



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

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

Complaints No. 291/2022, 292/2022 & 293/2022
Dated 12th September, 2023.

Complainants

1. Mahadevan V. Complaint No.291/2022
House No. A-17, FACT Township,
Udyogamandal, Kochi-683501.
2. Basanth Balan, Complaint No. 292/2022
Sayoojyam, Muttungal, Chorode,
Kozhikkode, PIN-673106.
3. Amrith. V.S. Complaint No 293/2022
Vidhnu Bhavan, Madappally P.O.
Changanasseri, Kottayam PIN- 686546.

(Adv.B. Rajasekharan Nair)

Respondents

1. Cheriyan Mathew, Proprietor, Izzet Realtors,
4C, Asset, Cheruparambath Road,
Kadavanthara, Ernakulam, PIN- 682020

(Adv. Tissy Rose K Cheriyan)



2. Vishakh Sunny Manjooran,
Texas Villa No. 07, Njarallor, Kizhakkambalam,
(Via) Pattimattom, 683562 Ernakulam District.

(Adv. K Shaj)

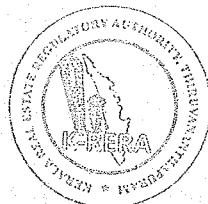
The Complainants and their Counsel Adv.B. Rajasekharan Nair and the Counsel for Respondent No. 1 Adv. Tissy Rose were present for the online hearing. Respondent No 2 was also present.

ORDER

As the above three Complaints are related to the same project developed by the same Promoters, the cause of action and the reliefs sought for in all the Complaints are one and the same, these Complaints are clubbed and taken up together for joint hearing and passing a common interim order, under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2.The Complaints are with respect to a real estate project named "ABANA ONE" at Kizhakkambalam, Ernakulam District. Complainants are allottees and the Respondents are the Builder/Promoter.

3. The case of the Complainants is that they had seen the advertisement on social media and purchased plots in the real estate project promoted by the first Respondent in the land owned by Louja Kuriakose and three other family members and entered



into an agreement for construction of villas in the plots purchased through the first Respondent.

Complaint No. 291/2022

4. The Complainant executed sale agreement for the purchase of 5 cents of land (Plot No 19) and sale deed was executed on 22.09.2021. On, 29-09-2020, an agreement was executed with the Respondents for construction of house with area of 1632 sq. ft in the allotted plot for a cost of Rs. 23,34,000/-. As per terms of agreement, construction was to be finished and keys were to be handed over to the Complainant in nine months. The progress in the construction work was in a dismal state and the Respondent failed to complete the work within the promised time of nine months as per the agreement. But in the meantime, the Respondent completed three other houses in the same project which were also started along with Complainant's house. The Respondent failed to honour the terms of agreement. In order to relieve from the distressful situation caused by contraventions committed by the Respondents, the Complainant agreed to execute a second agreement for construction on 15-12-2021 which was proposed by the Respondents. As per this agreement, construction of the house with area of 1600 sq. ft shall be completed within 3 months' time at a cost of Rs. 21,00,000/-plus GST to be paid as lump sum, and for a work area of 233 Sq. ft, an additional rate of 1800 per Sq. ft was agreed. In the meantime, the 1st respondent started construction of fifth house in the project, of



one Mr Christy Joseph, in a plot adjacent to Complainant's house which was completed quickly in seven months' time. During this construction the Respondents attended work of Complainant's house also and managed to complete partial structure of house. Thereafter, entire works were stopped and it was left there as it is where it is condition. In spite of repeated follow up and Complaints with the Respondents, the work was not resumed. Respondents used to make excuses and give false assurances saying that the work will be resumed shortly. On 10.10.2022, Mr Christy Joseph, the owner of completed house at adjacent plot No. 18 in the project, called the Complainant and informed about breaking and falling down of foundation stones from the structure of the Complainant's house into the paddy field which is 2.0 meter below the foundation of Complainants house. The Respondents had excavated the soil from this area in a massive manner using JCB for constructing retaining wall which led to such a dangerous situation. The quality of construction was also very poor which eroded the wall. Then the Complainant along with other allottees in the project were distressed and filed individual police Complaint on 22-10-2022, but due to the influence of the Respondents, the police cases reached nowhere. So, the Complainant had to construct the retaining wall at the back side by engaging another builder at a cost of Rs.1.9 lakhs for protecting the constructed structure of the Complainant's house from further damage. Thus, the construction of Complainant's



