



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 253/2021, 266/2021, 16/2022

Dated 22nd December 2022

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

Complainant in Complaint No. 253/2021

Ranjith Krishnankutty
Sreenilayam,
Koickal Bhagam,
West Kallada,
Peruvelikkara P.O
Kollam- 691500
[By Adv. Madhuraj. R]

Complainant in Complaint No. 266/2021

Bipin Vishnu Shinde
H No. ERA 045,
Near Karumbkonam Devi Temple,
Prathiba Nagar, Edavacode,
Sreekariyam, Trivandrum- 695017
[By Adv. Krishna Suresh]

Complainants in Complaint No. 16/2022

1. Vivekanandan,
Sivananda Vilasam, Aattipra Village,
Thiruvananthapuram- 695582



2. Ms. Chandini, D/o Savithri
Sivananda Vilasam, Aattipra Village,
Thiruvananthapuram- 695582
Represented by Power of Attorney
Holder Shri. Raveendran S/o Bhaskaran,
Rahul bhavan, Perayathukonam,
Challamcode, Nedumangad P.O.

Respondents

1. MPS INDIA HOLDINGS PVT LTD
Builders & Developers,
32/7 E, Chakrampilly Estate, NH Bypass,
Thammanam P.O,
Ernakulam- 682032
2. M P Shamsudeen
Chairman & Managing Director,
MPS Builders,
Mangadan Parmbath House,
Manalaya P.O Anamgad,
Perithalmanna, Malappuram – 679357
[By Adv S V Premakumaran Nair &
Adv Sreejith P.S]

The Complainants in complaints No. 253/2021 and 266/2021 and the counsel for the Respondents, Adv, Sreejith P.S attended the final hearing conducted virtually.

ORDER

Facts of the case in Complaint No. 253/21

1. The Complainant had entered into an agreement with M/s MPS Builders, the Respondents herein, for the construction and delivery of an apartment bearing No. 2A having 885 sq/ft in the project named “MPS Smart Homes” at Trivandrum as per the terms and conditions mentioned in the agreement of construction dated 04.01.2019. According to



the Complainant, though the agreement was signed, the original of the agreement was kept with the Respondent only. Based on the advertisements and promises given by the Respondent the Complainant had paid an amount of Rs 25,000/- on 12/12/2018 as an advance even before executing any agreement. The Respondents also had collected an amount of Rs 10,00,000/- from the Complainant as cash and that too was done before the execution of the agreement ie; on 29/12/2018 and after the execution of the agreement on 04/01/2019 the Complainant was asked to pay an amount of Rs 3,00,000/- and it was paid as bank transfer. The Complainant also submits that out of the total amount of Rs 13,25,000/- paid, the amount of Rs 10,25,000/- was taken from the Complainant even before execution of the any agreement and thereby clearly violated section 13 (1) of the Act.

2. According to the Complainant, through the agreement for sale and construction, the Respondent agreed to give an apartment No.2A having 885sq.ft constructed and handed over to the Complainant for a total consideration of Rs 23,85,950/-. The Respondents had promised to complete the construction and handover the flat within 24 months plus a grace period of 6 months from the date of obtaining the building permit; which was already over by January 2021 as the building permit was obtained in July 2018. According to the complainant, the agreement for sale and construction was for an apartment No.2A measuring 885 Sq.ft of super Built up area on the 2nd floor in the multi-storied building named "MPS Smart Homes" constructed in Schedule A property along with right to use common amenities and facilities described in the Annexure of the Agreement. The Complainant further submits that the delay caused on the part of the Respondents is critical and inexcusable and the fault on the part of the Respondent cannot be attributable to Covid -19 pandemic at all since no works had been done by them even before the lockdown in March, 2020.



