary issue of maintainability of the above Complaint came up for hearing this day. We heard both parties and their counsels and perused the documents submitted by the parties.

9. The learned counsel appearing for the Respondents argued that there was no firm as arrayed as Respondent No.1 but the Respondents No. 2-4 were owners of 3.292 hectors of land comprised in R. S No. 260/2,3, 261/1,2,3,4 & 262/5,6 of Vazhakkulam village, Kunnathunadu taluk of Ernakulam district and the entire property was divided into plots and sold during the period 2008 to 2012 and much before the execution of the first sale deed on 2008 division of plots was completed and the last sale deed was executed in 2012 when the real estate business of the Respondents 2-4 had been completed.

The copies of first and last sale deeds referred are produced and marked as Exhibits B1 & B3. He contended that the entire property has been sold between 2008 and 2012 much before the enactment of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as "the Act 2016"] and hence the project need not be registered before the Authority as there was no ongoing project at the time commencement of the Act or thereafter. According to the learned counsel for the Respondents 2-4, his clients never offered construction of any security cabin or display board and the name "Vidhya Hills" plots was given only for the sake of convenient identification of the property. According to him, since the sale of the entire property has been completed much before the enactment of the Act 2016 and establishment of the Authority, this Authority has no jurisdiction to entertain the above complaint. He argued that the Respondents have fulfilled all the commitments made in the sale deed and no other plot owners raised such allegations and there was no legal requirement for taking any Development Permit or Completion Certificate and no proceedings were initiated against them by any Authorities for any violations. The learned Counsel for the Respondents raised contentions that though the Municipality Building Rules 1999 was made applicable to all the Panchayaths from 06.06.2007, it was not implemented in Vazhakkulam Grama Panchayath and even the Kerala Panchayath Building Rules made applicable to Vazhakkulam Grama Panchayath only on 11.02.2011. Copies of application given

under RTI Act to Vazhakkulam Panchayath and the reply received in this regard are produced by the Respondents' Counsel which are marked as Exhibits B4 & B5. The Counsel also submitted that even before 2007, formation of plots has been completed and sale of the plots had been started and there was no legal requirement for taking Development Permit now and the opinion of the Town Planner is not relevant in this case as the plots have already been handed over to the parties and this Authority has no jurisdiction to adjudicate this complaint. The Respondents admit that when a third party encroached a portion of the land envisaged for 1-meter-wide landscape, the Respondents intervened and had made a suggestion in the settlement proposal. According to them they have provided all the facilities and amenities offered in the sale deed executed in favour of each plot owner. The learned counsel for the Respondents also took contention that the formation of the Complainant association is illegal which has no locus standi to file the present complaint. He revealed that some other plot owners in the Vidhya Hills have also formed another Association in the name of Vidhya Hills Welfare and Development Society, Vazhakkulam with Registration No. EKM/TC/25/2023 and majority of land in the Vidhya Hills is in the name of members of the said Association. Copy of Registration Certificate of the said Association is produced and marked as Exhibit B7.

10. The learned Counsel appearing for the Complainant Association argued that the Respondents who were the joint owners of 200 Ares of landed property started developing it since 2008 into a real estate project by name 'Vidhya Hills' and divided into 48 plots with common facilities such as roads, recreation area, lawn etc. which are specified in detail in each sale deed. The copy of sale deed dated 17.06.2011 executed in favour of Mrs. Mariamma Rajan, one of the members of the Complainant Association is produced to prove the contention of the Complainants and marked as Exhibit A8. The Counsel for the Complainants invited our attention to page 4 & 5 of the Exhibit A8 Sale Deed and in Page 4 of the said Deed states that "*Whereas the Vendors herein have, including other items of properties belonging to them, divided the property into plots of different areas under the common name of 'Vidhya Hills' and provided common internal roads, common areas; the common roads and common areas are intended for the use of the persons purchasing the plots in 'Vidhya Hills'*". Similarly, in page 5 of the Exhibit A8 Sale Deed, it states that "*2.75 Ares of property is coloured red in the sketch, and private roads are coloured yellow, recreation area is coloured orange common well is coloured in blue and the landscaping area is coloured in green and the said plots having 2.75 Ares is marked as plot No. 43 in the sketch attached herewith.* According to the learned Counsel for the Complainants, from the recital of the sale deed, it is manifestly evident that the Respondent conceived a real