house was deliberately halted by the Respondents after fleecing more than 90% of total amount (19.44 lacs) out of Total of Rs 21 lacs) from the Complainant. As assessed by a qualified architect only 30% of construction had been completed and 70% left out. Besides, it was found that the quality of construction was not meeting the technical and industry standards. As per first agreement, the house was to be completed before July 2020 which was not complied by the Respondent. As per the second agreement dated 15.12.2021, it was to be completed and handed over on or before 16-02-2022. This second agreement was imposed on the Complainant by the Respondent after they failed to honour the first agreement. It is pertinent to note that the villa project had not been registered with RERA Kerala.

Complainant No 292/2022

5.The Complainant executed sale agreement for the purchase of 4 cents of land (Plot No 6) that belonged to Louja Kuriakose and three other family members at a price of 18 lacs on 13.01.2021. Sale deed of land was executed and registered on 23.07.2021. Later on, 03-09-2021, an agreement was executed with the Respondents to carry out the construction of a house with area of 1386 sq. ft in the aforesaid plot for a cost of Rs. 23,10,000/- plus GST. As per the agreement the construction was to be finished and keys were to be handed over in seven months. After the initial earth excavation work which started immediately after signing agreement, rest of the works were pulling on in a



very slow pace. In the meanwhile, the Complainant paid Rs. 16,50,000/- by instalments till 01-07-2022, but progress in the work was quite dismal. Complainant paid more than 71% of total amount as on 01.07.2022 (Rs 16.5 lacs paid as on out of total of Rs. 23,10,000/-) approximately 30% of construction was completed as on 01.07.2022, the date of last payment. In spite of repeated follow up and Complaints with the Respondents, the work was not resumed. Respondents used to make excuses and give false assurances saying that the work will be resumed shortly. So, the Complainant along with other allottees in the project were distressed and filed individual police complaints at Pattimattam Police Station on 22.10.2022, but, due to influence of Respondents, the police case reached nowhere. As inspected and assessed by a qualified architect of the Complainant, it was found that only 30% of construction had been completed and 70% left out. Besides, it was found that the quality of construction was not meeting the technical and industry standards. The materials used were found to be of inferior quality, contrary to specifications in the agreement. As per the agreement, the house was to be completed before 03.04.2022 which was not complied by the Respondent. It was pertinent to note that the villa project had not been registered with RERA Kerala.

Complainant No 293/2022

6. The Complainant executed sale agreement for the purchase of 4 cents of land (Plot No 13) that belonged to Louja



Kuriakose and three other family members on 14-11-2020 for a consideration of Rs. 18 lakhs. Sale deed for land was executed on 23-07-2021. Later on, 08.09.2021, an agreement was executed between Complainant and the Respondents to carry out the construction of a house with area of 1794 Sq. ft in the allotted plot at a cost of Rs.49,14,800/-plus GST (including land price). As per terms of agreement, construction was to be finished and keys were to be handed over to the Complainant in 6 months' time. After the initial earth excavation work which started immediately after signing agreement, rest of the works were pulling on in a very slow pace. In the meanwhile, the Complainant paid Rs.17,00,000/- by instalments till 02-07-2022, but progress of the work was quite dismal. Complainant paid more than 55% of total amount as on 02.07.2022 (Rs 17 lacs paid out of Total of Rs. 31,14,800/) approximately 30% of construction was completed as on 02.07.2022, the date of last payment. In spite of repeated follow up and Complaints with the Respondents, the work was not resumed. Respondents used to make excuses and give false assurances saying that the work will be resumed shortly. So, the Complainant along with other allottees in the project were distressed and filed individual police complaints at Pattimattam police station on 22.10.2022, but, due to influence of Respondents, the police case reached nowhere. As inspected and assessed by a qualified architect of the Complainant, only 30% of construction had been completed and 70% left out. Besides, it was