According to the Complainant he had lost the opportunity to opt for another flat in the same locality for competitive prices; on account of the blocking of his money with the Respondent, which caused greater hardships to him. The Complainant also alleges that on an enquiry, it was known that the Respondents, instead of providing the flats by constructing the same along with the amenities as promised, are diverting the funds to other new projects to make profit out of this fund of the Complainant and other customers and thereby unlawfully enrich at the sweat of the customers. The Respondent is thus being culpably negligent in not providing flats with amenities and hence this complaint. The Reliefs sought by the Complainant are :- 1) An order directing the Respondent to complete the project and handover the flat to the Complainant along with the amenities as expressly and specifically promised by them as is evident in the brochures, advertisements and the agreement; 2) order the Respondent to pay the Complainant an interest at the rate of 18% of the total amount of Rs 13,25,000/- calculated from the date of payment to the Respondent thereof, as is more clearly stated in the calculation statement; and 3) order the Respondent to pay the Complainant an amount of Rs. 6,00,000/- (Six Lakhs Rupees only) Towards the violation of section 13(1) of the RERA Act.

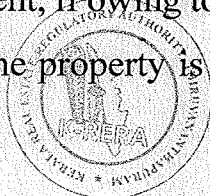
3. The Respondents filed written statement and admitted that they had lodged a project named "Smart Homes" at Kazhakkuttom near Techno Park and the project was a joint venture project with Mr. Vivekandan. The Respondent states that the project had obtained all necessary sanctions and plan was approved by the Trivandrum Corporation and all works up to earth level such as piling and setting underground pillars were already completed. Due to the Covid- 19 pandemic the workers from other states returned to their native place and work could not be proceeded with. The company intended to complete the work by 2021, but



for the last two years they could not carry on the construction due the reasons beyond their control. The Respondent assures further that the construction of the flats will be completed by January 2024 and all those who booked flats will get their flat by that time as agreed. The Respondents admit that for the benefit of customers the 1st Respondent had thought of entrusting the construction with one Augustin Chandy but as the arrangement with him was not a success it was dropped. All these were informed to the customers and there is no foul play in this regard and the customers including the Complainants gave consent for the transfer. The Respondent affirmed in the statement that they will complete the construction as early as possible and entrust the flat with the allottees provided they are ready to pay the balance sale consideration as per the agreement. Copy of Affidavit dated 04.04.2022. was submitted by the Respondent.

Facts of the case in Complaint No. 266/21

4. The Complainant has entered into an agreement with M/s MPS Builders, the Respondents herein, for the construction and delivery of an apartment bearing No. 7E having 945 sq/ft in the project named "MPS Smart Homes" at Trivandrum as per the terms and conditions mentioned in the agreement of construction dated 11.05.2019. As per Clause 18 of the said agreement, the Respondents have undertaken to ensure that the construction shall be completed within 24 months from the date of the agreement, according to which the project has to be completed as per clause 19 of the agreement, it was the duty of the builder to ensure handing over possession of the construction within 16 weeks after completion or after receipt of the entire payment made by the Complainant whichever is later. Further in the clause 20 of the agreement, if owing to any willful act and / or default of the builder, possession of the property is not given to the Complainant within



the commitment period, the client shall give intimation in writing to the Builder and from the date of such intimation by the builder the client shall be entitled to receive Rs.21.50 per Sq/mtr for the area of the apartment as liquidated damages till date of actual handing over of the possession from the date of receipt of intimation by the builder. The Complainant has paid a total amount of Rs. 15,40,016/- as on 12-07-2019 to the promoter. The construction has not been completed till date and by seeing the present stage of construction the Complainant reasonably apprehends further substantial delay in completion and handing over of the project. It is also submitted by the Complainant that he reliably learnt that the further construction of the apartment has been entrusted with one Mr. Augustin Chandy as Sub-Contractor as per Clause 20 of the agreement and the delivery will be completed only after further period of 3 years from the date of agreement. The extension of further 3 years in completion of the project would be prejudicial to the interest of the Complainant due to which the Complainant has to suffer financial losses and mental agony. The reliefs sought by the Complainant are:- 1)Direct the Respondent to comply with the duty vested upon them as per section 11(4) of the Act 2016 and to ensure that the apartment is handed over to the Complainant allottee within the time Schedule mentioned in the agreement or if the construction has been transferred to a third party, then a direction to deliver the property within a specific time as to be decided and monitored by this Authority.

