



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

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

Complaints No. 275/2020, 12/2021, 31/2021 & 89/2022

Dated 28th May 2024

Complainants in Complaint No. 275/2020

1. Hima Sobharaj,
W/o Sobharaj
Residing at IA, Asset Dew Apartment,
Mannoor Road, Maradu P.O, Kochi-682304.
2. Sunny Thomas,
S/o G.T. Thomas
Residing at Ganapatipalackal House,
Collectorate P.O, Kottayam – 686002.

[Adv. Saji Varghese]

Complainant in Complaint No. 89/2022

Fern Kensington Apartment Owners Association,
Modarchs Centre, Near Supplyco Flats,
Panampalli Nagar, Cochin - 682011
Represented by its Secretary Udayakumar.

[Adv. Saji Varghese]



Respondents in Complaint No 275/2020 & Complaint No 89/2022

1. M/S Fern valley Resorts Pvt Ltd.
Represented by its Managing Director,
Mr. Paul Fernandez,
G.358, Main Avenue,
Panampilly Nagar, Kochi-682 036.

2. Mr. Paul Fernandez,
No:2, AVS Compound, 80 Ft, Main Road,
4th Block, Koramangala, Bangalore - 560034

[For R1 & R2, Adv. Swathy Das]

3. Dr.Jacob John,
Akampillil House, Meenpara P.O,
Puthencruz, Ernakulam-682308.

4. Dr.Rose Jacob,
Akampillil House, Meenpara P.O
Puthencruz, Ernakulam-682308.

5. T.J Joseph,
Patharakarayil House,
Kontur Village, Meenachil Taluk
Kottayam District

6. V. I. Dileep,
Vellailparambil, Puthencruz Village,
Kunnathunadu Taluk,
Ernakulam-682308.

[For R3 to R6, Adv. T.J. Lakshmanan & Abhilash K.N.]



Complainant in Complaint No. 12/2021

T D Lonappan,
Gangothri grandure,
Flat No. 001, 369, 8th A Main,
4th Block, Koramangala,
Bangalore – 560034.

[Adv. Vinod M.V.]

Complainant in Complaint No. 31/2021

1.T D Lonappan,
Gangothri grandure,
Flat No. 001, 369, 8th A Main,
4th Block, Koramangala,
Bangalore – 560034.

2. Sheeba, W/o Lonappan
Gangothri grandure,
Flat No. 001, 369, 8th A Main,
4th Block, Koramangala,
Bangalore – 560034

[Adv. Vinod M.V.]

Respondents in Complaint No. 12/2021 & Complaint No. 31/2021

1. Dr.Jacob John,
Akampillil House, Meenpara P.O,
Puthencruz, Ernakulam-682308.
2. Dr.Rose Jacob,
Akampillil House, Meenpara P.O
Puthencruz, Ernakulam-682308.



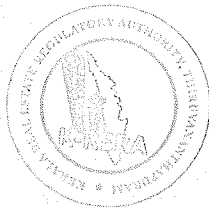
3. T.J Joseph,
Patharakarayil House,
Kontur Village, Meenachil Taluk
Kottayam District
4. V. I. Dileep,
Vellailparambil, Puthencruz Village,
Kunnathunadu Taluk,
Ernakulam-682308.

[For R1 to R4, Adv. T.J. Lakshmanan & Abhilash K.N.]

5. Mr. Paul Fernandez,
House no 134, old No 52/1 1st Cross, Residency Road
Bangalore – 5600025.
6. M/s Fern Valley Resorts Pvt Ltd.
Represented by its Managing Director,
Mr. Paul Fernandez,
No:2, AVS Compound, 80 Ft, Main Road,
4th Block, Koramangala, Bangalore – 560034.
7. The Manager,
Fern Valley Resorts Pvt Ltd.
State office, Fern Kingston, Near
Nucleus Mall, Maradu-682 038.

[For R5 & R6, Adv. Swathy Das]

The above-mentioned Complaints came up for hearing on 06.05.2024, for which the Counsel for the Complainants and the counsel for the Respondents No. 1&2 in Complaint No. 89/2022 appeared.



ORDER

1. As the above four Complaints are related to the same project developed by the same Promoter and as the cause of action and the reliefs sought in all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and for passing a Common Order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020. The factual matrix of each of the above complaints are as follows:

Complaint No. 275/2020:

2. The Respondent No. 1 is a Private Limited Company engaged in the business of construction of villas, apartments, etc., and the 2nd Respondent is the Managing Director of the 1st Respondent Company and he is the person who is responsible and in charge of the day-to-day activities of the 1st Respondent company. He is responsible for the activities of the 1st Respondent company. The Respondents 3 to 6 are the absolute owners of 63.57 Ares equivalent to 157.068 cents of land comprised in Resurvey No. 313/9, 10, 11, and 12 of Maradu Village by virtue of sale deed Nos. 1400/94, 1401/94, 1402/94 and 198/95 of the SRO, Maradu and by virtue of a certificate of purchase. Respondents 3 to 6 being the owners of the land entered into an agreement of joint venture of construction of multistoried residential apartment in the said



land with the 1st Respondent Company represented by the 2nd Respondent. Respondents 3 to 6 upon receiving consideration from the 1st Respondent and permitted Respondents 1 and 2 to enter into the afore-mentioned land and to construct multistoried apartment as per the approved plan and permit from the erstwhile Maradu Grama Panchayath. The agreement of joint venture between Respondents 3 to 6 and the 1st Respondent was executed on 03.01.2010. In the year 2010, the 1st Respondent made an advertisement regarding sale of apartments in the land owned by Respondents 3 to 6 with the land and undivided share in the common areas in a project called, "FERN KENSINGTON" at Maradu, Ernakulam. The project is a joint venture with the Respondents 3 to 6. The Respondents 3 to 6 being the owners of the land and they are also coming under the definition of promoters as per the Real Estate Regulation & Development Act. The Respondents have offered all modern facilities in the project such as swimming pool with kids' pool, club house, games room, health club, children's play area, visitors lounge, office room, 24 hours security service, Generator backup for common area, servants toilet. The first Complainant along with her husband Sri. Sobaraj K. S. executed a tripartite agreement between the 1st and Respondent 3 to 6 on 19.08.2013 for an apartment having three bedroom marked as A-904 having a super built up area of 1490 sq. ft (inclusive of ½ part in depth of the joints between the ceiling of each apartment and the floor of the apartment above it and internal



and external walls between such levels and also inclusive of proportionate undivided share in the built up common areas and facilities in the building) on the 9th floor of the building named “FERN KENSINGTON’ and the car parking space together with the right to use common areas and facilities etc. The standards of materials to be used are also agreed in the agreement. The 2nd Complainant in the said Complaint executed a tripartite agreement between the 1st and Respondents 3 to 6 on 06.01.2011 for an apartment having three bed room marked as A-902 having a super built up area of 1490 sq. ft (inclusive of ½ part in depth of the joints between the ceiling of each apartment and the floor of the apartment above it and internal and external walls between such levels and also inclusive of proportionate undivided share in the built up common areas and facilities in the building) on the 9th floor of the building named “FERN KENSINGTON’ and the car parking space together with the right to use common areas and facilities etc. The standards of materials to be used are also agreed in the agreement. The 1st Complainant along with her husband paid a total amount of Rs. 20,00,000/- and the Respondents issued receipt for Rs. 19,00,000/- only. It is submitted that after completing the structural works dispute arose between the builder 1st Respondent and the owners/ Respondents 3 to 6. The Respondents are attributing liabilities to each other. Several attempts were made by the purchasers to settle the dispute amicably, was of no use. To the knowledge of the Complainant, the 1st Respondent after collecting



huge amounts from the intending purchasers misappropriated the same and thereby cheated the purchasers. The Respondents 3 to 6 are also handing in glove with the 1st and 2nd Respondent in cheating the Complainants and similarly placed other purchasers. Respondents 3 to 6 are also not interesting to complete the project and to hand over the completed apartments to the purchasers. The Complainants are producing herewith copy of the agreement signed by the Respondents which may kindly be treated as part of this Complaint. The work on the project has stopped in the midway in 2015. The Complainant along with other purchasers sent numerous requests and reminders to the Respondents to complete the project and hand over the apartment and, all along, Respondents kept on assuring that the construction would be completed with a short period. Respondents are not taking any step to complete the project. Due to the wiggeries of light and air, the building has deteriorated badly. The Complainants apprehend that the structural stability has also been affected since the building is unattended for a quite long time. Unless construction works resume after carrying out necessary maintenance and restoration works, the partly finished building will be beyond salvage and will be a total loss. It is submitted that the Respondents have diverted the funds collected from the Complainants to their various other projects and they don't have the funds to complete the project. The Complainants suffered huge loss due to the negligence of the Respondents. In fact, Respondents cheated the Complainants and



also committed fraud upon the Complainants and similarly placed other purchasers. Complainants are entitled for compensation for the delay in completing the project. The Complainants are reserving their right to file separate Complaint for compensation as per the provisions of the Real Estate (Regulation and Development) Act. The present Complaint is without prejudice to the right of the Complainants to take appropriate action against the Respondents for damages and compensation. The reliefs sought by the Complainants are as follows: -

(i) Direct the Respondents to complete the construction of the apartment and all other amenities as agreed by the Respondents within two months after ensuring the structural stability of the building and other standards of the buildings by a competent civil engineer appointed by this Hon'ble Authority and to hand over possession of the villas to the Complainants without further delay

(ii) Alternatively, this Authority may formulate a scheme for the construction and completion of the project or to take over the entire project from the Respondents and complete the project as per the terms of the agreement raising funds after selling the remaining flats not sold by the Respondents and to hand over the apartments to the Complainant



(iii) Direct the police authorities to take criminal case against the Respondents for cheating the Complainant and also for committing fraud upon the Complainant

(iv) Order to recover cost of this proceedings from the Respondents and their personal assets AND

(v) Such other reliefs which in the circumstances of this case this Hon'ble Authority deems just and proper

Complaint No. 12/2021

3. The Respondents 1 to 4 are the joint owners of 157.068 cents of land in Re Sy No. 313/9, 10, 11 and 12 of Maradu Village by virtue of sale deed Nos. 1400/94, 1401/94, 1402/94 and 198/95 of the SRO, the 5th Respondent is the General Power of Attorney Holder of Respondents 1 to 4 as regards the said property. The 6th Respondent is a company engaged in the business of real estate developing, construction and selling of Residential Apartments in Kerala and which was promoted by 5th Respondent. All of the Respondents decided to construct a Multi Storied Apartment Complex known as FERN KENSINGTON in the above said property and to sell apartments in the said building. During the year 2012, the Complainant came to notice advertisements of the Respondents, wherein it was shown that construction of multistoried residential apartment complex is progressing at Maradu. On contacting the Respondents, it was intimated that construction of the said apartment named 'FERN



KENSINGTON' having various amenities, has already started and will proceed in a fast pace in order to complete and hand over the same to prospective purchasers within a short period. Accordingly, Respondents No. 1 and 3 to 5 took the 1st Complainant to the site and showed the building which was being constructed therein and offered to sell the apartments. A brochure containing pictures of the project, lay out plans, amenities and specifications was handed over to the Complainant by the Respondents. Carried away by the assurances of the Respondents, especially the scheduled date of completion, the Complainant entered into agreement dated 01.09.2012 with the Respondent for purchase of 3 bed-room apartment bearing No. A 601 on the sixth floor of the building for a sale consideration of Rs. 25,00,000/-. As per the terms of the said agreements, the Respondents had undertaken to construct the said residential unit as per the specifications enumerated in the agreement and had agreed to complete the construction within 24 months from the date of this agreement with a grace period of three months. And after that to hand over the possession of the said apartment to the Complainant within 3 days after completion of construction. It was further agreed that, that if the construction is not completed within the stipulated period of 27 months Respondents are liable to pay Rs. 10,000/- per month as compensation to the Complainant till completion of construction. As demanded by the Respondents, when the agreement was executed, the Complainant paid an



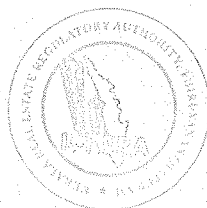
amount of Rs. 12,50,000/- to the Respondents towards sale consideration and the same has been specified in the agreement dated 01.09.2012. Thereafter Complainant has paid the balance sale consideration of Rs. 12,50,000/- to the Respondents and thereby entire sale consideration of Rs. 25,00,000/- as per the stipulations in the agreement dated 01.09.2012 had been paid by the Complainant to the 5th Respondent and the same had been received and acknowledged by the 5th Respondent and on behalf of other Respondents as well. The entire sale consideration was paid by the Complainant to the Respondents without waiting for the construction to be completed as it was a specifically discounted price and it to be paid within a limited time. As per the terms of the agreement Respondents were bound to complete the construction and hand over the apartment on or before 01.09.2014. If grace period of three months is taken into account even then the construction of the apartments should have been completed and they should have been handed over the same to the Respondents on or before 01.12.2014. However, the construction of the apartment has not been completed even now. But failed to evoke any response and the Respondent continued their sluggish approach. This being the situation, numerous requests were made by the Complainant to speed up the construction activities so as to complete the construction in terms of the agreement. Thus, notwithstanding the delayed progress in construction works, payments were made by the Complainant as and when demanded



after believing the assurances of the Respondents that they will initiate all efforts to complete the construction on war time basis. As the Complainant is residing at Bangalore they had no opportunity to inspect the progress of the construction and the entire payment was made by them believing Respondent's assurances that the construction is progressing well. Long after the entire consideration had been collected from the Complainant by the Respondents. Complainant realized that the structure of the building that had been shown by the 1st, 3rd, 4th and 5th Respondents to the Complainant is June 2012 as the structure to the building in which apartment is being offered for sale to the Complainant is not the building in which the apartment mentioned in the agreement dated 01.09.2012 is situated. Complainant was shocked and it was utmost agonizing for the Complainant to realise that building under construction is a different block and the construction of the tower in FERN KENSINGTON in which Complainants apartment is to be located had not even commenced and no work whatsoever has been carried out in the project site. The Complainant and his wife had entered into another agreement dated 01.09.2012 with the Respondent for purchase of 3 bed-room apartment bearing No. A 402 on the fourth floor of the same building for a sale consideration of Rs. 25,00,000/-. With regard to the same also entire consideration had been paid by the Complainant to the Respondents. Though separate agreement had been entered into



with regard to the two apartments, the Complainant send a common lawyer notice dated 12.02.2016 demanding the entire sale consideration with regard to two apartments of Rs. 50,00,000/- paid by the Complainant to the Respondents with other compensations. On the basis of notice dated 14.07.2017 issued by the Complainant the Respondents approached the Complainant and promised that amount will be paid and thereby matter will be settled. 5th Respondent after discussion with the Complainant offered to pay Rs. 60,00,000/- with respect to apartment No. 601. The 5th and 6th Respondents on behalf of other Respondents prepared agreement dated 01.07.2016 promising that the Respondents have consented to buy back the apartment for Rs. 60,00,000/- and settle the payment within 9 months and further agreed that in the event of fails to make the payment of Rs. 60,00,000/- within the stipulated time the Complainant has the option to charge interest @ 18% per annum for the balance amount payable till the account is settled and the said amount also has not been paid by the Respondents till date though a second lawyer notice has been sent by the Complainant and which caused irreparable damages and hardships to the Complainant. In fact, the delay had occurred solely due to the latches and negligence on the part of the Respondents. The Complainant has been unnecessarily dragged to this litigation by the Respondents. Thus, the Complainant is made to suffer innumerable hardships on account of the said acts of the Respondents which amounts to



negligence, deficiency of service and unfair trade practice. Being highly aggrieved by the acts of the Respondents, the Complainant has no other option but to approach this Hon'ble Authority to redress his grievance. It is respectfully that, the Complainant needs to be compensated adequately for the said acts of the Respondents. Although the Complainant is entitled to liquidated damages even as per the agreement, this is totally insufficient considering the magnitude of hardships, mental, physical and financial, caused to the Complainant due the immense delay that has been caused in completing and handing over the Apartment. Apart from this, the Complainant is entitled to get Rs. 60,00,000/- with 18% interest on the amount as stipulated in the agreement dated 01.07.2016. In fact, Respondents cheated the Complainant and also committed fraud upon the Complainant. The Complainant filed a separate Complaint for compensation as per the provisions of the Real Estate (Regulation and Development) Act. It is submitted that with regard to the said subject matter Complainant had filed Petition before the Hon'ble Permanent Lok Adalath as O.P 2/2018 and the Hon'ble Permanent Lok Adalath found that the Forum has no jurisdiction to entertain the Complaint and the petition was returned with the direction to present the same before the appropriate Forum RERA. The cause of action for the Complainant arose on September 2012, when the Respondents had agreed to complete the construction of the apartment of the Complainant and on subsequent dates and on



01.07.2016 when the Respondents had promised to buy back the apartment. The reliefs sought by the Complainant are as follows:-

(i) Direct the Respondents to complete the construction of apartment No. A 601 on the sixth floor of the building namely FERN KENSINGTON and all the common amenities as promised by the Respondents, in a time bound manner and to hand over possession of the same to the Complainant at any rate within 6 months

(ii) Direct the Police Authorities to take criminal case against the Respondents for cheating the Complainant and also for committing fraud upon the Complainant

(iii) Pass such other orders, interlocutory or otherwise, which are deemed fit and proper in the interest of justice and

(iv) Award the costs of the proceedings

Complaint No. 31/2021

4. The Respondents 1 to 4 are the joint owners of 157.068 cents of land in Re Sy No. 313/9, 10, 11, and 12 of Maradu Village Deed Nos. 1400/94, 1401/94, 1402/94 and 198/95 of the SRO. The 5th Respondent is the General Power of Attorney Holder of Respondents 1 to 4 as regards the said property. The 6th Respondent is a company namely M/s Fern Valley Resorts Pvt Ltd engaged in the business of real estate developing, construction and selling of Residential Apartments in Kerala in



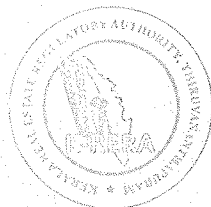
which was promoted by 5th Respondent. All of the Respondents decided to construct a Multi Storied Apartment Complex known as FERN KENSINGTON in the above said property and to sell apartments in the said building. During the year 2012, the Complainant came to notice advertisements of the Respondents, wherein it was shown that construction of multistoried residential apartment complex is progressing at Maradu. On contacting the Respondents, it was intimated that construction of the said apartment named 'FERN KENSINGTON' having various amenities, has already started and will proceed in a fast pace in order to complete and hand over the same to prospective purchasers within a short period. Accordingly, Respondents No. 1 and 3 to 5 took the 1st Complainant to the site and showed the building which was being constructed therein and offered to sell the apartments. A brochure containing pictures of the project, layout plans, amenities and specifications was handed over to the Complainant by the Respondents. Carried away by the assurances of the Respondents, especially the scheduled date of completion, the Complainant entered into agreement dated 01.09.2012 with the Respondent for purchase of 3 bed-room apartment bearing No. A 402 on the fourth floor of the building for a sale consideration of Rs. 25,00,000/-. As per the terms of the said agreements, the Respondents had undertaken to construct the said residential unit as per the specifications enumerated in the agreement and had agreed to complete the construction within 24



months from the date of this agreement with a grace period of three months. And after that to hand over the possession of the said apartment to the Complainant, within 30 days after completion of construction. It was further agreed that, that if the construction is not completed within the stipulated period of 27 months Respondents are liable to pay Rs. 10,000/- per month as compensation to the Complainant till completion of construction. As demanded by the Respondents, when the agreement was executed, the Complainant paid an amount of Rs. 12,50,000/- to the Respondents towards sale consideration and the same has been specified in the agreement dated 01.09.2012. Thereafter Complainant has paid the balance sale consideration of Rs. 12,50,000/- to the Respondents and thereby entire sale consideration of Rs. 25,00,000/- as per the stipulations in the agreement dated 01-09-2012 has been paid by the Complainant to the 5th Respondent and the same had been received and acknowledged by the 5th Respondent for and on behalf of other Respondents as well. The entire sale consideration was paid by the Complainant to the Respondents without waiting for the construction to be completed as it was a specifically discounted price and it to be paid within a limited time. As per the terms of the agreement Respondents were bound to complete the construction and hand over the apartment on or before 01.09.2014. If grace period of three months is taken into account even then the construction of the apartments should have been



completed and they should have been handed over the same to the Respondents on or before 01.12.2014. However, the construction of the apartment has not been completed even now. But it failed to evoke any response and the Respondents continued their sluggish approach. This being the situation, numerous requests were made by the Complainant to speed up the construction activities so as to complete the construction in terms of the agreement. Thus, notwithstanding the delayed progress in construction works, payments were made by the Complainants as and when demanded after believing the assurances of the Respondents that they will initiate all efforts to complete the construction on war time basis. As the Complainants is residing at Bangalore they had no opportunity to inspect the progress of the construction and the entire payment was made by them believing Respondent's assurances that the construction is progressing well. Long after the entire consideration had been collected from the Complainants by the Respondents, Complainants realized that the structure of the building that had been shown by the 1st 3rd 4th and 5th Respondents to the Complainants in June 2012 as the structure to the building in which apartment is being offered for sale to the Complainants is not the building in which the apartment mentioned in the agreement dated 01.09.2012 is situated. Complainants were shocked and it was utmost agonizing for the Complainant to realise that building under construction is a different block and



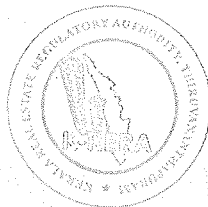
the construction of the tower in FERN KENSINGTON in which Complainants apartment is to be located had not even commenced and no work whatsoever has been carried out in the project site. The 1st Complainants had entered into another agreement dated 01.09.2012 with the Respondent for purchase of 3 bed-room apartment bearing No. A 601 on the sixth floor of the same building for a sale consideration of Rs. 25,00,000/-. With regard to the same also entire consideration had been paid by the Complainants to the Respondents. Though separate agreement had been entered into with regard to the two apartments, the Complainants send a lawyer notice in common dated 12.02.2016 demanding the entire sale consideration with regard to two apartments of Rs. 50,00,000/- paid by the Complainants to the Respondents with other compensations. On the basis of notice dated 14.07.2017 issued by the Complainants the Respondents approached the Complainants and promised that amount will be paid and thereby matter will be settled. 5th Respondent after discussion with the Complainants offered to pay Rs. 50,00,000/- with respect to apartment No. A 402. The 5th and 6th Respondents on behalf of other Respondents prepared agreement dated 01.07.2016 promising that the Respondents have consented to buy back the apartment for Rs. 50,00,000/- and settle the payment within 9 months and further agreed that in the event of fails to make the payment of Rs. 50,00,000/- within the stipulated time, the Complainant has the option to charge interest @ 18% per



annum for the balance amount payable till the account is settled. Unfortunately, the said amount also has not been paid by the Respondents. Thereafter the Complainant on numerous occasions had intimated their protest and anxiety to the Respondents over the inordinate delay in making the payment as per the agreement dated 01.07.2016. The Complainants are highly aggrieved by the non-completion of construction of the apartment allotted to them within the time stipulated in the agreement and further by the failure of making payment as agreed in the agreement dated 01.07.2016. Needless to mention, the Complainant had entered into the agreement on the bonafide belief that the Respondent will stick to the terms of the agreement and will complete the apartment complex in time. Based on this, the Complainant had cherished their plans to start residing in the said flat, at any rate by the beginning of the year 2015. Needless to mention, the Complainant is now at heavy loss after starting to invest money from the year of 2012 believing that the said flat would be an asset for the family. Now the Complainants have neither got their money back as agreed as per the agreement dated 01.07.2016 nor got possession of the apartment. The entire money spent by the Complainants on the project has turned out to be a 'dead investment'. This apart the Complainant is a sick person and had to make frequent visit to Kerala for getting back the money as agreed by the Respondents in the agreement dated 01.07.2016. It is relevant to find that, the Complainants had paid the entire sale



consideration of Rs. 25,00,000/- as demanded by the Respondents. Only because of the failure on the part of the Respondents in starting the construction, the Complainants were constrained to enter into agreement dated 01.07.2016. Failure on the part of the Respondents to complete the construction of the apartment in the stipulated time despite receiving the entire payment in time has resulted in immense hardships to the Complainants, for which the Respondents are solely liable. There is no valid and substantial reason for causing enormous delay in not even starting the construction and thereby Complainants were constrained to enter into agreement dated 01.07.2016 by which Respondents have consented to buy back the apartment (No. A 402) for Rs. 50,00,0000/- and settle the payment within 9 months and further agreed that in the event of fails to make the payment of Rs. 50,00,000/- within the stipulated time the Complainant has the option to charge interest @ 18% per annum for the balance amount payable till the account is settled and the said amount also has not been paid by the Respondents till date though a second lawyer notice has been send by the Complainants and which caused irreparable damages and hardships to the Complainants. In fact, the delay had occurred solely due to the latches and negligence on the part of the Respondents. The Complainants have been unnecessarily dragged to this litigation by the Respondents. Thus, the Complainants is made to suffer innumerable hardships on account of the said acts of the



Respondents which amounts to negligence, deficiency of service and unfair trade practice. Being highly aggrieved by the acts of the Respondents, the Complainant has no other option but to approach this Hon'ble Forum to redress their grievance. It is respectfully submitted that; the Complainants needs to be compensated adequately for the said acts of the Respondents. Although the Complainants are entitled to liquidated damages even as per the agreement, this is totally insufficient considering the magnitude of hardships, mental, physical and financial, caused to the Complainants due the immense delay that has been caused in completing and handing over the Apartment. Apart from this, the Complainant is entitled to get Rs. 50,00,000/- with 18% interest on the amount as stipulated in the agreement dated 01.07.2016. In fact, Respondents cheated the Complainant and also committed fraud upon the Complainant. The Complainant filed a separate Complaint for compensation as per the provisions of the Real Estate Regulation and Development Act. It is submitted that with regard to the said subject matter, Complainant had filed Petition under Section 22(1) of the Kerala State Legal Services Authorities Act 1987 before the Hon'ble Forum Permanent Lok Adalath as O.P 3/2018 and the Hon'ble Permanent Lok Adalath found that the Forum has no jurisdiction to entertain the Complaint and the petition was returned with the direction to present the same before the appropriate Forum RERA. The cause of action for the Complaint arose on September



2012, when the Respondents had agreed to complete the construction of the apartment of the Complainant and on subsequent dates and on 01.07.2016 when the Respondents had promised to buy back the apartment. The reliefs sought by the Complainants are as follows:-

(i) Direct the Respondents to complete the construction of apartment No. A 402 on the fourth floor of the building namely FERN KENSINGTON and all the common amenities as promised by the Respondents, in a time bound manner and to hand over possession of the same to the Complainant at any rate within 6 months

(ii) Direct the Police Authorities to take criminal case against the Respondents or cheating the Complainants and also for committing fraud upon the Complainant

(iii) Pass such other orders, interlocutory or otherwise, which are deemed fit and proper in the interest of justice and;

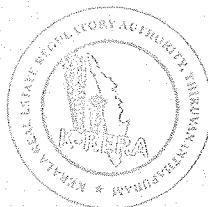
(iv) Award the costs of the proceedings.

Complaint No. 89/2022

5. The Complainant is an Association registered as per the provisions of Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act vide No – on --. The Association was constituted for the common welfare of all residents, registered owners of the building known as FERN



KENSINGTON. The Complainant is represented by its Secretary. The Complainant is competent to represent the members of the Association as contemplated under the provisions of Kerala Real Estate (Regulation and Development) Act, 2016. The 1st Respondent is a Private Limited Company engaged in the business of construction of villas, apartments, etc. The 2nd Respondent is the Managing Director of the 1st Respondent Company and he is the person who is responsible and in charge of the day to day activities of the 1st Respondent Company. The Respondents 3 to 6 are the absolute owners of 63.57 Ares equivalent to 157.068 cents of land comprised in Resurvey No. 313/9, 10, 11, and 12 of Maradu village by virtue of Sale Deed Nos. 1400/94, 1401/94, 1402/94 and 198/95 of the SRO, Maradu and by virtue of a certificate of purchase. Respondents 3 to 6 being the owners of the land entered into an agreement of joint venture of construction of multistoried residential apartment in the said land with the 1st Respondent Company represented by its Managing Director, 2nd Respondent. Respondents 3 to 6 upon receiving consideration from the 1st Respondent and permitted Respondents 1 and 2 to enter into the aforementioned land and to construct multistoried apartment as per the approved plan and permit from the erstwhile Maradu Grama Panchayath. The agreement of joint venture between Respondents 3 to 6 and the 1st Respondent was executed on 03.01.2010. In the year 2010, the 1st Respondent made an advertisement regarding sale of



apartments in the land owned by Respondents 3 to 6 with the land and undivided share in the common areas in a project called, "FERN KENSINGTON" at Maradu, Ernakulam. The project is a joint venture with the Respondents 3 to 6. The Respondents 3 to 6 being the owners of the land and they are also coming under the definition of promoters as per the Real Estate Regulation & Development Act. The Respondents have offered all modern facilities in the project such as swimming pool with kid's pool, club house, games room, health club, children's play area, visitors lounge, office room, 24 hours security service, Generator backup for common area, servants' toilet etc. Since the Respondents failed to fulfil the terms and conditions in the agreement two allottees in the said project approached this Authority by filing a Complaint to redress their grievances. The same is numbered as Complaint No. 275/2020 and the said Complaint is pending before this Authority. During the course of the hearing, this Authority directed the builder to take initiative to convene the meeting of association of allottees and to bring the said association in the party array enabling proper and effective adjudication of the issues involved in the case by this Authority. The meeting of the association of allottees held and unanimously decided to complete the project. The association is constituted for the welfare and benefit of the allottees and to protect their interest. During the course of hearing of the Complaint No. 275/2020, the 2nd Respondent who is the Managing Director of the 1st



Respondent Company personally appeared and he filed his written statement. Though there is no concrete proposal to settle the issues, he has projected the dispute between the landowners and the builder. Later, he made to believe this Authority that he is ready and willing to complete the project if the allottees contribute some more amount in addition to the amounts as agreed in the agreement executed between each allottees, builder and the landowners. The landowner also agreed to contribute from his built-up area so as to bridge the gap of money required for completion of the project. The individual owners and the association take all earnest efforts to complete the project in a time bound manner. Though the 2nd Respondent committed before this Authority in the said case that he is ready and willing to restart the project, he did not do anything as agreed before this Authority. The facts and figures stated by the 2nd Respondent before this Authority is absolutely false and incorrect. He is not disclosing the list of allottees and the list of purchasers before this Authority so far. The 2nd Respondent along with Respondents 3 to 5 encumbered the property to the 3rd parties. The Respondents 1 to 5 have committing fraud upon this Authority. They have no intention to complete the project. They are trying to protract the matter anyhow or somehow. The landowners received much more than the market value of the land from the allottees through the builder. The builder also collected substantial amounts from the allottees/members of the association. This Authority directed the



1st Respondent many times to take registration from RERA and also to renew the Building permit already expired. But Respondents did not care to do so. There is no positive action from the side of the Respondents so far. Section 8 of the Real Estate (Regulation and Development) Act, 2016 empower this Authority to take over the project in case of failure by the promoter and to entrust the same to the allottees. The said section would show that upon lapse of registration the authority may carrying out the remaining development works through the association of allottees or in any other manner, as may be determined by the Authority. Here, in this case this Authority has given ample opportunities to the Respondents to finish the project. But even after the lapse of a year, the Respondent did not do anything. On the other hand, they have failed to comply with the direction issued by this Authority. It is submitted that, since the Respondents have no intention to complete the project, the Complainant is ready and willing to take over the project and complete the same. The Complainant have men and machinery to complete the project. Some of the members are experts in the filed of construction and financial management. There are qualified Engineers, financial experts in the association. The Association is ready and willing to complete the project and to handover possession of completed apartments to the members/allottees under the supervision of this Hon'ble Tribunal. We are ready to submit detailed estimate and other statement before this Hon'ble



Tribunal. The Complaint is for a direction to settle a scheme for construction and to takeover the entire project by this Authority with liberty to the association to raise funds for completing the project from the unsold apartments as per the approved plan and permit held by the builder as well as the owners of the land. It is also submitted that the association and its members are entitled to appropriate damages from the remaining funds, if any, for the delayed handing over the apartments and other damages caused to its members. The association further reserves the right of its members to proceed against the Respondents and their other assets. It is further submitted that the Respondents are alienating the undivided share and the purposed built up area to third parties to defeat the claim of the members of the Complainant association. They have no right to do so and Authority may issue temporary injunction restraining the Respondents from alienating or encumbering any rights in the property covered by the project. The reliefs sought by the Complainant are as follows: -

(i) The Authority may settle a scheme for the construction and completion of the project to take over the entire project from the Respondents and complete the project as per the terms of the agreement raising funds after selling the remaining flats not sold by the Respondents and to hand over the apartments to the Complainant;



(ii) Direct the Police Authorities to take criminal case against the Respondents for cheating the Complainant and also for committing fraud upon the Complainant;

(iii) Direct the Respondents 1 to 6 to file an affidavit furnishing the details of plan, permit, area, number of allottees and details of encumbrances with respect to the disputed project;

(iv) Direct the Respondents to handover possession of the site to the apartment owner's association;

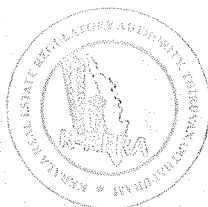
(v) Allow the association to sell the unsold flats/areas so as to raise fund for completing the project;

(vi) Audit the entire account with the assistance of a Chartered Accountant;

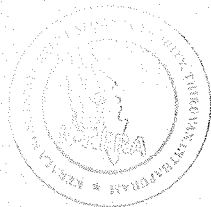
(vii) Order to recover cost of this proceedings from the Respondents and their personal assets AND

(viii) Such other reliefs which in the circumstances of this case this Hon'ble Authority deems just and proper.

6. In the common counter affidavit dated 27.08.2021 filed by the Respondents No. 1 and 2 in Complaints No 275/2020, had submitted as follows: The Respondents 3 to 6 are land owners with whom Respondents 1 and 2 had entered into an agreement for joint venture in construction of buildings in those land owned by them. The Respondents 3 to 6 are the absolute owners of 63.57 Ares equivalent to 157.068 cents of land comprised in Resurvey



No. 313/9, 10, 11 and 12 of Maradu village by virtue of Sale Deed Nos. 1400/94, 1401/94, 1402/94 and 198/95 of the SRO, Maradu, Ernakulam District. The joint venture agreement entered into between Respondents 1-2 with other Respondents are of a complex nature. Initially there was another agreement between Respondents 3-6 and a company known as M/s Punarjani Projects Pvt Ltd., incorporated which was represented by its Executive Director, Dr. Jacob John, the 3rd Respondent. The Respondents 4 to 6 permitted Respondent 3 to enter into an Agreement with M/s Punarjani Projects Pvt Ltd., to construct multistoried Apartment as per the approved plan and permit from the erstwhile Maradu Grama Panchayath. The Agreement of Joint Development between the 3rd Respondent and Respondents 4 to 6 was executed on 30-11-2007. There lies a matter of fact that the 3rd Respondent is also the holder of the largest portion of land here along with his wife, the 4th Respondent. Respondent No. 3 in order to carry out the piling works of the project raised a project loan from State Bank of India, Ernakulam Branch, in the name of Respondents 3 to 6 by providing the 157 cents of the Project land as collateral during 2007. The Company (M/s Punarjani Projects Pvt Ltd), based on the said Joint Development Agreement dated 30-11-2007, carried out certain piling works at the project site to the extent of ninety percent and the work was stopped by the Trade Union, as a result of causing damages to 42 neighboring houses due to the impact of piling carried out by M/s Punarjani projects Pvt Ltd. The Respondent No.



3 closed operation at the project site on 30th June 2008 and left the project till January 2010. Meanwhile Respondent No. 3 along with Respondents 4 to 6, was looking for a New Builder and Developer to take up the project work and complete the project on Joint Development basis. Respondent No.2 (Paul Fernandez) and Respondent No. 3 (Dr. Jacob John, Executive Director of Punarjani Projects) met few times and discussed about the stalled work and possible revival of the project. Respondent No.3 never disclosed the damages caused by piling and the rift between the union leaders and Respondent No. 3. Not only the damages to be paid but also the loan amount taken from SBI was not revealed to Respondents 1-2, which later become the crux of all issues. In this context, Respondents 3 to 6 being the owners of the land entered into an agreement of joint venture of development and construction of multistoried residential apartment in the said land with the Respondent No.1, represented the Respondent No. 2. The Respondents No 3 to 6 upon receiving consideration from Respondent No.1 permitted Respondents 1 and 2 to enter into the aforementioned land and to construct multi-storied apartments as per the already approved plan and permit from the erstwhile Maradu Grama Panchayath. The Agreement of Joint Development of the property between Respondent No. 1 and Respondents 3 to 6 was executed on 03.01.2010. The joint venture ratio between the builder and landowners for the built-up area was 60-40, i.e., 60% of the area belongs to builder and 40% belongs to landowners. It is



true that the 1st Complainant paid an advance amount of Rs. 20,00,000/- out of the total consideration of approximately Rs. 58,00,000/-. The balance amount receivable from the 1st Complainant is Rs. 38,00,000/- excluding statutory payment towards VAT/SVS Tax, etc. It is true the second Complainant paid an advance amount of Rs. 31,00,000/- out of the total receivable consideration of Rs. 42,00,000/-. The balance amount receivable from the Complainant is Rs. 11,00,000/- excluding statutory payments towards VAT/SVS/Tax, etc. The trade unionist did not allow Respondent No. 1 to enter the project site and commence work as planned due to the fact that (the previous Promoter Company Punarjani Projects headed by the 3rd Respondent Dr. Jacob John as Executive Director) did not fulfill his commitment of paying compensation to the 42 neighboring families for the damages caused to their respective houses, while doing piling work as per the first joint Development Agreement entered into between Respondent 3 and Respondents 4 to 6. This fact was brought to the notice of Respondent No. 1 only 10 months after signing the Joint Development agreement between Respondent No. 1 and with Respondents 3 to 6. As many as 42 cases (both civil and criminal) in nature were filed against Respondent No. 3, which in fact was never disclosed by Respondent No. 3 to Respondents No. 1, which badly affected the construction and progress of the whole project. Respondent No. 1 spent considerable amount of time, effort and money to amicably settle the matter with as many as 42



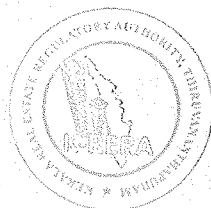
individuals, since Respondents 3 to 6 expressed their inability to settle the matter. Respondent No. 1 paid compensation to as many as 42 individuals and closed all the cases. The said compensation amount of Rs. 40,00,000/- is still unpaid to Respondent No. 1 by Respondent No. 3. Soon after clearance of the issues raised out of piling and paying compensation, and cheque bouncing cases, the State Bank of India sent notices to Respondent 3 to 6 under securitization act to take over the 157 cents of the project land as the project loan taken by Respondents 3 to 6 had become NPA (Non-Performing Asset). As the Respondents Nos. 1-2 had already invested huge money and efforts into the project he was compelled to repay that loan amount also. The Respondents 3-6 simply washed away their hands, putting the entire burden on Respondent No. 1. Respondent No. 1, submits that, with great difficulty has arranged funds from investors as well as the funds kept with Respondent No. 1 for work progress, to clear the project loan and bail out Respondents 3 to 6 from the clutches of State Bank of India and save the project from securitization act. Respondent No. 1 paid a sum of Rs. 4,22,00,000/- to Respondent No. 3 to clear the above stated project loan and for other requirements of Respondent No. 3 as early as in June 2012. In view of the above, the cash reserve of Respondent No. 1 was completely drained out and the liquidity of Respondent No. 1 was badly hit. In spite of the above stated unforeseen issue, faced by Respondent No.1, have completed the civil work of the first tower consisting of stilt car parking, ground



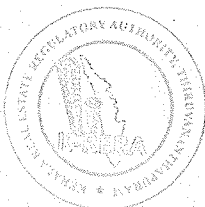
plus 14 floors – having 56 apartments. The works pending in the first tower are the finishing works, which requires approximately 5 crores to complete. 60% of the clients/Complainants have booked in the first tower. Respondent No. 1, collected a total amount of Rs. 16.76 Crores from the Purchasers and Complainants and spent on the project Rs. 18.83 crores thereby overspent on the project a sum of Rs. 207,00,000/- In addition to the above, Respondent No. 1 has paid VAT and Service Tax to the authorities on behalf of the purchasers/Complainants, which amount is due from purchasers/Complainants as of now. Financial non-viability has pushed the project to the present state of affairs. The other limitations include a very low Floor area ratio (FAR) (155,000 sqft) allotted for the project, despite of the fact that total land area is 157 cents, the high sharing of 40% space allotted to Respondents 3 to 6, to raise money the Respondent was compelled to sell the apartment units for as low as 2500-3000 INR/sqft. The Respondents 3-6 were hesitant to give title deeds for a fresh pledging to raise loans, though they had agreed for the same while the 1st Respondent cleared outstanding loan from SBI. Escalation of cost (in 2016) up to 30% over the estimated cost. Inflation coupled with increase in fuel prices. Actually, the money collected and spent on the project makes it a financially deficit project indeed. The work on the project stopped in mid- 2017, after the demonetization of the Indian currency towards the end of 2016 and as its aftermath. The purchasers/Complainants were co-operative



in understanding the Real Estate market and ground realities. Respondent No. 1 called for the first meeting of purchasers/Complainants spread all over the world on 21/09/2019 at Maradu and stated that the envisaged Fern Kensington Housing Project is not financially viable as the average selling price per Sq. ft of the apartment sold was below Rs. 3,000/- and most purchasers/ Complainants purchased for a price below Rs. 3,000/- per Sq. ft. According to the ratio of sharing agreed between Respondent No. 1 and Respondents 3 to 6, Respondent No. 1 gets only 92,000 Sq. ft, which is 60 percent of the constructed area where as the total constructed area is 1,55,000 sq ft. The realization amount of Respondent No. 1 at the rate of Rs. 3,000/- (at an average) is Rs. 27.75 crores whereas at an average construction cost of Rs. 2,500/- per Sq ft for high rise building of ground plus 14 floors amount to Rs. 38.75 crores. Apparently, there is a deficit of Rs. 11 crores in the revenue, just to make the break even and to complete the project even without any profit to Respondent No. 1. This being the truth and the ground realities, the averments made that Respondent No. 1 is not taking any steps to complete the project is totally wrong and baseless. Respondent No. 1, at the time of stopping the work at the project site ensured proper weather treatment to exposed areas, especially where metal part is exposed. Recently, Respondent No. 1, visited the project site and made more than 4 inspections to make sure the overall present condition of the building is normal. Nothing alarming as stated in the Complaint.



However, proper and necessary maintenance and restoration works shall be initiated before starting the actual construction works. Complainant No.1 paid an advance amount of Rs. 20,00,000/- about 34% of the total cost of construction including the land price. A huge amount of Rs. 38,00,000/- about 66% of the total cost is still pending from the 1st Complainant. Respondent No. 1 submits that along with other purchasers/Complainants/have formed a Group on 21st September 2019 to oversee the matters of the project. Respondent No. 1 along with purchasers/Complainants present at the meeting on 21st Sept 2019 has formed a “CORE COMMITTEE” to meet and discuss at least once in a month to find out ways and means to take the project forward. The “CORE COMMITTEE” as of now had conducted eight meetings and minutes of the same recorded. Respondent No. 1, submits that, it was agreed initially in the Core Committee meeting that all the concerned parties including Clients/Complainants, Respondent No. 1, and Respondents 3 to 6 shall jointly submit a viable proposal to Kerala Real Estate Regulatory Authority how to take the project forward and complete it. The Core Committee was not able to meet after February 2020 till June 2021 due to the pandemic Covid-19 and it's after effect. Respondent No.1, submits that the 157 cents of the project land at the best market price today may fetch only Rs. 10 crores, whereas Respondents 3 to 6 have already received in June 2012 a sum of Rs. 4.22 crores in cash from Respondent No. 1 and Respondents 3 to 6 presently possess a stock worth Rs. 20



crores (built up area). Therefore, the total realization of Respondents 3 to 6 shall be over Rs. 25 crores at the end of the project, thereby Respondents 3 to 6 is making a huge profit of 150% from the Project. Therefore, Respondent No.1 requested Respondents 3 to 6 in a CORE COMMITTEE meeting to release for the benefit of the Project, to make good the deficit an Area of 15,000 Sq ft of Apartment space out of the 40,000 Sq ft, held by Respondents 3 to 6 as contribution to make good the loss and complete the project. Discussions for a workable solution is underway and within few days a final settlement can be reached with Landowners i.e., Respondents 3-6. As that is the case a contribution from Respondents 3-6 from their share of the total built up area and also from the part of the apartment Purchasers/Complainants are being finalized. Respondent No.1, shall also make an additional contribution apart from the already over spent amount on the project, to make the Project financially viable. Respondent No. 1, submits that, there is an understanding between all the parties involved that an additional sum of Rupees 8 crores should be mobilized apart from the available stock of 20,000 Sq ft plus the receivables of Rs. 4.5 Crores from the Apartment Purchases/Complainants to make the project viable. The proposed suggestion for the inflow of additional fund of Rs. 8 crores is being prepared. As far as Complaint Nos 12/2021 along with 31/2021 is concerned, an amicable solution is being worked out with the Complainants.



7. In the Statement submitted by the 3rd and 4th Respondents for themselves and also on behalf of Respondents No. 5 and 6 in Complaint No. 275/2020, it was stated as follows: The Respondent No. 3 and 4 are owners of the property extending 157.068 cents in Re. Sy No. 313/9, 10, 11 and 12 of Maradu Village. The 1st Respondent company approached these Respondents for the construction of an apartment complex in the aforesaid property and believing the words of the 1st and 2nd Respondents, these Respondents agreed to give their property for construction and they agreed that certain percentage of the area of the total construction shall be set apart to these Respondents. It is respectfully submitted that it is evident from the agreement to sell and construct submitted by the Complainant that the entire payment was made to the developer who is the 1st Respondent herein. The property owners have no role in the agreements and their role is very much limited and is made as a party therein only for an assurance to the customers that the landlord agreed to set apart the land for joint construction. All the payment receipts show that all transactions are between the customers and 1st Respondent. Further without prejudice to the above contentions, it is respectfully submitted that the payments for construction were made not regularly. Further any delay is happened, the promoter/1st Respondent is liable in accordance with the clause 5 of the agreement submitted by the Complainant. The operative portion of the agreement is extracted below;- “That in the event of any delay



in the completion of the construction for reasons beyond the control of the promoter including natural calamities like heavy rains, floods, earthquakes, drought, famine, pestilence or riots or civil commotion or strike or by reasons of Governmental or judicial restraint on construction, or, on account of shortage of critical construction materials, the time during which such contingencies continue shall be excluded in calculating the period for completion of , construction and delivery of the premises. In the event of a delay in getting Power & water connection from the Authorities. The promoter shall make alternate arrangements to provide water & DG sets power.” Therefore, the Complainants herein are stopped from taking a different contention other than the clauses contained in their agreement. The construction had not been completed and the customers of the projects tried to restart the construction by calling upon a meeting of the customers but the Complainant herein has not co-operated with the process. Other customers formed an association and registered the association with the society of Registrar. The Complainant may be directed to co-operate with the construction process initiated by the association and the Complainant is aware of the entire facts. Therefore, it is prayed to dismiss the Complaint with compensatory cost.

8. We heard both parties in detail and examined all the documents placed on record. With respect to the registration of the project “Fern Kensington” under Section 3 of the Real Estate



(Regulation and Development) Act, 2016 [herein after referred to as the Act, 2016] the Authority issued Show-cause Notice No. 2155/K-RERA/2021 dated 03-08-2021, 24.11.2021 and the promoter attended the hearing in Suo moto proceedings on 22.11.2021 and 09.02.2022 and submitted his intention to register the project and the Authority vide Suo moto proceedings dated 09-02-2022 had directed the promoter to register the project within 30 days. Thus, after repeated directions in the hearings and after issuing show cause Notice No 1873/K-RERA/2020 dated 01.03.2023, under Section 59(1) of the Act, 2016, the said project has been registered under Section 3 of the Real Estate (Regulation & Development) Act 2016, vide Registration No. K-RERA/PRJ/ERN/193/2023 dated 30.10.2023, by the 1st & 2nd Respondents/promoter, with proposed date of completion of the project on 31.07.2025.

9. The Authority, vide interim order dated 27.09.2021, had directed to form an association and arrange for its registration under Section 11(4)(e) of the Real Estate (regulation and Development) Act, 2016. Consequently, an Allottee Association was formed and the Complainants filed I.A. No 29/2022 for impleading the said Association as additional Complainant and I.A. No 30/2022 to direct the Respondents 1 to 6 to file affidavit regarding the details of project, handing over possession, allow them to sell unsold flats etc. The Authority, on 09.02.2022, advised the Allottees' Association to file a separate



Complaint and then the Secretary representing the Fern Kensington Apartment Owners Association, filed Complaint No 89/2022 as mentioned above.

10. The Authority, during hearings on 09.02.2022 and 17.02.2022, had given directions to the 2nd Respondent /promoter to file statement of accounts and details of project including the status of work, list of works to be completed, number of allottees, the time required for completing the remaining works and hand over of the project to the allottees as promised. On 07.04.2022, the 2nd Respondent/promoter submitted certain details as per which the total land area is 157 cents and the total saleable area is 1,54,000 sq ft and the number of towers is two, and total number of flats in two towers are 112, 56 each, the percentage of developer's shares 112420 sq ft and that of land owner is 41580 sq ft and the refundable advance to the land owners is Rs. 4.22 crores, area sold by the developer is 92960 and 19460 sq. ft remain to be sold, the area sold/adjusted by the land owner is 2229 and the area available with the land owner is 39351 sq.ft., the sale realization from developer's area is Rs. 23,44,61,900/- amount utilized by the developer is Rs. 19,48,00,000/-, amount paid to land owner as non-refundable advance is Rs. 4,22,00,000/- amount spent for settlement of 42 cases of land owners was Rs. 39,20,000/- unsold stock available with developer is Rs. 9.73 crores, pending dues from the clients is Rs. 4.5 crores, unsold stock available with the land owners is Rs. 19.61 crores, work completed as on 31.12.2021



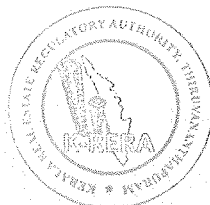
was Rs. 19.48 crores, the estimate of unfinished works as on 31.12.2021 was 19.98 crores, the estimate of common amenities is 30 lakhs.

11. The Secretary representing the Fern Kensington Apartment Owners Association who is the Complainant in Complaint No. 89/2022 filed I.A. No. 161/2023 requesting to pass order directing the Respondents/promoters/landowners to hand over the project to the Complainant/Association to complete the project and hand over the respective apartments to the allottees and submitted that if it is not allowed, the members of the Complainant Association will be put to irreparable loss and injury. They also filed another application numbered as I.A. 166/2023 for an order revoking the registration No. K-RERA/PRJ/ERN/193/2023 granted to the 1st Respondent on the ground of violation of mandatory provisions of law in this respect by the 1st Respondent/Promoter and they submitted as follows: The Respondent/promoter defaulted the requirements of the certificate of registration and violated the terms and conditions of the certificate of registration and violated the terms and conditions of the approval given by this Authority and he has not even started the separate account and the building permit is not yet renewed by the Respondents. The Respondent/promoter has practically abandoned the project which was started ten years back but not completed even now. The partly completed project is deteriorating day by day and for the best interest of the allottees the registration



has to be revoked to take alternative steps by them to complete the project.

12. When the matter came up for hearing on 02.05.2024, the Complainants and their Counsels, Counsel for Respondents/promoters and the Counsel for the Respondents/Land owners attended. The Counsel for the 1st & 2nd Respondents /promoters filed a memo dated 23.03.2024, along with an affidavit dated 18.03.2024 signed at Bangalore, sworn by the 2nd Respondent, the Managing Director of the 1st Respondent Company/promoter, which is marked as Exhibit B1, as per which he waived all his rights, liabilities and future claims in the project in question. In the said affidavit he has affirmed that he is not in a position to complete the project as agreed due to his ill health, old age and poor financial condition and he has no objection to hand over the project as such to the Complainant association/or to any other builder /promoter /contractor nominated by the Association, who will be responsible in future to fulfill all the requirements to complete the project. He relinquished all his rights, responsibilities and claims in the said project and assured that he will not raise any claim on it in future also. The Counsel for the Complainant submitted that they will submit an application of the erstwhile promoter, the 2nd Respondent to hand over the project as per Section 15 of the Act, 2016 and requested for a direct hearing on 06.05.2024.



13. When the Complaints came up for hearing on 06.05.2024, the Counsels for both the Complainant Association and the Respondents No. 1&2/Promoters appeared and submitted the Joint Development Agreement dated 30.03.2023 in original, which is marked as Exhibit A1 in which, the 1st Respondent represented by the 2nd Respondent in Complaint No 89/2022, the Promoter is the first party, the Complainant in Complaint No 89/2022, the Association of allottees is the second party, 3rd Respondent/one of the land owner who also signed the agreement as the General Power Attorney Holder of the other land owners/ Respondents 4 to 6 in Complaint No. 89/2022 is the third party, one Shiju A.H referred to as the Mediator is the fourth party and M/s Maskan Builders LLP a Company under Limited Liability Partnership Act, 2008, Manjeri, Malappuram represented by its Managing Partner Nizamudheen referred to as the Contractors/Builders is the fifth party who are signatories in the said agreement. Certain major conditions govern the agreement which are as follows: The fifth party/Builder agrees to complete entire project as per specification attached to the agreement for a total lump sum contract amount of Rs. 26 crores. The amount exceeds 26 crores to a maximum of Rs. 2 crores should be paid by the third party by constructing two additional floors of 11,100 sq. ft each within the same time schedule of the Joint Development agreement and that includes provision for additional car parking, construction of compound wall, interlock pavement. The fifty

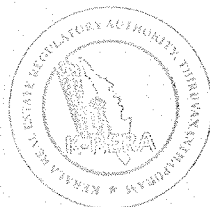


percent of the total contract value (13 Crores) shall be paid in stages as works progress by the second party the remaining 13 crores shall be paid in instalments and to generate this fund, 23,650 sq ft saleable area from the total saleable area received by the second party from the first, third and fourth parties shall be reserved for sale. The second party and fifth party can sell this for a maximum price of Rs. 5,500 per square feet and can adjust towards the full and final payment of remaining Rs. 13 crores. The payment of this fund to the 5th party shall take place as and when sale occurs or on or before 36 months after completion of the project. The saleable area of two additional floors totaling around 22,200 sq.ft shall be constructed by the third party and amount expended over and above 26 crores and to a maximum of Rs. 2 crores shall be paid to the fifth party by the third party. A sale area of 8,500 sq. ft from the said additional saleable area constructed will be reserved for the fourth party. The second party shall be liable to pay all the GST amount and statutory fees applicable for their respective share of area. The first party agrees to hand over 20,000 sq. ft of balance unsold sale area stock to the second party from the share of area belongs to him by the rights obtained through the revised Joint Development Agreement dated 08.06.2012. The third party agrees to surrender 4,000 sq. ft saleable area from the share of 43580 sq. ft for which he has absolute ownership obtained through the Revised Joint Development Agreement dated 08.06.2012. The balance



construction share of third party as per the revised Joint Development agreement dated 08.06.2012 after reduction of the already surrendered 4,000 sq. ft to second party and 6,000 sq. ft allotted to fourth party shall be 33, 580 sq. ft. The fourth party agrees to surrender the 6000 sq. ft saleable area which he will obtain the rights through the agreement dated 26.02.2021 with the third party to the second party. The third party here by agrees that after the completion of the project, the fourth party will get absolute ownership of 8,500 sq.ft from the saleable area of additional floor to be built in this said project and that the said 8,500 sq. ft will be in the front portion. The balance saleable area from this 22,200 sq. ft after deducting the 8,500 sq. ft reserved to the fourth party belongs to third party on which the third party shall have the absolute right.

14. Heard the representatives and counsels of the Association of allottees, original Promoter and Land Owners of the project in question through multiple hearings. The Promoter of the project in question could not complete the project or take any alternate steps for it despite giving several directions and ample time by this Authority and it has been made clear through the above mentioned Affidavit that the Promoter is not in a position to complete the project due to his ill health, old age and poor financial condition and he has no objection to hand over the project to the Complainant association/or to any other builder /promoter /contractor nominated by the Association of allottees and the



promoter also waived all the rights, liabilities and claims over the project in question.

15. It is noticed in all these years that the Real estate projects may come to a standstill for numerous reasons and homebuyers who have borrowed money on interest or have invested their life-savings in these projects suffer for no fault of their own. The model formulated under Section 8 of the Act 2016 allows homebuyers to have stalled projects completed under the aegis of the Association of Allottees which is especially useful for projects that are close to completion and where refund of booking amounts along with interest and compensation is not the best alternative to provide relief to the homebuyers. When the promoters are insolvent, languishing in jail or are absconding, the RERA authorities have limited options to provide relief to the homebuyers. On one hand, efforts made by the authority to order refund of booking amounts may prove to be futile as the promoter may not be financially capable of doing the same. On the other hand, sealing and attaching the project property will only do more harm to the homebuyers who have been awaiting possession for years at end. Thus, in these cases too, restarting a stalled project through the Association of Allottees may prove to be the best option for safeguarding the home buyers' interests. However, the real estate and construction sectors are burdened with unorganized processes, which can make the policy somewhat challenging for these Association of Allottees, as the Project management includes



various fundamental components like procurement of sanctions and approvals, product procurement, financing, workforce management, supply chain management, legal sanctions, etc. Therefore, to be able to successfully restart and complete a stalled project, the Association will require a great degree of expertise and business acumen. Consequently, they may need to make further investments to be able to finance a new workforce or to seek the assistance of contractors, developers, consultants and a panel of professionals, etc. Incomplete projects are though cynical, still a common occurrence in the ever-growing real estate industry which we all form part of. Many a times, genuine promoters find themselves in a bad industrial shape which makes it difficult for them to complete the construction of projects even after making consistent efforts. In such situations, not just private realtor houses can contribute by accepting transfer of sick projects to them but, even the Association of Allottees is empowered to play a role in carrying out the remaining development works by virtue of the Act, 2016. Under the said Act, as mentioned above, upon lapse of registration or on revocation of the registration of a project as required, the Authority may take such action as it may deem fit including issuing of directions to the Association of Allottees to carry out the remaining development works. In such events, the role of the Association extends beyond that of completing it but to protect the interest of not just existing and prospective Allottees but also financial institutions who have an interest in such projects.



Such an Association on taking over the project becomes the promoter as defined under Section 2(zk) of the Act. The Maharashtra Real Estate Regulatory Authority while adjudging a Complaint filed by a Society where the latter has taken over the project after a previous Development Agreement entered between the Promoter and the Society was terminated, has laid down certain directions and we feel it worthwhile to reproduce them hereinbelow:

1. *The Society while appointing future developers must conduct proper due diligence of the development agreement being entered into and during the course of execution of the said Project, exercise supervision and monitor its progress diligently to ensure that the purpose of appointing the new developer is achieved in a timely manner and all bona fide liabilities created in the process are fulfilled;*
2. *Society to safeguard and protect the interest of all aforesaid new flat Purchasers of the said Project by adopting a course of redevelopment either by itself or by developer for the said project;*
3. *Society to ensure that all the liabilities as accruing on date including the liability of paying interest on delayed possession, all the transactions as on date and all the duties cum responsibilities as on date are clearly enumerated;*
4. *Society will carry the preliminary responsibility to safeguard the interest of all present Allotees and new Purchasers, if any in the*



said Project and in no manner jeopardize their interest in terms of their individual rights and interest in the said Project, as enumerated in the said Act.

16. On the very same subject matter, the Hon'ble Bombay High Court in its landmark judgement on the Act 2016 in Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors., observed as follows: "Having a careful scrutiny of the relevant provisions of the RERA, its object and scheme and considering the submissions advanced, we have harmoniously construed the provisions of Sections 6, 7, 8 and 37 of RERA. We hold that in case the Authority is satisfied that there are exceptional and compelling circumstances due to which promoter could not complete the project in spite of extension granted under Section 6, then the Authority would be entitled to continue the registration of the project by exercising powers under Sections 7(3), 8 or 37 of the Act. Such powers shall be exercised on case-to-case basis. We hold that while exercising powers in this regard, the Authority shall be bound to hear the promoter, allottee or associations of allottees, as the case may be. In deserving cases the Authority would be even entitled to consult the appropriate Government. The Authority, while dealing with such cases, shall be bound to pass a reasoned order. The construction placed by us on these provisions shall not be construed to mean that in every case of failure of promoter to complete the project within the extended time as prescribed under



Section 6, the promoter shall be entitled as of right to seek further extension”.

17. Here in this case, Exhibit B1 Affidavit of the Managing Director of the Promoter Company and Exhibit A1, the Joint Development Agreement produced by the Association of Allottees reveal that as the Promoter has grievously failed to complete and hand over the project in question, the Association of Allottees themselves formulated a Scheme for successful completion of their project with the support and co-operation of the land owners of the project who are also signatories in the said agreement and the Promoter has expressed willingness to hand over the project to the Association of Allottees by waiving all their rights and interests on it. In these circumstances, this Authority has decided to consider I.A. No. 161/2023 for the better prospects of the allottees of the project in question and give sanction as provided under Section 15 of the Act, 2016, for handing over the project in question to the Complainant/Association in Complaint No 89/2022, to complete the project in all respects and to hand over the respective apartments to all the allottees therein, as per the terms arrived at by the parties to the Joint venture agreement dated 30-03-2023 and on the basis of the Affidavit dated 18.03.2024 signed by the Original Promoter. Section 15 of the Act, 2016 stipulates as follows:

“15 (1): The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to



a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

18. Based on the above special facts and circumstances, and invoking Section 15 of the Act 2016, this Authority hereby give sanction to the Respondents No 1 and 2/



promoters in complaint No. 89/2022, to hand over the abovementioned project "Fern Kensington" to the 'Fern Kensington Apartment Owners' Association', the Complainant in Complaint No 89/2022 and the registered Association of allottees/owners of the project in question, to complete the project and to hand over the respective apartments to the allottees, as per the terms and conditions in the Joint Development agreement dated 30-03-2023 entered in to between the parties mentioned therein. After taking over the Project, the said registered Association shall report the same to the Authority. Thereafter, the Secretary (Technical & Administration) of this Authority shall make necessary entries in the records/website of the Authority, transferring the project in the name of the said Association.

19. All the Complaints mentioned above, stand disposed accordingly.

Sd/-
Preetha P. Menon
Member

Sd/-
Dr. B. Sandhya
Member

Sd/-
P.H. Kurian
Chairman

True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibit on the side of the Complainant

Exhibit A1 : The Joint Development Agreement dated 30.03.2023 in Original signed between the parties.

Exhibit on the side of the Respondent

Exhibit B1: Affidavit dated 18.03.2024 in Original sworn by the 2nd Respondent, the Managing Director of the 1st Respondent Company/promoter.