found that the quality of construction was not meeting the technical and industry standards. The materials used were found to be of inferior quality, contrary to specifications in the agreement. As per the agreement, the house was to be completed before 01.09.2022 which was not complied by the Respondent. It was pertinent to note that the villa project had not been registered with RERA Kerala.

7. The relief sought by the Complainants and considered by the Authority are as follows: -

- (1) to register the Project under section 3 of the Real Estate (Regulation and Development) Act, 2016
- (2) Complete the house work within 2 months' time
- (3) penal interest for delay in completion under Section 18 of the Act
- (4) Any other reliefs this Hon'ble Authority deems fit and proper in the facts and circumstances of the case.

8. In the objection filed by the 1st Respondent on 16.06.2023, it was denied that they are the promoters and the agreement was for construction of the residence for the Complainants. The term 'builder' is not defined anywhere in the Act. The land for the proposed project belongs to 5 family members namely, (1) Mr.Poulose S/o Paily Mathew, (2) Mercy Paul W/o Paily Mathew (3) Geo Paul S/o Paily Mathew (4) Shimol W/o Geo Paul and (5) Bibin Paul and (6) Louja Kuriakose



W/o Binin Paul and they are necessary party in the Complainant. The first Respondent admitted that he had advertised a real estate project in social media on 19.05.2020. The first respondent had bonafide intention to start a real estate project as per the regulations of the Real Estate (Regulation Development) Act, 2016, but the land owners cheated the respondent. The land owners entrusted their land for development and sale to the respondents and sold the land to the complainants. Since one of the land owners was abroad, they were unable to execute registered agreement or any other documents in order to register the project with RERA. The respondent communicated the entire thing to the complainant, when the complainant met the respondent as per the advertisement. Thus, the complainant directly purchased the land from the original owner through LIC Housing loan. According to the respondent "So, in order to adjust the amount which, the respondent already invested huge amount to develop the land. So, the landlord adjusted the amount of the respondent in the land value. Thus, in order keep the loan applicant in the limits of the loan, due to the compulsion of the complainant the respondent agreed to minimise the amount for construction in the construction agreement. Thereby the land lord received the amount as sale consideration from the bank. But they did not pay any amount to the respondents for the purpose of construction." According to the respondent he is doing construction with the amount entrusted by the complainant. The



respondent further stated that the land owner is not paying the development charges to the respondent and the land owner instigated the complainant to file this complaint and if the land owner is ready to disperse the amount as agreed the respondent shall complete the building within a reasonable time.

9. The Counter Affidavit was filed by the 2nd respondent on 16.06.2023 stating that the complaint is not maintainable either in law or in facts and all averments and allegations in the complaint except those, which are specifically admitted hereunder, are denied. At the outset itself, it was submitted that this complaint did not have any legal backing. The complaint is bad in law for non-joinder of necessary parties and misjoinder and is liable to be dismissed. The 2nd respondent is a salaried employee in the proprietorship firm of the 1st respondent. He is not a necessary party to this complaint and does not come under the purview of the Act of 2016 in the capacity of being “promoter”. Being a mere employee who had worked in the firm of the 1st respondent for a period of 15 months does not make him a promoter and no reliefs can be sought from him. The aforesaid firm and the proprietor were solely responsible for any damages and claims caused by them. Moreover, the proprietorship firm of the 1st respondent, who was a necessary party to this complaint, was also not arrayed as a party to his complaint. According to the 2nd respondent, he joined the proprietorship firm of the 1st respondent only on 20.10.2021 and he was unaware about the sale