5. The Respondents filed written statement and admitted that they had lodged a project named "Smart Homes" at Kazhakkuttom near Techno Park and the project was a joint venture project with Mr. Vivekandan. The Respondent states that the project had obtained all necessary sanctions and plan was approved by the Trivandrum Corporation and all works up to earth level such as pilling and setting



underground pillars were already completed. Due to the Covid- 19 pandemic the workers from other states returned to their native place and work could not be proceeded with. The company intended to complete the work by 2021, but for the last two years they could not carry on the construction due the reasons beyond their control. The Respondent assures further that the construction of the flats will be completed by January 2024 and all those who booked flats will get their flat by that time as agreed. The Respondents admit that for the benefit of customers the 1st Respondent had thought of entrusting the construction with one Augustin Chandy but as the arrangement with him was not a success it was dropped. All these were informed to the customers and there is no foul play in this regard and the customers including the Complainants gave consent for the transfer. The Respondent affirmed in the statement that they will complete the construction as early as possible and entrust the flat with the allottees provided they are ready to pay the balance sale consideration as per the agreement. Copy of Affidavit dated 04.04.2022. was submitted by the Respondent.

Facts of the case in Complaint No. 16/2022

6. The Complainants are the owners of 20.65 Ares of land in Attipra Village, Thiruvananthapuram Taluk comprised in Re-Sy No 284/11 and Sy/ No. 1270 of Attipra Village. The Respondents represented that they are the builders and developers of housing property and they have many housing projects both in Kerala and outside Kerala. Based on the representation, the Respondents approached the Complainants to develop the above 20.65 Ares of land into an apartment project under the name “MPS Smart Homes” and entered into a Joint Development Agreement with the land owners and M/s MPS India Holdings Pvt. Ltd on 03/05/2017 by which the promoters agreed to construct 8083.39 sq.m of built up area on the



aforesaid joint development project, on the understanding that the promoters will construct the apartments within 36 months from the date of agreement after obtaining development plan, and building plan approved by the Thiruvananthapuram Corporation. The promoter had undertaken that they will construct and handover the owner 27% of the saleable apartment area to land owner in consideration of owners transferring 73% of the area as builders constructed area with the right to sell the same to the prospective allottees/ buyers. Another agreement was executed on 30/08/2018 modifying the agreement dated 03/05/2017 with minor charges, the other terms and conditions remaining the same. Accordingly building permit No.ZAE/BA/282/2017 dated 26/07/2018 was obtained by the promoters from the Thiruvananthapuram Corporation for construction of 11 storeyed building consisting of Ground floor, first floor, floor upto 10th floor with a total plinth area of 8063.89 Sq.m intended to be sold to prospective buyers of apartment units.

7. As per the joint development agreement, the promoters/builders have been given absolute right to enter into agreement with the prospective buyers/ allottees for construction of individual apartment and sale of proportionate undivided share on the land. Pursuant to the joint venture agreement, the promoters have agreed to give to the owners, an amount of Rs 75,00,000/- on three installments of Rs 25,00,000/- within six months from the date of agreement. The promoters have also agreed to give Rs 30,00,000/- for acquiring additional extent of 1.25 cents for widening the access road to the existing road, the said amount to be adjusted on the value of apartments agreed to be allotted to the land owners. The development of the entire project shall be at the entire cost, expenses and risk and on the entire account of the builder. The promoter advertised that the project is for sale to the prospective buyers of individual apartment and based on the