estate project in the name and style of 'Vidhya Hills' and sold the plots to the members of the Complainant association and therefore the contentions of the Respondents that it is not a real estate project are absolutely false. The arguments of the learned Counsel appeared for the Respondents that since the sale deeds are already executed the said project is no more a real estate project and therefore this Authority does not have jurisdiction to entertain the complaint were also strongly objected by the learned counsel for the complainants stating that as per Section 2(zn) of the Act 2016, the development of building and selling plots or building which includes common areas and other development works are included in the definition of a real estate project and the completion of the real estate project is only after completion of all the works in connection with the said project and on obtaining the completion certificate from the local authority and hence the execution of sale deeds does not exonerate the Promoters from carrying out the pending works in the real estate project. For the Complainants it was argued that unless and until the amenities required to be provided are not provided, the project cannot be said to be completed and the development Plan shown was with the security cabin and recreation area and common pathways. The contention raised by the counsel for the Respondent during the course of argument that "the Kerala Panchayath Building Rules came into force only in 2011 and therefore there was no requirement for the Respondents to apply for and obtain the development permit for

developing the property” was categorically objected by the Complainants’ counsel pointing out that the Kerala Municipality Building Rules 1999 came into force with effect from 01.10.1999 and as per Rule 5 of it, “every person other than the Government who intends to develop or redevelop any parcel of land shall apply to the Secretary in the prescribed format along with plans and documents to prove ownership of land.” Moreover, Government of Kerala, vide gazette notification dated 06.06.2007, has made applicable the provisions of Kerala Municipality Building Rules 1999 to all the panchayaths in Kerala with effect from 06.06.2007. The copy of said notification is also produced by the Complainants and marked as Exhibit A11. The copy of the reply given by the Vazhakkulam Panchayath under RTI Act confirming that Kerala Municipality Building Rules 1999 were applicable to Vazhakkulam Panchayath with effect from 06.06.2007 is also produced and marked as Exhibit A10. The learned counsel for the Complainants asserted that the said project was conceived and implemented after the notification dated 06.06.2007 and hence the Respondents could develop the property only after obtaining the Development permit from Vazhakkulam panchayath with the concurrence of the District Town Planner. The learned counsel for the complainants submitted that the Complainant Association have approached the office of the District Town Planner and Vazhakkulam Panchayath and both the offices advised that a development permit can still be applied for jointly by the

Respondents/Promoters and the plot owners together under Rule 31 of the Kerala Panchayath Building Rules 2019. The Complainants also contended that they are ready to cooperate with the Respondents by giving sufficient extent of land required for the access in accordance with the building rules. The Complainants also submitted that though the responsibility of the Respondents to form an Association has been stipulated in the Sale Deed, they have not taken any steps to form the Association. The copy of the web page of Vidya Buildarchs Pvt. Ltd., who became the 1st Respondent as per the order in IA No. 2/ 22, is also produced by the Complainants and marked as Exhibit A4. The copy of the “Vidhya Hills” layout plan signed by Respondents No. 2,3 &4 is produced and marked as Exhibit A3. The Complainants produced true copy of the letter sent by them to Respondents 2,3, &4 on 13.09.2021 informing that the Association has been formed on the basis of the discussion between them and the said Respondents and requesting to hand over the project formally to them after completing the pending works detailed in the said letter which is marked as Exhibit A5.

11. With respect to the issue of maintainability of the above complaint raised by the Respondents herein, the Authority has to examine the point “Whether the development of land into plots by giving a name “Vidhya Hills” by the Respondents herein is a real estate project which comes under the purview of the Real Estate (Regulation & Development) Act 2016 and required to be

registered under Section 3 of the Act 2016?”

12. According to Section 2(zn) of the Act 2016, the *"real estate project"* means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.” Hence it is clear that the development of land into plots for sale with common areas and easement rights and appurtenances belonging thereto will come under the definition of the term “real estate project”. Then Section 3 (1) of the Act 2016 stipulates that *“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”*. The provisions under Section 3 of the Act 2016 came into force on

01.05.2017. Section 3 deals with prior registration of real estate project with the Real Estate Regulatory Authority. Sub section (1) of Section 3 interdicts the promoters from advertising, marketing, booking, selling, offering for sale or inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority. Going by the mandate of the 1st proviso, projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, are bound to apply for registration. As pointed out by the learned counsel appeared for the Complainants, the Kerala Municipality Building Rules 1999 came into force with effect from 01.10.1999 and as per Rule 5 of it, every person other than the Government who intends to develop or redevelop any parcel of land shall apply to the Secretary in the prescribed format along with plans and documents to prove ownership of land. According to Rule 5(1) of the Kerala Panchayath Building Rules 1999, “Every *person other than a Central or State Government Department who intends to: - (a)develop or redevelop any parcel of land by subdividing into plots shall apply in writing to the Secretary in the form in Appendix A3*” and as per Rule 6(17) of the said Rules 1999, “*The Secretary shall, after considering the application, plans and drawings and other documents, issue development permit in the form in Appendix B1 .*” The Rule 20(2) specifies that “*The*

Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix F1 along with a copy of the plans duly signed by the Secretary, not later than 15 days from the date of receipt of the completion certificate.” Here in this case, the Respondents have not even procured any development permit for the said development in compliance of Rule 5 of the Kerala Panchayath Building Rules 1999 and the “Development Certificate” showing completion of the development according to Rule 20(2) of the Kerala Panchayath Building Rules 1999. Exbts. A10 & A11 would reveal that the Kerala Municipality Building Rules 1999 were applicable to Vazhakkulam Panchayath with effect from 06.06.2007. At this juncture, we have to consider the contentions of the Complainants in the light of the encumbrance certificate that 16 sale deeds were executed after 14.02.2011, out of which 10 are in favour of the members of the Complainant Association and 6 are in favour of the spouse of Respondent No.2. In view of the above and in the light of Exhibit A10 & Exhibit A11, it is clear that the Respondents/Promoters were bound to obtain Development Permit from the local Authority. It is unfortunate that they have not applied for the same even on later stage by regularizing the land development including common areas. If they had obtained development permit, they could have obtained ‘Development

Certificate' from the local Authority showing the completion of the plot development. Similarly, the Respondents/promoters also ought to have executed proper agreements for sale with the allottees of plots. Even though the Complainants have mistakenly used the word "agreements" in place of "sale deeds" in their pleadings, it has been clarified by the Counsel at the time of hearing that no agreements have been executed between the parties. After hearing both sides and perusing the documents, it is clear that the Respondents/Promoter have shrewdly avoided execution of agreements and included all the clauses supposed to be inserted in the agreement for sale, in the sale deeds executed in favour of the Complainants/allottees. The members of the Complainant Association who appeared in person submitted that being legally illiterate persons, they were not aware of the provisions of law such as obtaining a development permit for the plot development or executing agreements for sale inserting the clauses with respect to the promises from the Promoters. Anyhow, the Respondents/Promoters, after having committed such violations of laws cannot urge for any benefit out of it as they did in this case. In this context, it is relevant to quote the maxim "*nullus commodum capere potest de injuria sua propria*" which means "*no man can take advantage of his own wrong.*" In *Devendra Kumar vs State of Uttaranchal & Ors.*: 2013 (3) KLT (Suppl) 62 (SC): (2013) 9 SCC 363: AIR 2013 SC 3325, it was held by the Hon'ble Apex Court that "*a person having done wrong*

cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation.” According to the learned counsel for the complainants, when the Complainant Association approached the office of the District Town Planner and Vazhakkulam Panchayath, both the offices advised that a development permit can still be applied jointly by the Respondents/Promoters and the plot owners together under Rule 31 of the Kerala Panchayath Building Rules 2019. It is also to be noted that the Complainants are still ready to cooperate with the Respondents and release sufficient extent of land required for the access as per the building rules.

13. In page 4 of the Exhibit A8 Sale Deed it states that *“Whereas the Vendors herein have, including other items of properties belonging to them, divided the property into plots of different areas under the common name of ‘Vidhya Hills’ and provided common internal roads, common areas; the common roads and common areas are intended for the use of the persons purchasing the plots in ‘Vidhya Hills’”* and in page 5 of the Exbt. A8 Sale Deed, it states that *“2.75 Ares of property is coloured red in the sketch, and private roads are coloured yellow, recreation area is coloured orange common well is coloured in blue and the landscaping area is coloured in green and the said plots having 2.75 Ares is marked as plot No. 43 in the sketch attached*

herewith". Exhibit A8 sale deed also clearly reveals that the Respondents had envisaged it as a real estate project by providing common areas and giving the name "Vidhya Hills". Moreover, the Respondents themselves state that "they have provided all the facilities and amenities 'offered in the sale deed' executed in favour of each plot according to which the maintenance expenses for the common facilities have to be met by the plot owners jointly" from which it is revealed that they have offered common facilities to the allottees/complainants but tactfully evaded from executing proper agreements with the allottees. Anyhow, an 'offer' is not supposed to be made through sale deed but in this case, proper agreements for sale could have been executed by the Respondents/promoters in favour of the allottees/Complainants in accordance with the provisions of the law. Surprisingly, the clauses/terms of the Exhibit A1 sale deed, resemble the usual terms being inserted in an agreement for sale in a real estate project. Likewise, the statement of the Respondents that "when a third party encroached a portion of the land envisaged for landscape the Respondents had intervened and made a suggestion in the settlement proposal" also indicates that they are the promoters of the said project. Exhibit A4 web page of the 1st Respondent is an advertisement of sale of house plots in the project "Vidhya Hills". In view of these facts, it can be concluded safely that the project in dispute comes under the definition of a 'real estate project' as per the Act 2016. To examine whether it

was an 'ongoing project' as on the date of commencement of the Act 2016 which comes under the purview of Section 3 of the Act 2016, it is worthwhile to refer some relevant parts of the judgement of the Hon'ble Apex Court in M/s. Newtech Promoters and Developers Pvt. Ltd v. State of U.P. & Ors. A three Judges Bench of the Hon'ble Apex Court in M/s. Newtech Promoters and Developers Pvt. Ltd v. State of U.P. & Ors. have made a detailed probe to various provisions of the Real Estate (Regulation and Development) Act, 2016 and the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 and considered the question whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India and paras 37, 41 & 54 are relevant to be extracted which read thus:

Para 37: "Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and

to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

Para 41: The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

Para 54: From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

14. Hence, it is evident that the criteria to be considered in this context is not the completion of sale of plots/units in the project but completion of the project in its entirety as promised to the allottees and only after completing the project in all respects as promised to the allottees and handing over the common area to the Association of allottees, the Promoter can be left, absolving from his obligations. Here the Respondents failed to produce any completion certificate to substantiate their claim that the project was completed before the Act, 2016. So, the arguments of the Respondents that the entire property has been sold between 2008 and 2012 much before the enactment of the Act 2016 and hence the project need not be registered before the Authority are not legally maintainable. The contention of the complainants that after 14.02.2011, 6 sale deeds got executed in favour of the spouse of Respondent No.2, is corroborated by the entries in the Exhibit B6 encumbrance Certificate and the statements of the Respondents in their pleadings that “majority of project land is owned by the members of the newly formed Association.”

15. From the documents placed on record by both the parties, it is clear that the project envisaged by the Respondents was a Real estate project having all the features of a project comes under the Act 2016. Here, the Respondents have collected certain amount from each allottee towards maintenance of the common area which is the usual practice followed by the


Promoters of such real estate projects. In the Exhibit A8 sale deed, it is stipulated that *“the Purchaser shall join as member of the residential association to be formed in “Vidya Hills” and share proportionately the common expenses for maintenance of the common area and shall not cause any inconvenience to the owners of other plots. In case of default on the part of the Purchaser, the plot purchased by him shall be liable for all such loss and costs caused by the act of the purchaser.”* If it is merely sale of plots to different individuals no need of such an initiative from the part of the Respondent for formation of an Association of allottees for maintaining the common area but here, apart from the Complainant Association, the Respondents have initiated and formed one more Association, that too after filing of the above complaint and obtained Exhibit B7 certificate of registration. Anyhow, more than one Association is not legally permissible in a real estate project. Clause 8 of the Exhibit A1 sale deed stipulates that *“the Purchaser is entitled to use the common recreation area and common area intended for landscaping in common with owners of other plots in “Vidya Hills” for the purposes of such common area are intended for.”* The copies of the sale deeds, lay out and the web page of the 1st Respondent company clearly indicate that it is a plot development project and the common area was exclusively allocated for the allottees of plots in Vidya Hills. Moreover, the main grievance of the Complainants is that in the year 2012, the adjoining plot of

Vidhya Hills property owned by the Respondents under a different prior deed including around 3 acres of land was sold to a commercial establishment 'Bless Homes Pvt. Ltd.' owned by 2nd Respondent himself and given access rights to the said establishment to the common areas of the project in question without the knowledge or consent of the plot owners, whereas the registered deeds had clearly assigned rights of the common area only to the 'Vidhya Hills' plot owners. They allege that the "Bless Homes" is a paid retirement home and the 2nd Respondent is still dumping food and other waste materials belonging to around 200 inmates and staff, in the project premises and the 3rd and 4th Respondent are silently permitting to encroach the common area of the project in question. According to the Complainants, the 2nd Respondent had even put up a pig sly on 6 cents within the project property, claiming that the plot belonged to his staff but it was shut down under instructions of Vazhakulam Panchayat based on a Complaint from a neighboring plot owner. Therefore, such illegitimate activities, carrying out by the Respondents by holding majority of the project land and without handing over the common area to the Association of allottees, are not permissible and denying protection to be obtained under the Act 2016 to the Complainants/allottees herein is also not justifiable. So, the project in question and the Respondents/Promoters should be necessarily brought under the fold of the Act 2016.

16. In the light of the above facts and circumstances, I hold that the project in question will come under the definition of the term "on going project" which is required to be registered as provided under Section 3 of the Act 2016 and hence the above complaint is maintainable before this Authority.

Sd/-
Preetha P. Menon
Member

True Copy/ Forwarded By/Order


Secretary (legal)

APPENDIX

Exhibits on the side of the Complainant.

1. Exhibit A1-True copy of the Registration Certificate of the Association issued by the Registrar of Societies dated 08/09/2021.
2. Exhibit A2- True copy of the sale deed dated 04/05/2011 executed in favour of Sreekanth S
3. Exhibit A3-True copy of the layout of the Vidhya Hills Project attached with sale deeds executed with members of the Complainant Association

4. Exhibit A4- Copy of web page of Vidya Buildarchs Pvt. Ltd.,
5. Exhibit A5- True copy of the registered letter dated 13/09/2021 sent by Vidhya Hills Plot Owners Association to the Respondents.
6. Exhibit A6- True copy of the postal acknowledgment receipts.
7. Exhibit A7- True copy of stop memo dated 3-09-2021 issued by the Panchayath to the 1st Respondent
8. Exhibit A8- True copy of sale deed dated 17-06-2011 executed in favour of Mariyamma Rajan.
9. Exhibit A9- True copy of the application submitted under Right to Information Act to the Vazhakkulam Grama panchayath.
10. Exhibit A10- True copy of reply dated 07-11-2022 under RTI Act, from the Vazhakkulam Grama Panchayath.
11. Exhibit A11- True copy of notification dated 06-06-2007.
12. Exhibit A12- True copy of sale agreement dated 27-05-2011 executed with Joseph Jerome & Dolly Joseph

Exhibits on the side of the Complainant.

1. Exhibit B1 - Copy of sale deed No 1271/2008 executed in favour of Jaya Raman V. Iyer
2. Exhibit B2-Copy of sale deed No 3692/2011 executed in favour of Dolly Joseph.
3. Exhibit B3-Copy of sale deed dated 27-07-2012 executed In favour of Lija.
4. Exhibit B4-Copy of application dated 2-3-2022 submitted under Right to Information Act to Vazhakkulam Grama Panchayath.
5. Exhibit B5-Copy of reply under Right to Information Act by the Vazhakkulam Grama Panchayath.
6. Exhibit B6-Copy of Certificate on encumbrance on property.
7. Exhibit B7-Copy of registration certificate issued to Vidhya Hills welfare and Development Society dated 11-01-2023 by the Registrar of Societies.