agreement for purchase. He was assigned for co-ordination of staffs and labourers. He came to know about the execution of sale deed pertaining to 5 cents of land in the name of the 1st complainant after the 1st respondent informed him. It was submitted by the 2nd respondent that he tried all his possible efforts in co-ordinating with the 1st respondent and workers in the construction whenever the 1st complainant contacted him over telephone and stated his grievance regarding the delay in project. According to the 2nd respondent, it was not true that he had excavated the soil in a massive manner using JCB for constructing retaining wall which led to alleged dangerous situation. He was engaged in the office works alone and not trained or done any labour works as alleged and he was not aware of the said facts. Being the employee of the 1st respondent and as directed by him he accompanied the 1st respondent to the police station based on complaint submitted by the allottees and the 1st respondent and the allottees settled the issue at the police station and since no law-and-order issue arose, it was informed by the police authorities that they could not take any action. No complaint was filed against him by any of the allottees since they knew that he was just carrying out office works as instructed by the 1st respondent. It was further submitted that he had resigned from the firm of the 1st respondent proprietorship firm on 19.01.2023. So, the complainant being an allottee can seek relief against the promoter



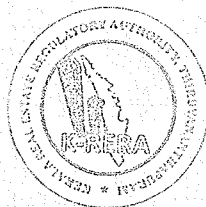
alone and arraying him as the 2nd respondent who was a salaried employee is not sustainable under law.

10. The replications were filed by the complainants on 02.09.2023 to the objection filed by the 1st respondent wherein it was submitted as follows: - The contentions in the objection are false and the interim order dated 17.04.2023 were not honoured by the Respondents. Though it was found by the Authority that the project "ABANA ONE" is a registrable project as per Sec 3 of the Act, 2016, it is not registered and show cause notice was issued for penal action as per Sec 59(1) of the Act. The Respondents ignored the interim order and filed objection with false contentions. The Respondent acted as promoter as defined in Sec 2 (zk) of the Act and not as builder, and they entered into development agreement with land owner to develop 1.2 Acres of land and advertised it as a villa project. The first part of project was planned with 24 units (villas) with all modern amenities, and later, certain disputes developed between Respondents and land owners as admitted by the respondents and these facts confirm the role of Respondents as promotor. The land sale agreement was executed with Respondents and cost for land and construction were collected by Respondents in Complaint No. 291/2022, and the land sale agreement was executed with Respondents and cost for land and construction were collected by the Respondents including Advance amount, except few payments as directed by Respondents in Complaint No. 292/2022 and the land sale



agreement was executed with Respondents and cost for land and construction were collected by Respondents including Advance amount, except few payments as directed by Respondents in Complaint No. 293/2022. The Respondents already finished five villas in the project and handed over to the allottees/buyers and there is common access road, amenities and round the clock security watchman arranged by Respondents. Despite all these facts and clear evidences, mostly admitted by Respondents, they attempt to run away from their obligations as promotor and distort their role as builder.

11. The Authority had vide common interim order dated 17.04.2023 directed respondents 1 and 2 to show cause within 2 weeks, why this Authority shall not initiate penal action u/s 59(1) of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter referred to as the **Act, 2016**), for not registering the Real Estate Project "ABANA ONE" before the Authority under Section 3 of the Act, 2016. In the hearing, the Authority observed that the above said real estate project 'ABANA ONE' is a registerable project, which is not registered before the Kerala Real Estate Regulatory Authority under Section 3 of the Real Estate (Regulation and Development Act, 2016. In the hearing on 04.09.2023, the maintainability and registrability of the project was heard and it was decided to pass final order, in the above complaints, which is as follows.