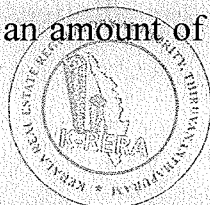
applications received from the prospective buyers the builders have agreed to construct and sell 24 apartments by collecting advance amount on the promise that they will construct and handover the apartments. M/s MPS India Holding private limited have entered into an agreement with one Mr. Augustin Chandy to transfer the project to him along with the existing allottees. The Complainant also submitted that the Authority had issued an order dated 21-04-2021 to transfer the project MPS Smart Homes from MPS India Holdings Private Ltd to Mr. Augustine Chandy even before registering the project with the Authority and the order was cancelled by the Authority upon noticing that the project is not registered with the Authority and directed the Respondent/promoter to register the project as mandated in the Act. Vide order dated 6-12-2021. Now the project will not take place due to the lack of initiative on the part of the builder and they have diverted the money collected from the applicants. The joint development agreement also is no more valid and binding on Complainants. The Builders/ promoters have cheated the owners and the allottee by collecting advance amount without the intention to construct the apartments. Hence this complaint. The reliefs sought by the Complainants are: -1) Direct the Respondents to register the project with RERA within a fixed time by the Authority and complete the construction within 18 months from the date of registration and handover physical possession of 27% of the saleable constructed area to the Complainants after obtaining occupancy certificate from the corporation of Thiruvananthapuram, 2) Direct the Respondents to pay to the owners of land compensation at the rate of Rs 1,00,000/- per month till the project is completed and physical possession of 27% built up area is handed over to the owners of the land. In case the promoters/Builders fail to register the project with RERA after complying the provisions of RERA Act and Rules within the time stipulated by the Authority, direct the Builder to refund the advance amount collected from the allottees with interest, 3) Direct the



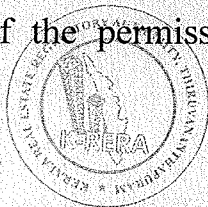
promoter to deposit the advance amount collected from the allottees in a separate bank account to be opened for the purpose and withdraw the amount only for construction depending on the progress of work on need based and Grant an order of Injunction against the Respondents from entering the property and do any construction activity till the project is registered with RERA and amount collected from the allottees are deposited with designated Bank account.

8. As the above 3 Complaints are related to the same project developed by the Respondent/Promoter, the cause of action and the reliefs sought in these Complaints are almost the same, the said Complaints are clubbed and taken up together for joint hearing. The Authority heard the counsels for all the complainants and the Respondents and gave careful consideration to the submissions and perused the material documents available on record.

9. The documents produced from the part of the Complainant is marked as Exbt.A1 to A11 and the documents produced from the part of the Respondents are marked as Exbt.B1. The copy of the "agreement for construction" produced by the Complainant in complaint No. 253/2021 is not a properly executed/ signed document and hence it cannot be accepted on record. The 1st respondent had filed statement in which nothing has been mentioned about the agreement executed between him and the complainant. Anyhow the copy of the said agreement for construction dated 04-01-2019 produced by the complainant shows that the Respondents had agreed "to complete the said construction within 24 Months after obtaining the building permit together with a grace period of six months subject to the client fulfilling his obligations as per the agreement". It is noted seriously that in the case of complaint No.253/2021 the Respondent/promoter had received an amount of Rs 13,25,000/- from the complainant,

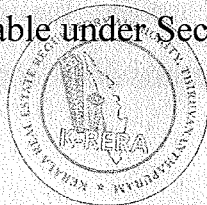


without even executing a proper agreement for sale that too after the Real Estate (Regulation and Development) Act, 2016 came into force. Sec 13 of the Act ,2016 specifies that “(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed”. Rule 10 (1) says that “for the purpose of sub-section (2) of section 13, the agreement for sale shall be in the form in Annexure ‘A’”. It is also noticed that in the case of the other 2 complaints also, the agreement for construction with the complainants executed after the Act 2016 came into force, are not in the prescribed format as mentioned above and these agreements as well as the Joint Development agreement executed between the promoter and the landowners are not registered, though they are mandatorily registrable as per the Registration Act. We also feel it essential to mention here that the complainants/allottees in these cases also should have been more cautious while transferring the amounts before executing an agreement for sale in the proper manner, and registering them as per the law. Exhibit A1 is the Joint Development Agreement produced by the complainant dated 03-05-2017 executed between the complainants and the 1st respondent represented by the 2nd Respondent. Exhibit A2 is the Modified Joint Development Agreement produced by the complainant dated 03-06-2018. As per the agreement, the builder had agreed to allot 27% of the total super built up area of the permissible total super built area of being