12. Documents produced by the Complainants were marked as **Exhibit A1** to **A9**. **Exhibit A1** is the advertisement published on 19.05.2020 by the 1st Respondent in social media. According to Exhibit A1 advertisement, “ABABA ONE” is a gated community consists of 20 individual villas along with clubhouse, swimming pool, Gym etc. which is located at just 700 meters from the heart of the Kizhakkambalam. **Exhibit X1** is the reply from Kizhakkambalam Grama Panchayat dated 04.09.2023 to the notice of this Authority issued on 28.04.2023. **Exhibit X2** is the reply from Kizhakkambalam Grama Panchayat dated 11.09.2023 to the notice of this Authority issued on 28.04.2023. **Exhibit X3 Series** are the three advertisements available on the website as regards the Abana One Villas at Kizhakkambalam. **Exhibit X4** is another advertisement on face book dated 12/05/2022 of another gated community Villas at Mulanthuruthy of the same promoter that is registrable but not registered with the Authority under Section 3 of the Act, 2016.

Complaint No. 291/2022

13. **Exhibit A2** is the Articles of Agreement made for Plot No. 19 dated 29.09.2020 made between the Complainant and 1st Respondent for constructing residential building based on drawings and specifications to be done by the Architect. The drawings prepared by the Architect were to be signed by both the parties. The respondents had agreed to execute the work based on the drawings, specifications, schedule and subject to the



conditions in the agreement. The contract is based on the lump sum amount of Rs. 23,34,000/- for a total area of 157 sq. m (1692 sq. ft). The project shall be completed and handed over to the complainant within nine months from the date of excavation. **Exhibit A2(1)** is the Articles of Agreement dated 15.12.2021 made between complainant and 1st respondent for construction of the building for a lump sum amount of Rs.21,00,000/- plus GST for a total area of 149 sq. m (1600 sq. ft). The project shall be completed and handed over to the complainant within three months from the date of excavation. **Exhibit A3(1)** is the individual police complaint by the complainant at Pattimattam Police Station on 22.10.2022. **Exhibit A4(1)** is the Account Statement showing a total payment of Rs. 39,44,000/- made to the 1st Respondent. The total amount paid is Rs. 39,44,000/- which includes land cost of Rs. 20,00,000/- and Rs. 19,44,000/- for construction against Rs. 21,00,000 plus GST as per Exhibit A3(1) agreement. **Exhibit A5(1) Series (pages 10)** is the Bank Statement of the 1st Complainant. **Exhibit A6(1)** is the General Building Permit from Kizhakkambalam Grama Panchayat dated 06.01.2022 issued in favour of the 1st Complainant for construction of Villa having an area of 170.41 sq. m. **Exhibit A7(1)** is the Approved key map of the proposed villa.

Complaint No. 292/2022

14. **Exhibit A2(2)** is the Articles of Agreement made for Plot No. 6 dated 03.09.2021 made between the Complainant and



1st Respondent for constructing residential building based on drawings and specifications to be done by the Architect of the builder. The drawings prepared by the Architect were to be signed by both the parties. The respondents had agreed to execute the work based on the drawings, specifications, schedule and subject to the conditions in the agreement. The contract was based on the lump sum amount of Rs. 23,10,000/- plus GST for a total area of 129 sq. m (1386 sq. ft). The project was to be completed and handed over to the 2nd complainant within seven months from the date of excavation. **Exhibit A3(2)** is the individual police complaint by the complainant at Pattimattam Police Station on 22.10.2022. **Exhibit A4(2)** is the Account Statement showing a total payment of Rs. 34,50,000/-. The total amount paid is Rs. 34,50,000/- out of which Rs. 16,50,000/- was paid to the first respondent for construction against Rs. 23,10,000 plus GST payable as per Exhibit A2(2). It can be confirmed that the token and advance shown in the Exhibit A5(2) statement as also part of the land payment and therefore, Rs. 18,00,000 was paid towards purchase of land. **Exhibit A5(2) series (pages 8)** is the Bank Statement of the Complainant. **Exhibit A6(2)** is the General Building Permit issued by Kizhakkambalam Grama Panchayat dated 12.11.2021 for construction of Villa having an area of 133.15 sq. m. **Exhibit A7(2)** is the Approved key map of the proposed villa. **Exhibit A8 series** is the photographs to prove the present status of the villa, that is constructed by the 1st respondent.



Complaint No. 293/2022

15. **Exhibit A2(3)** is the Articles of Agreement made for Plot No. 13 dated 08.09.2021 made between the Complainant and 1st Respondent for constructing residential building based on drawings and specifications to be done by the Architect of the builder. The drawings prepared by the Architect were to be signed by both the parties. The respondents had agreed to execute the work based on the drawings, specifications, schedule and subject to the conditions in the agreement. The contract was based on the lump sum amount of Rs. 49,14,800/- (including land price) plus GST for a total area of 167 sq. m (1794sq. ft). The project shall be completed and handed over to the 3rd complainant within six months from the date of excavation. **Exhibit A3(3)** is the individual police complaint by the complaint at Pattimattam Police Station on 22.10.2022. **Exhibit A4(3)** is the Account Statement showing a total payment of Rs. 35,00,000/-. An amount of Rs. 9,62,500/- is paid to Loveja Kuriakose and Rs. 6,37,500 is paid to shymol, thus a total amount of Rs. 16,00,000 is paid to the land owner as per Exhibit A5(3) Account Statement. Further it is confirmed that an amount of Rs. 50,000/- was paid to 1st respondent towards the cost of land and another Rs. 1,50000/- was paid for land registration charges. Therefore, it can be confirmed that only Rs. 18,00,000 was spent for land purchase and the balance Rs. 17,00,000/- is the construction cost for the villa. However, it is clear from the complaint that the construction cost



was Rs, 31,14,800/- and only Rs. 17,00,000/- was paid to the first respondent for construction. The balance amount payable to the first respondent by the complainant is Rs. 14,14,800/- plus GST as per Exhibit A2(3). **Exhibit A5(3) Series (pages 8)** is the Bank Statement of the complainant and payment proof to Respondents. **Exhibit A6(3)** is the General Building Permit from Kizhakkambalam Grama Panchayat dated 12.11.2021 for construction of Villa having an area of 152.27 sq. m. **Exhibit A7(3)** is the Approved key map of the proposed villa.

16. It is very clear from **Exhibit X1** and **X2** that the real estate project was developed without obtaining development permit and construction work was executed based on the building permit obtained by the individual land owners. Exhibit A1 dated 19.05.2020 is the advertisement released inviting prospective customers to purchase villas. Based on Exhibit A1 advertisement, the complainants had approached the respondents for purchase of villas, consequent to which the plots were sold to the complainants and building permit for construction of villas was obtained from the Kizhakkambalam Grama Panchayat. The Agreements for construction were executed in complaint No. 291/2022 on 29.09.2020 and revised on 15.12.2021 and in the case of Complaint No. 292/2022 it was 03.09.2021 and in the case of Complaint No 293/2022 it was 08.09.2021. Sale deeds were executed on 22.09.2021, 23.07.2021 and 23.07.2021 in favour of the complainants by the land owners, who are not parties to the



complaint. Hence the payment made to the land owners as revealed above for execution of the sale deed has to be considered as consideration for purchase of land against the sale agreement which is not produced before this Authority. Therefore, those payments cannot be considered as made to the promoter. Copies of the sale deeds are also not produced to establish the actual value of the land mentioned in the sale deeds. The General Building Permits were issued on 06.01.2022, 12.11.2021 and 12.11.2021 in favour of the Complainants from Kizhakkambalam Grama Panchayat.

17. **Exhibit X2** obtained from the Secretary, Kizhakkambalam Grama Panchayat confirms the villa constructed for Complainant in complaint No 293/22, has been completed and the building has been numbered. As far as the Complaint in complaint No 291/22 is concerned the building has been completed and the application for obtaining building number submitted before the Kizhakkambalam Grama Panchayat. As far as Complainant in Complaint No 292/22 is concerned it is reported that the construction of the building has been completed.

18. The **Exhibit A1** advertisement was displayed on the face book on 19.05.2020 and **Exhibits X3** Series advertisements are even now available on social media for public viewing. It is therefore evident that 'ABANA ONE' is a real estate villa project consisting of 20 villas and is registerable under Section 3 of the



Act, 2016. The advertisement was released by the 1st respondent. There is a clear-cut violation of Section 3 of the Act, 2016 by the 1st respondent as all the complainants had made payments after 19.05.2020 after release of the advertisement. The Act came into force on 01.05.2017 and releasing advertisement is a clear-cut violation of Section 3 of the Act and the 1st respondent is liable to be punished under Section 59(1) of the Act, 2016 for violation of Section 3. The promoter is continuing violation of Sec 3, of the Act, 2016 as is evident from Exhibit X3 and Exhibit X4 advertisements on social media. The Complainant in Complaint No. 291/2022 had made all payments directly to the 1st respondent while the complainants in Complaint Nos. 292/2022 and 293/2022 had settled major share of the land payments directly to the land owners.

19. The Kerala Real Estate (Regulation and Development) Rules (herein after referred to as the **Rules, 2018**) were notified on 14.06.2018, and all agreements were to be executed in the prescribed format under Rule 10 of the Rules, 2018 shown as Annexure A. Under Section 13(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. Therefore, the 1st respondent is liable to be punished for violation of Section 13(2). From the agreement executed between the complainants and the first respondent, it is evident that the agreements are only for construction of the villas and such an agreement cannot be considered by this Authority for strict enforcement. The Real Estate Project as defined under Section 2 (zn) means *“is the development of a building for the purpose of selling and includes the common areas, the development works, all improvements and structures there on and all easements, rights and appurtenances belonging thereto”*. Hence all the terms and conditions in the above agreements for construction of villa cannot be considered under the Act, 2016, as the agreement is not for selling but construction only. It is to be noted that the drawings are to be prepared by the Architect in the case of Complaint No. 291/2022, while in the case of other two Complaints it is to be prepared by the Architect of the builder. The payments made against the construction agreement as worked out from the Account Statement furnished by the complainants along with the complaint is as detailed below: -



(i) Complainant No. 291/2022 – Rs. 19,44,000 against Rs. 21,00,000 plus GST

(ii) Complaint No. 292/2022 – Rs. 16,50,000 against Rs. 23,10,000 plus GST

(iii) Complaint No. 293/2022 – Rs. 17,00,000/- against Rs. 31,14,800/- plus GST. In the Complainant No. 293/2022, the amount for construction is shown as Rs. 31,14,800/-. However, as per the agreement for construction produced the total amount payable is Rs. 49,14,800/- plus GST. Therefore, it is clear that the full payment for construction as per the agreements is not paid by the complainants and the respondent has not completed the construction work as per the agreement and amenities promised as per the brochure.

20. This Authority is not expected to pass orders based on the agreement for construction as the agreement is not in the prescribed format , but has to go by the Act, 2016 and Rules, 2018. The Land owners have completed the sale of land and no agreement executed with them is produced by the complainant or the 1st respondent, and they cannot be made a party to the complaint. The 2nd respondent is only an employee of the 1st respondent and not a signatory to the agreement and not a necessary party in the complaint, and no relief can be sought by the complainants against the 2nd respondent. Relief sought for penal interest for delay in completion under Section 18 of the Act,



2016, is not considered as the relevant documents in proof of payments made are not submitted with calculations by the complainants. From Exhibit X1, X2 documents submitted by the Kizhakkambalam Gram Panchayat and Exhibit A1 advertisement it is confirmed that the project is a new project registrable under Section 3 of the Act, 2016. In the objection filed by the 1st Respondent it was admitted that he had intention to start a real estate project but the landowners cheated him. Hence this Authority decided to proceed with the complaint considering the project as a registrable project.

21. Considering the facts and circumstances of the case, the Authority hereby invoking Section 37 of the Act, 2016 directs as follows: -

(1) The first respondent shall register the real estate project 'ABANA ONE' under Section 3 of the Act, 2016 as a Villa project within 30 days on receipt of this order;

(2) The 1st respondent shall complete the balance works as per the permit issued and the agreement executed with the complainants and obtain the occupancy certificates for all the 3 villas and hand over possession of the villas to the complainants within 60 days from the receipt of this order;

(3) The complainants shall settle the balance payment due as per agreement, before taking over possession of villas



immediately after intimation of receipt of the occupancy certificates, from the 1st respondent.

The above complaints are disposed of with the above direction and liberty to the complainants to approach this Authority with claims for delay interest along with calculation statement and all documents required to prove their claims and the Adjudicating Officer for compensation under Section 12 and Section 14(3) of the Act, 2016.

Sd/-
Smt. Preetha P. Menon
Member

Sd/-
Sri. M.P. Mathews
Member

True Copy/Forwarded By/Order




Secretary (legal)

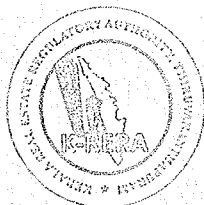
APPENDIX

Exhibits marked from the side of the Complainants

- Exhibit A1: Copy of the advertisement published on 19.05.2020 by the Respondent in social media.
- Exhibit A2: Copy of the Articles of Agreement dated 29.09.2020 made between the 1st Complainant and the 1st Respondent
- Exhibit A2(1): Copy of the Articles of Agreement dated 15.12.2021 made between 1st complainant and the 1st respondent
- Exhibit A2(2): Copy of the Articles of Agreement dated 03.09.2021 made between the 2nd Complainant and the 1st Respondent
- Exhibit A2(3): Copy of the Articles of Agreement dated 08.09.2021 made between the 3rd Complainant and the 1st Respondent
- Exhibit A3(1): Copy of the individual police complaint by the 1st complainant at Pattimattam Police Station on 22.10.2022
- Exhibit A3(2): Copy of the individual police complaint by the 2nd complainant at Pattimattam Police Station on 22.10.2022
- Exhibit A3(3): Copy of the individual police complaint by the 3rd Complainant at Pattimattam Police Station on 22.10.2022
- Exhibit A4(1): Copy of the Account Statement of the 1st Complainant



- Exhibit A4(2): Copy of the Account Statement of the 2nd Complainant
- Exhibit A4(3): Copy of the Account Statement of the 3rd Complainant
- Exhibit A5(1) Series: Copy of the Bank Statement of the 1st Complainant
- Exhibit A5(2) Series: Copy of the Bank Statement of the 2nd Complainant
- Exhibit A5(3) Series: Copy of the Bank Statement of the 3rd Complainant
- Exhibit A6(1): Copy of the General Building Permit from Kizhakkambalam Grama Panchayat dated 06.01.2022 issued in favour of the 1st Complainant
- Exhibit A6(2): Copy of the General Building Permit issued by Kizhakkambalam Grama Panchayat dated 12.11.2021 issued in favour of the 2nd Complainant
- Exhibit A6(3): Copy of the General Building Permit from Kizhakkambalam Grama Panchayat dated 12.11.2021 issued in favour of the 3rd Complainant
- Exhibit A7(1): Copy of the Approved key map of the proposed villa.
- Exhibit A7(2): Copy of the Approved key map of the proposed villa



- Exhibit A7(3): Copy of the Approved key map of the proposed villa.
- Exhibit A8 Series: Copy of the photographs to prove present status of the villa.

Exhibits marked from the Official Side

- Exhibit X1: Copy of the letter from Kizhakkambalam Grama Panchayat dated 04.09.2023 to the notice of KRERA issued on 28.04.2023.
- Exhibit X2: Copy of the letter from Kizhakkambalam Grama Panchayat dated 11.09.2023 to the notice of KRERA issued on 28.04.2023.
- Exhibit X3 Series: Advertisements available on the website as regards the Abana One Villas at Kizhakkambalam
- Exhibit X4: Advertisement on facebook dated 12.05.2022 of another gated community Villas at Mulanthuruthy



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