sanctioned by the appropriate Authority in in the multi-storied building “MPS Smart Homes”, to be constructed in the said property with the specification and amenities to the land owners. The 1st Respondent had agreed to complete the said construction within 36 Months and if the promoter fails to complete within the time stipulated the owners will grant extension of 6 months period for the completion as a grace period. As per Clauses 18 and 19 of the Joint Development agreement, the Builder, the Respondent herein, undertakes that *“the construction shall be completed within 24 months from the date of the agreement with a grace period of 6 months and to hand over possession within 16 weeks after completion or after receipt of the entire payment whichever is later.”* Copy of Agreement for construction dated 11.05.2019 executed by the Complainant in complaint No. 266/2021 and the Respondents is produced by the Complainant and got marked as Exhibit A3. The Schedules C & D annexed to the agreement clearly shows the details of apartment booked, its specifications and the common amenities offered to the Complainants. The copy of bank account Statements is also produced by the Complainants which is marked as Exhibit A9. The total amount of consideration is shown as Rs. 37,25,0404/- According to the Complainant in complaint No. 266/21, he paid 15,40,016/- out of the said total amount to the Respondent as on 12.07.2019 towards the performance of the Respondent as per the terms of agreement.

10. During the initial hearing itself, conducted in the above Complaint Nos. 253/2021 & 266/2021 on 17.01.2022, the Counsel appearing for the Respondent admitted that the project was intended to be completed by 2021 but for the last two years they were not able to carry out any construction. Hence, he sought time for completion of the project till January 2024. As it was noticed on that day that the said project is an ongoing project registerable under Section 3 of the Real Estate (Regulation



and Development) Act, 2016, the Authority vide interim order dated 17.01.2021, directed the Respondent/promoter to register the project within 15 days on the receipt of said order. It was also directed to submit an affidavit showing the details of works to be completed and the date on which the same shall be completed and in the meanwhile to convene a meeting of all the allottees and explain the program for completion of the project. Even though the promoter has registered the project in compliance of direction of this Authority, it was noticed that no details have been uploaded by them in the web portal as prescribed by the Act and Rules and it was also found that no meeting of the allottees was conducted as directed through the interim order and the statement dated 17.01.2022 was filed by them without sufficient details. The Counsel for the Respondent submitted during the next hearing that formation of Association is not possible as the majority of units have not been booked so far. In view of the said situation, the Authority, vide interim order dated 29.03.22, directed the Respondent No. 2 to furnish all details of the project such as building permit details, number of allottees, amounts received from allottees, present stage of construction, remaining works and amount required to complete the project, etc. in the form of an affidavit within 15 days from the date of receipt of the order. He was also directed to show specifically the scheme for completion of the total project with clear milestones for completing each work and a fixed time schedule for completion and handing over the project as a whole. In compliance of said direction, the 2nd Respondent submitted an affidavit dated 04.04.2022 which is marked as Exbt. B1 in which it is shown that the building permit is renewed up to 25.07.2026 and out of total 65 units 24 are sold out and an amount of Rs. 1,53,53,517/- has been received from 24 allottees. It is also stated that 7 allottees cancelled their bookings and an amount of Rs. 13,27,112/- has been refunded and an amount of Rs. 2,99,81,696/- has been expended in total. According to the said affidavit, only the piling works have



been completed in the project and amount required to complete the project is approximately Rs. 18,95,82,955/-. The Respondents have not furnished any detailed completion plan/scheme in the said affidavit as directed by this Authority.

11. As far as the project in question is concerned, earlier the Authority received a joint application dated 20.02.2021, from the Respondent/Promoter and one Mr. Augustine Chandy for according sanction under Section 15 of the Act 2016 to hand over the project to one M/s Apstone Infrastructure Pvt. Ltd., represented by Mr. Augustine Chandy who also conveyed thereby his willingness to take over the project. The Respondent/Promoter submitted details of consent obtained for the transfer from 16 out of total 24 allottees as per the conditions prescribed under section 15 of the Act 2016. Even though the Authority had given approval for the said transfer, vide order dated 21.04.2021 copy of the which is produced by the complainant and marked as Exhibit A5, on the basis of consent of majority of allottees, it has been recalled later on 06.12.2021, copy of the said order is also produced and marked as Exhibit A6, when it came to notice of the Authority that the Respondent/Promoter has failed to complete the registration of the project under Section 3 of the Act 2016 and neglected the orders of this Authority in this regard.

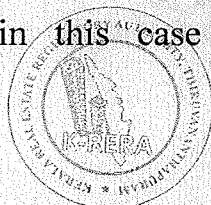
12. Thereafter the project got registered under section 3 of the Act, 2016, vide registration No. K-RERA/PRJ/TVM/157/2022, with validity up to 25/07/2026. Then the Respondent/Promoter submitted a fresh application for approval of the Authority to transfer the project to another firm named M/s Apstone Infrastructure Pvt. Ltd. As per Section 15 of the Act 2016 along with consent of 2/3rd majority of allottees and the Authority vide order dated 21/12/2022, given approval to transfer the project 'MPS



Smart Homes' in favour of M/s Apstone Infrastructure Pvt. Ltd., subject to the conditions stated therein, as per section 15 of the Act, 2016.

13. Apart from the assurance made in the written statement by the Respondents/Promoters that they will complete the project by January 2024, during the final hearing the Counsel appeared for the Respondents reiterated the same and pleaded for granting time up to 30.01.2024 for completing the project in toto and handing over it to the allottees including Complainants as promised to them as per the terms of the agreements. The Complainants also agreed to grant time up to 30.01.2024 to the Respondents to complete and hand over the project.

14. With respect to the 2nd prayer of the Complainant in Complaint No.253/2021 with regard to claim of interest for delay, the Authority cannot consider it in the absence of a properly executed agreement for sale. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that "*if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed*". But in this case the Complainant failed to submit a



signed/properly executed agreement with the Respondent/Promoter. Hence the above Complainant can approach the Authority afresh with necessary documents to substantiate his claim.

15. Hence on the basis of the confirmations and undertakings by the Respondents and invoking Section 34(f) & 37 of the Act, this Authority hereby issues the following directions: -

1. The Respondents/Promoters shall complete the project "MPS Smart Homes" at Kazhakuttam, Thiruvananthapuram in all respects as promised to the Complainants herein and hand over it to them along with all statutory sanctions and approvals and other documents pertaining to the said project **on or before 30.01.2024** without fail.

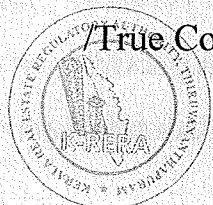
2. The Respondents/Promoter shall enable formation of an Association of allottees as and when majority of allottees having booked the apartments and the common area shall be handed over to the Association after completion of the project in toto.

16. This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority, in accordance with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents and claims for interest for delay before the Authority.

Sd/-
Smt. Preetha P Menon
Member

Sd/-
Sri.M.P. Mathews
Member

Sd/-
Sri. P H Kurian
Chairman



/True Copy/Forwarded By/Order/

Secretary (legal)

Appendix

Documents produced by the Complainants

Exbt A1- Copy of – Joint Development agreement dated 30/05/2017.

Exbt A2- Copy of Joint Development agreement dated 30/06/2018.

Exbt A3- Copy of – Agreement for construction dated 11/05/2019.

Exbt A4- Copy of building permit.

Exbt A5- Copy of Order issued by the Authority in suo-moto proceedings dated 21/04/2021 to the promoters.

Exbt A6- Copy of notice dated 06/12/2021 issued by the Authority.

Exbt.A7- Copy of Power of Attorney.

Exbt A8- Copy of Email sent by GM sales MPS Builders to Bipin Shinde.

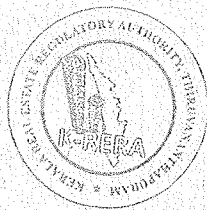
Exbt A9 - Copy of bank account statements of the Complainant.

Exbt A10 Series - Copies of payment receipts.

Exbt A11- Brochure of MPS Smart Homes.

Documents produced by the Respondents

Exbt.B1 -Affidavit dated 04/04/2022 filed by the Respondents.



STATE OF TEXAS

County of _____

Know all men by these presents, that _____

of the County of _____ State of Texas

do hereby certify that _____

is the true and correct copy of _____

as the same appears from the _____

records of the _____

County of _____ State of Texas

in and to the effect following to-wit:
