

KERALA REAL ESTATE REGULATORY AUTHORITY THIRUVANANTHAPURAM

Complaints No. 34/2021 & 8/2024

Present: Smt. Preetha P. Menon, Member Dr. B. Sandhya, Member

Dated 10th March 2025

Complainant in Complaint No. 34/2021

Alphonsa Residence Association Rep: by its Secretary K.C James Mulamoottil Homes, Alphonsa Apartments 5th floor, No.E, College Road, Kozhenchery P.O, Pathanamthitta.

[By Adv. R. Harikumar]

Complainants in Complaint No. 108/2024

E.T. Philip, S/o Late M.P. Thomas, Erumathadathil House, Flat No. A2, Floor No.1, Alphonsa Residence Apartment, College Road, Kozhenchery P.O. Pathanamthitta.

[By Adv. R. Harikumar]



Respondents in Complaint No. 34/2021

- Jacob Thomas Mulamootttil House, Kozhenchery P.O, Pathanamthitta
- Molly Jacob
 W/o. Jacob Thomas
 Mulamootttil House,
 Kozhencherry P.O, Pathanamthitta.

[By Adv. A. Santhosh Kumar & Adv. Riaz S. Kandala]

Respondents in Complaint No. 8/2024

- Jacob Thomas @ Sunny Mulamootttil Homes, Kozhencherry P.O, Pathanamthitta, Pin -689641.
- Molly Jacob W/o. Jacob Thomas @ Sunny Mulamootttil Homes, Kozhencherry P.O, Pathanamthitta, Pin- 689641.

[By Adv. A. Santhosh Kumar & Adv. Riaz S. Kandala]

 Kozhenchery Grama Panchayath, Kozhencherry P.O, Pathanamthitta, Pin -689641 Represented by its Secretary.

The above Complaints came up for final hearing on 15.01.2025. The Counsel for the Complainants and the Counsel



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Respondents No. 1 & 2 appeared online. The Respondent No. 3 in Complaint No.8/2024 was not present.

<u>ORDER</u>

1. As the above Complaints are related to the same project developed by the same Promoters and as the cause of action and the reliefs sought in the two 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 Complainant in Complaint No. 34/2021 is the Association of owners of flats, represented by its secretary, in the real estate project "Mulamoottil Homes Alphonsa Apartments" at Kozhenchery promoted by the Respondents No. 1 & 2. The Complainant in Complaint No.8/2024 is one of the owners of the flat in the project in question. The Respondent No.3 in Complaint No. 8/2024 is the Grama panchayath, represented by its secretary.

2. The factual matrix of the Complaint in brief is as follows: The Complaint No. 34/2021 was originally filed on 23.01.2021 seeking following reliefs: a) direct the Respondents to handover possession of the common areas, common facilities and amenities attached to Mulamootil Homes to the flat owners association within the time stipulated by the Authority, b) to



complete the Project as envisaged in the covenants contained in the sale deeds executed in favour of the purchasers of the flats and c) for compensation for delay in completing the Project and handing over of possession of the common areas to the Association. The Respondents have filed the Counter Affidavit in the above Complaint, questioning the maintainability of the Complaint claiming that the flats/apartments which are the subject matter of the Complaint had been completed and the tax was assessed in the financial year 2006-2007 and only after completion of the building, the revenue inspector of the Panchayat assess and levy the tax. The Respondents produced copy of a certificate issued by the Secretary of Kozhenchery Grama Panchayat on 27-02-2021 in support of their contention. They also submitted that since the building has been completed before the enactment of the Real Estate (Regulation and Development) Act 2016, no prior registration is required as contemplated under Section 3 of the Act 2016. The Complainants have filed Replication denying the contentions in the affidavit filed by the Respondents and contented that the certificate produced by the Respondents cannot be treated as a completion certificate of the Apartment complex within the meaning of term defined under section 2 (q) of the Act, 2016 and the project is an on-going project comes under Section 3 of the Act, 2016. This Authority found that that the flats/apartments which are the subject matter of this Complaint have already been completed and the tax was assessed in the financial year 2006-2007, much



before the date of commencement of the Real Estate (Regulation & Development) Act 2016 and the Complainants have already taken enough steps and approached other judicial forums for getting their grievances redressed, thus ordered that the Complaint is not maintainable before this Authority and hence it was dismissed. The said order of this Authority was challenged in appeal before the Hon'ble Real Estate Appellate Tribunal by the Complainant association and the Tribunal vide REFA No. 51 of 2021 dated 01-11-2022 has allowed the appeal and set aside the order of this Authority and remanded for examination and decision afresh.

3. When the above Complaint came up for consideration afresh along with the other complaint No. 8/2024 filed by one of the allottees, on 18.06.2024, the Complainant in Complaint No 34/2021 filed IA No. 89/2024 to amend the Complaint and the new counsel appeared for the Complainant Association requested for further time to produce documents to show that the project in question is an ongoing project comes under Section 3 of the Act 2016. The counsel for the Respondent submitted that counter statement is filed by them in Complaint No. 8/2024 also and stated that the project has obtained the completion certificate. But no such certificate has been produced according to him. It is also found that the Complainants could not produce any agreements entered into between them and the Respondents. Hence, the counsels for both the parties were directed to produce



all the documents to substantiate their respective contentions with respect to the issue of maintainability of the complaints. On 29.08.2024, only the counsel for the Complainants attended the hearing but nobody appeared from the part of the Respondents. The Authority enquired the Counsel for the Complainants as to whether the Complaint No. 8/2024 by an allottee can be entertained as the original Complaint No. 34/2021 filed by the Association seeking the same reliefs is under consideration. The Counsel sought further time to consult with his client and decide. Exparte notices were ordered against the Respondents and the hearing was adjourned to 06.11.2024. When the cases came up for hearing on that day, it was found that no documents have been produced from the part of both sides and the counsel for the Complainants requested for a adjournment and a physical hearing of the matter. The Complainant was again directed to produce sufficient to prove their case that the project comes under the Act 2016. On the next hearing day, the counsel for the Complainant appeared directly but the 1st Respondent and his counsel appeared online. The counsel for the Respondents submitted that some documents have been produced by them and admitted that no agreements have been entered into between the Complainants and the /respondents but all the allottees got executed sale deeds in their favour. According to the Counsel for the complainants, the common amenities shown in the brochure and advertisement were not provided by the Respondents. The counsel appeared for the



Respondents alleged that various attempts of the complainants before other judicial Forums were failed and these complaints does not come under the purview of the Act 2016.

4. The factual matrix of the Complaint No. 34/2021 in brief is as follows: There is delay in handing over of possession of the common areas and common facilities of the apartment complex to the Apartment Owners Association even after the registration of the Association on 12-05-2014. Even though car parking facility is offered in the documents of title of some of the apartment owners and car porch in some other title deeds, only eight car parking areas were earmarked and the Promoters usurped and unauthorizedly constructed other structures in the remaining parking lots and utilizing the same for their benefit by letting out the same to third parties. Even though 16 apartments were contemplated in the original building permit and approved plan and 1/16 oodukar right in the 28 $\frac{1}{2}$ cents of land had been given to the first 16 flat owners, the developer unauthorisedly constructed 22 apartments and fraudulently apportioned 1/20 the oodukar undivided and indivisible right in the 28 1/2 cents of land is conveyed to the last purchased flat owners of the fourth floor whereas for making such conveyance deeds the promoter/ developer have remained no title in the property. Now the Respondents are trying to make further constructions above the fourth floor as if they have got right to make such unauthorised constructions in flagrant violation of the building rules. The



completion certificate/ occupancy certificate had not yet been obtained by the Promoters. The Respondents had persuaded the flat owners to purchase the apartments proposed to be constructed by them with the common amenities described in their brochure namely 2 elevators including one bed lift with backup generator, fire safety, car parking, air condition provision in the master bedroom in each flat, and roof top part area, fitness centre, drivers/servants toilet, garbage chute, basketball post, beautiful landscaping, children's play area, round the clock security provision, common lighting and water pump. Out of the said common facilities, barring the 8 car parking lots and the erecting of a low-quality lift and contributing $\frac{1}{2}$ of the expenditure for the other lift, all the other promises remained unfulfilled. No effective and efficient waste management system provided in the apartment complex. Inefficient and incomplete sewage mechanism was provided. Clearance certificate from the fire and safety department has not yet been obtained by the Promoter. The apartment owners have made prompt payments of all the instalments to the Promoters. It was alleged that in spite of prompt payment of all instalments by the apartment owners, Respondents did not complete the Project within the specified time. The Respondents promised to complete the Project within 6 months of occupation and the flat owners were persuaded to occupy the apartment. Believing the assurance given by the Respondents as true, the flat owners occupied the apartments. It was also submitted that the



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Project is ongoing and is not registered in RERA. As per IA No. 89/2024 filed on 18.06.2024, it was submitted that till date the completion certificate of the building has not been given to the Respondents and till date the Respondents not handed over the common area including terrace to the association and register the same as per law. The inmates of Alphonsa Residents Association are suffering a lot due to the act of the Respondents. The approved plan of the project is also not supplied to the Complainant by the Respondents. The document produced from the side of the complainants will clearly show that the Respondents had not applied for permit for construction of the 4th and 5th floors over the existing three storied building and the Panchayat Secretary through letter dated 25.11.2006 sought for Fire Force Clearance Certificate from the Director of Fire Force and Commandant General Fire & Rescue Services rejected the NOC by pointing out that the main stair cases proposed are around the lift well which is not permissible. But without any NOC or Clearance Certificate from the Fire & Rescue Services and even without any approved plan and permit the Respondents had constructed the 4th and 5th floors which are now posing a grave safety threat to the inhabitants of the flats and the Flat Owners. The emergency exit in case of a fire accident remained incomplete, because the ladder from the exit door is not touching the ground. The Respondents had encroached sizable portion of the landed property of the Apartment complex and reduced it into their illegal possessions by making the



unauthorized construction of shop rooms there and thereby deprived the Flat Owners of their legitimate right over the car parking area set apart on the front portion of the apartment complex initially. The Respondents constructed temporary shed for the workers stay and obtained a building number which was gradually replaced with a permanent structure and thus usurped the Flat's property and now raised a false contention that there is a shortage in the area and extent of the 28 ¹/₂ cents sold out to the flat owners. Till now the existing revenue records will go to show that the landed property of the flat is having an extent of 28 $\frac{1}{2}$ cents sold out to the flat owners. Till now the existing revenue records will go to show that the landed property of the flat is having an extent of 28 1/2 cents and not 26 cents contended by the Respondents. The Respondents did not provide any elevator on the other hand one half of the cost of the installation of already erected lift is met by the flat owners. The Respondents are not executing the works in conformity with the approved plan and permit. It was submitted that the Apartments in which all the flat owners are age old and having difficulties to climb the steps for the ingress and egress to the flat. As per amended Complaint the following reliefs were additionally sought, - (d) the completion certificate and the approved plan of the building issued by authority should be made available the competent to petitioner/complainant by the Respondents (e) direct the Respondents to facilitate the arrangements to get the inmates of the



Alphonsa Residency Association the Occupancy certificate, (f) remove the unauthorized construction and to do the needful to get the NOC from the Fire Force and Commandant General Fire and Rescue Service, (g) direct the Respondents to facilitate lift as well as the Well and also to remove the unauthorized sheds constructed in the premises and also to repay the amount paid by the inmates of Alphonsa Residence Association on behalf of the Respondents.

The Respondents filed Counter Affidavit dated 5. 11.03.2021 in which it was submitted as follows: The Complaint is not maintainable. The flats/apartments which are the subject matter of this Complaint have been completed and the tax was assessed in the financial year 2006-2007. It was certified by the panchayath in the certificate dated 27.02.2021 that the building is 14 years old, copy of which was produced. Only after completion of the building, the revenue inspector of the Panchayat will assess the tax and tax will be levied, copy of tax receipt dated 04.10.2006 was produced. The building bearing No. VIII/507 B for which tax receipt produced belongs to the person who claims to be the Secretary of the Complainant Association. Therefore, it is an admitted fact that the flat/apartments were constructed and completed before the enactment of Real Estate (Regulation and Development) Act 2016. Since the building has been completed before the enactment of the Act 2016, no prior registration is required as contemplated under Section 3 of the Real Estate (Regulation and Development) Act 2016. Therefore, the



Respondents submitted to consider the question of maintainability of the Complaint at first instance before proceeding further and to dismiss the Complaint as not maintainable. The Complaint is filed supressing material facts. The Complainant who is the Secretary of the Association is a member of the said association but he is not an owner in any of the Apartment/flats. He himself has settled the apartment in favour of her daughter and husband, retaining his as well as his wife's life interest through a settlement deed registered as document No. 334/2016 of SRO, Kozhencherry. Therefore, the Secretary will not come under the definition of "Allottee" under Section 2 (d) of the Real Estate (Regulation and Development) Act 2016 and therefore the Complainant is not authorized to file this Complaint. The Respondents denied that they are trying to make further construction above the fourth floor and the Respondents have no intention to make any such construction. The Respondents are also having an apartment in the same residential building complex. Initially the undivided shares over the land were sold to the parties and thereafter building was constructed and the same was handed over. The allottees are using the flats since 2006-2007. All the amenities assured were provided. The Complainant is having personal animosity towards the Respondents and is filing frivolous Complaint at different forums. The flats are constructed in the property having 28 cents which is now only 26 cents as per the revenue records. There is another 5 cents of property adjacent to this property. The Respondents had constructed shop rooms in



the said 5 cents of land. Alleging encroachments O.S No: 474/2019 was filed by the Complainant before the Munsiff Court, Pathanamthitta and the same is pending for consideration. When the Respondents constructed a truss work over the above said shop rooms, the Complainant filed WP(C) No: 35534/2019 before the Honourable High Court of Kerala and the same is also pending for consideration. For the same allegations in this Complaint, a petition was filed before the Consumer Disputes Redressal Forum, Pathanamthitta as CC 81/2019 and the same is also pending for consideration.

6. An additional counter affidavit dated 15.04.2021 was submitted by the Respondents in which it was stated as follows: The properties have been mutated in the name of allottees and is evident from the Thandaper account, copy of which was produced. In the reply dated 08.08.2019 to the information sought by the Complainant from the Panchayath under RTI, it was stated that the building was completed. The Respondents had constructed shop rooms in the 5 cents of land adjacent to the property in question. The Respondents installed lift and the documents produced by the Complainant is with respect to the maintenance of the lift already installed. The copies of sale deeds, Thandaper account and agreement with elevator company were produced.

7. The Complainants filed Replication denying the contentions in the counter affidavit filed by the Respondents and submitted as follows: In the certificate issued by the Secretary of



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Kozhencherry Grama Panchayat on 27-02-2021, it was stated that building tax were assessed for flat/apartment numbers 338 to 357 in the Alphonsa Apartments Complex in Ward No. XIII in the year 2006-2007 as per the building tax assessment register maintained in the said panchayat and it could not be treated as a completion certificate of the Apartment complex within the meaning of term defined under section 2 (q) of the Act. The Respondents misconstrued the Occupancy certificate under section 2 (2f) and a completion certificate under section 2(q) as one and the same and made a desperate attempt to establish that it is a completed Project even before the commencement of the Act. Whereas the common areas as defined under Section 2 (n)(i) to (viii) have not yet so far been completely constructed or handed over to the Flat Owners Association. The construction of the common areas covered by Section 2 (n) (i) to (iv) and (viii) are still remaining incomplete and flat owners are forced to occupy the incomplete apartment complex in the midst of a total dearth of assured common facilities. Therefore, the Respondents contention that this is a completed Project is totally false and it is an on-going Project on the date of commencement of the Act and even now no completion certificate has so far been issued by the competent authority. The building tax receipt dated 04-10-2006 produced by the Respondents only evidencing the payment of building tax and the certified copy of settlement deed No: 334/2016 executed by Complainant in favour of his daughter and son-in-law with life interest reserved to him



and his wife, produced by the Respondents will not in any way establish that the Complainant is not an original Allottee. It may at the best will go to show that Complainant being the original allottee has assigned his title in favour of his daughter and son-inlaw through settlement deed No: 334/2016 who will get absolute right only after Complainant's death. So, the Complainant is entitled to exercise all the rights and discharge all the duties of Allottees under Section 19 of the Act. The averment that Respondents are not making any further construction above the fourth floor and have no intention to make such construction is utter falsehood. The construction above fourth floor without any approved plan or permit is still going on. The said unauthorised constructions were made in flagrant violation of Section 14 of the Real Estate (Regulation and Development) Act 2016 by deviating from the approved plan and permit. With the nefarious design to construct 4 more flats above the fourth floor without any plan or permit and even by deviating from the approved plan and permit, the Respondent had delayed the handing over of the common areas including the terrace area to the Association even after several years of the formation of the Apartment owner's association by the Flat owners. The Complainants also pointed out that without any NOC or clearance certificate from the Fire and Rescue Services and even without any approved plan and permit the Respondents had constructed 4th and 5th floors which is now posing a grave safety threat to the inhabitants. The Respondents had encroached



sizable portion of the landed property of the apartment complex and reduced it into their illegal possession by making the unauthorized construction of shop rooms there and thereby deprived the flat owners of their legitimate right over the car parking area set apart on the front portion of the apartment complex initially. The Complainants also alleged that OS No: 474/2019 filed before Munsiff Court, Pathanamthitta is for fixation of boundary of 28 ¹/₂ cents and for recovery of possession of the encroached land from the Respondents. The WP (C) 35534/2019 filed before Hon'ble High Court of Kerala is for seeking the issuance of a writ of mandamus or directions to the Panchayath Secretary for an early hearing and disposal of the application filed before Panchayat for the demolition of the unauthorised construction by the Respondents. The Complaint filed before the District Consumer Disputes Redressal Forum, Pathanamthitta as CC No: 81/2019 is against the unfair trade practice followed by the Respondents and for the removal of the deficiency in the services of the Respondents who are service providers as property developers. The additional counter affidavit filed by the Respondents/promoters is the result of an afterthought. The copies of sale deed, Thandaper account and agreement with elevator company are irrelevant documents. It was submitted that the relief sought for in any of the aforesaid petitions and the suit are in no way be parallel remedies. The Photographs produced by the Complainants will clearly show the incomplete construction made



over the roof slab of the fourth floor after erecting truss work above it. The unauthorized ongoing construction of the fifth floor is clearly depicted in the photographs and the Respondents vague and evasive denial of the same is only an attempt to hoodwink the Authority and thereby trying to wriggle out of their responsibilities and liabilities as the Promoters. The Complainant submitted the copies of advertisement published in Malayala Manorama daily on 13.07.2006, email communication by one of the allottees with the respondents, letter dated 30.07.2018 by the Respondent to the Secretary of the Association.

8. The facts of the Complaint No. 8/2024 filed by one of the flat owners are as follows: The 1st Respondent in the capacity of Chairman, Mulamoottil Group published an advertisement in the newspaper with regard to the sale of 16 luxury flats at Kozhenchery. The Complainant approached the 1st Respondent for the purchase of a flat, the 1st Respondent issued a copy of the brochure with regard to the flat and the facilities available to the purchaser also with a location plan. A copy of the brochure was produced. Believing the words of the 1st Respondent, the Complainant purchased 1/16th undivided share in the property in Sy. No. 333/6/1 of Kozhenchery Village, Pathanamthitta District having a total extent of 28 cents along with $\frac{1}{2}$ cent for the egress and ingress to the property from 1st and 2nd Respondents as per sale deed No. 992/2006 and a copy of the sale deed was produced. As per the said deed the Respondents 1 and 2 promised that a flat in



the first floor having an extent of 1527 square feet and a car porch will be handed over. As per the deed the Complainant was allowed to use the car parking area, stair case, varandah and the other facilities which is promised by the Respondents as per the brochure and advertisement. Thereafter the Respondents No.1 and 2 did not fulfil any of the promises given by them as published. The Respondents No.1 and 2 started construction of a building encroaching into the property which is already sold to the inmates of the association named "Alphonsa Residence Association". The Respondents No.1 and 2 sold the flat to the flat owners and in the sale deeds it is made very clear that each inmate is having 1/16th undivided share in the whole property. Even after the sale without consent from the Complainant, getting the Respondents constructed 4 flats in the existing upstairs, behind the back of the complainant. It is reliably learnt that the Respondents No.1 and 2 colluded with the 3rd Respondent to construct the 4 flats. The Alphonsa Residence Association filed O.S.No.479 of 2019 before the Munsiff's Court, Pathanamthitta against Respondents No.1 and 2 seeking a relief of recovery of possession to fix the western boundary of item No. 1 of the property, to construct the compound wall and to realize the amount of the costs and also for permanent prohibitory injunction and consequential relief. Temporary injunction was granted in the suit. The Alphonsa Residence Association filed W.P.(C) No. 35534 of 2019 before the Hon'ble High Court against the Respondents No.1 and 2 seeking a relief to



consider the representation filed by the Alphonsa Residence Association before the Chairman Development Authority Standing Committee, Kozhencherry Grama Panchayat and also direction to the 3rd Respondent to execute the stop memo effectively and also for consequential reliefs, a copy of the Writ Petition was produced. The Alphonsa Residence Association filed a complaint before the 3rd Respondent on 29.07.2021, with regard to the unauthorized construction of flats by the Respondents No.1 and 2, the building permit, if at all building permit is granted by the 3rd Respondent to Respondent Nos. 1 and 2 to construct 4 flats is illegal since the property owners are not Respondents 1 and 2. However, the Respondents 1 and 2 continued their illegal construction, a copy of the Complaint filed was produced. Even though car parking facility is offered in the documents of title of complainant, the same is not handed over the complainant till date. The Respondents 1 and 2 unauthorizedly constructed other structures in the parking lots and utilizing the same for their benefit by letting out the same to third parties. Even though sixteen (16) apartments were contemplated in original building permit and approved plan and 1/16 oodukur right in the 28 ¹/₂ cents of land had been given to the first sixteen flat owners, the developer unauthorizedly construct 20 apartments and fraudulently apportioned 1/20th oodukur undivided and indivisible right in the 28 ¹/₂ cents of land in which the apartment complex is constructed to the last purchased flat owners of the fourth floor for here making such deeds as conveyance the



proprietor/developer have no title in the property. The Respondents 1 and 2 are trying to make further constructions above the 4th floor as if they have got right to make such unauthorized constructions in flagrant violation of the building rules. Several times the Complainant demanded for the approved/sanctioned plan, layout plans but the same was not granted. The Complainant requested for the compliance of car parking modern safety standards, roof top, park area, fitness centre, drivers and servants' toilets, drivers and servants' common room, garbage chute, basketball posts, elegant lobby, generator last but not least beautiful landscaping area. Unfortunately, till date nothing been complied with by the Respondents 1 and 2 brutally cheated the complainant. The Respondents 1 and 2 till date did not hand over the common areas as promised by them. The Completion Certificate/Occupancy Certificate had not yet been given to the complainant. The Respondents persuaded the flat owners to purchase the apartments proposed to be construct by them with the common amenities described in their brochure namely 2 elevators including one bed lift with backup generator, fire safety, car parking, air condition provision in the master bedroom in each flat and roof top part area, fitness centre, drivers/servants toilet, drivers/servants room (common), garbage chute, basketball post, beautiful landscaping, children's play area, round the clock security provision, common lighting and water pump. Out of the said common facilities, barring the 8 car parking lots and the erection of a low-quality lift



and contributing $\frac{1}{2}$ of the expenditure for the other lift, all the other promises remained unfulfilled. No effective and efficient waste management system provided in the apartment complex. Inefficient and incomplete sewage mechanism was provided. The Clearance Certificate from the fire and safety department has not yet been handed over to the Complainant. In spite of prompt payment by the Complainant to the Respondents 1 and 2, the Respondents 1 and 2 did not complete the project within the specified time. The Respondents 1 and 2 promised to complete the project within 6 months of occupation and the complainant was persuaded to occupy the apartment. The project is an ongoing project and it is not registered in RERA. The Complainant is entitled for compensation from Respondents 1 and 2 for not completing the project within time and with all facilities promised by the Sale Deed No. 992/2006 and the brochure/advertisement. The relief(s) sought are : a) Direct the Respondents 1 and 2 to complete the Project envisaged in the covenants contained in the Sale Deed executed in favour of the complainant, b) Compensation for delay of completion of the Project and handing over the possession in true letter and spirit of the Deed executed between the complainant and Respondents No.1 and 2, c) direct the Respondents No. 1 and 2 to hand over completion certificate and the approved plan of the building issued by competent authority, to the complainant, d) direct the Respondents No. 1 and 2 to hand over the Occupancy Certificate to the Complainant, e) direct the



Respondents No. 1 and 2 to remove the unauthorized construction and to do the needful to get the NOC from the Fire Force and Commandant General Fire and Rescue Service, f) direct the Respondents No. 1 and 2 to facilitate lift as well as the Well and also to remove the unauthorized sheds constructed in the premises. A petition was also filed to depute an Advocate Commissioner to inspect the project and to report the state of affairs therein. The copies of brochure, sale deed, memorandum of writ petition 35534/2019, letter dated 29.07.2021 from the association to the Grama Panchayath Secretary, list of allottees with details of registration of property are produced.

9. The Respondents No. 1 and 2/promoters filed reply statement on 28.05.2024 to the above complaint No. 8/24 in which it was submitted as follows: The Complaint is not maintainable, the occupation of the apartment was given during the year 2006-07, ie. ten years before the commencement of the RERA Act. The Complaint will not come within the jurisdiction of this Authority and apply to the project in question. The building construction was fully completed in all respects, during the year 2006-2007 and had received completion certificate prior to the commencement of the said Act. The project is not a new one or an on-going one. Further the allegations as to the subject matter are as regards a builder/promoter, who is a necessary party has not been made a party in the Complaint and hence the complaint is bad for non-joinder of necessary parties. Further Kozhencherry Grama



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Panchayat was unnecessarily arrayed and hence the Complaint is bad for mis joinder also. Sale Deed No. 992 of 2006 was executed in favour of the Complainant on 28/09/2006, for the undivided share of the land and the right over flat No. A2 having an extent of 1527 Sq.ft. on the 1st floor of the apartment project namely "Mulamoottil Homes Alphonsa Apartment". The building of the Complainant having No. 13/343 of Kozhencherry Grama Panchayat is now aged 19 years as evident from the Building Age Certificate issued by Kozhencherry Grama panchayat, which is appended in page No. 7 of the Complaint. The Complainant took the possession and physically occupied the apartment, he purchased, assessed by the competent authority and is having right, title, enjoyment and possession years back. The residents' association was formed and took the maintenance responsibilities of the common areas and amenities, as provided under law, also years back. The apartment project has already obtained completion certificate then prevalent, prior to the commencement of Real Estate (Regulation and Development) Act, 2016. The pleadings of the Complaint if taken as a whole and on overall appreciation, it can be found that, none of the provisions of Real Estate (Regulation and Development) Act, 2016 is attracted. Moreover, the Complainant has no competency or locus standi to raise the allegations and file the present Complaint, since the maintenance responsibility has been taken over by the legally formed residence Association and grievances if any, for the Association, as a society



in large, has to be agitated by the Association only. The Association has already filed the Complaint which is pending as Complaint No. 34/2021, before this Authority and hence the present Complaint is hit by the principle of "Res Subjudice". The Respondents No.1 and 2 never published any advertisement in any capacity under the Mulamoottil Group as alleged. No brochure has ever been printed, published or issued by the Respondents at any point of time. The undivided shares over the land were sold to the prospective purchasers. As per the recitals in their respective sale deeds, the purchasers were permitted to construct the flats and as per their 20 flats were constructed and handed over to the requests. prospective purchasers with common facilities and amenities and they are in occupation after assessment from the authority and obtaining individual building numbers right from the year 2006-2007. Encroachment alleged in the said land is highly impish and derogatory. The Complainant was allotted oodukoor right to the extent of a 1/16th share as per the sale deed executed in his favour in the year 2006 and had no exclusive possession of any definite portion of the property. The total extent of project land at the time of commencement and completion is 28.500 cents and the same is recited as A Schedule in all Sale deeds. All the constructions made and completed were as per the permissions, plan and permits as authorized by law and completed in the year 2006. The contrary allegations are emphatically denied. The flat for the Complainant was constructed and handed over to them with common facilities



and amenities including car park and they are in occupation after assessment from the authority and obtaining individual building numbers since in the year 2006-2007. The approved/sanctioned plan was given to the Association. All common amenities and facilities offered were given to the flat owners prior to their occupation and the buildings were assessed and allotted individual numbers, according to the then prevalent Law, Rules, Regulations, Procedures and Notifications for the year 2006-07. The project is very old and occupied by the flat owners during 2006 (19 years old) and not a new one or ongoing one. The complainant is not entitled for any compensation as averred. The Complainant had instituted false and frivolous complaint on an experimental basis, suppressing the real facts, with a view to harm the Respondents, and hence the Respondents are entitled for compensation and compensatory cost. The Respondents No. 1 and 2 filed objection to the petition for deputing Advocate commissioner.

10. We heard arguments of the learned counsels appeared for both sides, on the issue of maintainability of the complaints and perused all the documents produced by each of them. The Respondents raised the issue of maintainability specifying that the flats/apartments which are the subject matter of this Complaint have been completed and the tax was assessed in the financial year 2006-2007, much before the date of commencement of the Real Estate (Regulation & Development) Act 2016. Here the reliefs sought by the Complainants are a) to direct the Respondents to



handover the possession of the common areas and common facilities and amenities to the flat owner's association, b) to complete the Project as envisaged in the covenants contained in the sale deeds executed in favour of the purchasers of the flats and c) for compensation for delay of completion of Project and handing over of possession of the common areas to the Association d) the completion certificate and the approved plan of the building issued by competent authority should be made available to the petitioner/complainant by the Respondents (e) direct the Respondents to facilitate the arrangements to get the inmates of the Alphonsa Residency Association the Occupancy certificate, (f) remove the unauthorized construction and to do the needful to get the NOC from the Fire Force and Commandant General Fire and Rescue Service, (g) direct the Respondents to facilitate lift as well as the Well and also to remove the unauthorized sheds constructed in the premises and also to repay the amount paid by the inmates of Alphonsa Residence Association on behalf of the Respondents. The grievances of the Complainants, the association and the individual allottee are almost same. According to the complaints, the Respondents offered several common amenities through advertisements and brochures but the Respondents No.1 and 2 have not provided any of the amenities offered by him or handed over the common area to the Association. According to the Complainants, the Respondents No.1 and 2 have made constructions over the apartment on which they have exclusive



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rights. They also raised serious allegation that the Respondents No.1 and 2 constructed 4 flats illegally though these Respondent have no title over the said property now. They allege that though car parking facility is mentioned in the sale deeds, the same is not handed over till date instead the Respondents have unauthorizedly constructed other structures in the parking lots and let out the same to third parties. We have noticed seriously one of the submissions from the part of the counsel for the complainants that even though sixteen (16) apartments were contemplated in original building permit and approved plan and 1/16 oodukur right in the 28 ½ cents of land had been given to the first sixteen flat owners, the Respondents unauthorizedly constructed 4 more apartments later and fraudulently apportioned 1/20th oodukur undivided and indivisible right in the 28 ½ cents of land to the last purchased 4 flat owners of the fourth floor.

11. The copies of documents produced by the Complainant in Complaint No. 34/2021 are marked as **Exhibits A1 to A9** and the copy of document produced by the Complainant in Complaint No. 8/2024 is marked as **Exhibit A10**. The copies of documents produced by the Respondents No. 1 & 2/ promoters are marked as **Exhibits B1 to B7**. The copy of certificate dated 12.05.2014 registering the Complainant Association with District Registrar Pathanamthitta produced is marked as **Exhibit A1**. As per the memorandum of the Society appended with the certificate it was stated that the Secretary shall be the person who will sue and



be sued for and on behalf of Alphonsa Residence Association. The copy of photographs of the apartments produced are marked as **Exhibit A2.** The copy of sale deed dated 28.04.2016 produced is marked as **Exhibit A3**. As per Exhibit A3, 1/16 right in 11.53 Ares was transferred along with building admeasuring 1223 sq ft for a total, consideration of Rs. 8.5 lakhs. In the Exhibit it was stated that the building along with water connection, electricity connection, right to use common path way, car parking area, varandah, stair case, with other common amenities were transferred. The copy of advertisement published in Malayala Manorama daily on 13.07.2006 produced is marked as Exhibit A4. In the advertisement in the name of Mulamoottil Homes, it was stated that "16 luxury flats at affordable rate in the heart of Kozhencherry near Muthoot Hospital ready for occupation". Common amenities have not been mentioned in the advertisement issued during 2006. The copies of email communications dated 28.06.2007 and 29.06.2007 produced is marked as Exhibit A5 series. Exhibit A5 series, e mail communications were issued during 2007 in which the price of apartment offered was Rs. 18.5 lakhs and the facilities offered are two bed room, study room, living room, dining hall, kitchen, two bath room and verandah, 24hour water supply, electricity, security, elevator, covered roof top, Also offered that the handing over of completed flat will be before 2007 December. The copy of letter dated 30.07.2018 issued by the Respondent No. 1 to the Complainant in Complaint No. 34/2021



produced is marked as Exhibit A6. In the Exhibit A6 letter, Respondent No. 1 has stated that the top floor of building is owned by him and he has complete right for stocking goods, for construction there and for letting out the property and these had also been specifically mentioned in the deeds executed with the allottees. The copy of sale deed dated 07.12.2015 executed by one of the flat owners for its second sale in favour of the present owner of flat as document No. 1085/1/2015 of Kozhencherry SRO produced is marked as Exhibit A7. As per Exhibit A7 deed, 1/16 share in land was transferred and details of building were annexed in Form 1B to the document as per which the building was constructed in the year 2007 and building number assigned was 13/340 amount of tax was Rs. 1076/-and area of building is 1135 sq ft. The copy of sale deed dated 06.03.2017 executed by one of the flat owners for its second sale in favour of the present owner of flat as document No. 182/1/2017 of Kozhencherry SRO produced is marked as Exhibit A8. As per Exhibit A8 deed, 1/20 share of land was transferred the details of building were annexed in Form 1B to the document as per which the building was constructed in the year 2007 and building number assigned was XIII/354 D1 and date of property tax was on 09.01.2016 amount of tax was Rs. 1024/-and area of building is 114 sq m. The copies of 3 sale deeds as document No. 557/2009, 866/2008, and 1/687/2008 executed by the Respondents No. 1 & 2/promoters is marked as Exhibit A9 series. As per these sale deeds 1/20 share of land was transferred.



Hence total 4 sale deeds were executed with land area of 1/20 share out of 28.5 cents. The copy of sale deed No.992/2006 dated 28.09.2006 produced by the Complainant in Complaint No. 8/2024 is marked as Exhibit A10. As per Exhibit A10 sale deed executed by the Respondents No. 1 and 2 in favour of the Complainant, it was stated that permit for construction was obtained as per KMBR order No. 48/04-05 accordingly right for construction of a flat in the manner explained in schedule B and 1/16th of total land described in schedule A, equal to the extent proportionate to flat along with right to use common amenities was transferred for a total consideration of Rs.2.5 lakhs. In Schedule B it was stated that right to construction of a flat admeasuring area of 1527 sq ft was transferred. A strange clause was inserted in page 5 as clause 3 in the sale deed in which it was stated that the Respondents No. 1, 2 and their successors have right to construct flats above the flats to be constructed by the Complainants.

12. The copy of certificate dated 27.02.2021 issued by the Kozhencherry Grama Panchayath is marked as **Exhibit B1**. In Exhibit B1, the Secretary of the Grama panchayath has certified that the building was assessed for the purpose of tax in the year 2006-2007 and the buildings are 14 years old. The copy of tax receipt dated 04.10.2016 issued by the Kozhencherry Grama Panchayath is marked as **Exhibit B2**. In Exhibit B2, building tax for four buildings were remitted on 04.10.2006. The copy of settlement deed as doc No. 334/2016 SRO Kozhencherry executed



by the Complainant in Complaint No. 34/2021 in favour of his daughter and her husband produced is marked as Exhibits B3. According to the Respondents No. 1 and 2/ promoters the Complainant in Complaint No. 34/2021 is not an allottee under the Act, 2016 in view of the settlement deed executed. The Complainant submitted that the said settlement deed was executed with life interest reserved to the Complainant and his wife, hence the Complainant is still an allottee under the Act, 2016. The copies of sale deeds executed in favour of the owners of flats produced by the Respondents/promoters are marked as Exhibit B4 series. In all these deeds 1/16 share of land was transferred and it was specified that the Respondents No. 1, 2 and their successors have right to construct flats above the flats to be constructed by the Complainants. The copy of Thandapper account showing that the properties were mutated in favour of the owners produced by the Respondents/promoters are marked as **Exhibit B5**. The copy of agreement dated 30.03.2008 entered between the Respondents/ promoter and elevator company for supply and maintenance of lift produced by the Respondents/promoter are marked as Exhibit B6. The copy of settlement deed dated 25.10.2012 executed in favour of one of the owners of flats as document No. 1131/2012 Kozhencherry SRO produced is marked as **Exhibit B7.** As per the deed, the details of building in Form 1B were annexed to the document as per which the building was constructed in the year 2007 and building number assigned was 8/507Q and date of



property tax was on 22.10.2012 amount of tax was Rs. 580/-and area of building is 1135 sq ft.

13. This Authority is called upon to determine whether the above complaints filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act 2016") are maintainable. The Complaint No. 34/2021 was filed by the Association of flat owners in "Mulamoottil Homes Alphonsa Apartments" at Kozhenchery. The Complaint was originally filed on 23.01.2021 seeking directions to the Respondents to: 1) Hand over possession of common areas, facilities and amenities to the flat owners' association; 2) Complete the project as envisaged in the covenants contained in the sale deeds;3) Award compensation for delay in completing the project and handing over possession. The Complaint No. 8/2024 was filed by one of the flat owners in the same project, seeking similar reliefs along with additional prayers regarding occupancy certificate, removal of unauthorized construction, etc. This Authority had earlier dismissed Complaint No. 34/2021 finding that the project was completed before the commencement of the Act. However, the Hon'ble Kerala Real Estate Appellate Tribunal in REFA No. 51 of 2021 set aside the order and remanded the matter for fresh examination. Both complaints are now being heard together as they relate to the same project as mentioned above.

14. The contentions raised by the learned counsel appeared for the Complainants were shortly that: 1) The project is



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an "ongoing project" under Section 3 of the Act as: a) No completion certificate as defined under Section 2(q) of the Act has been issued by the competent authority, b) Common areas as defined under Section 2(n) remain incomplete, c) Construction of the 4th and 5th floors was carried out without proper permits and NOC from Fire and Rescue Services, d) Common amenities promised in the brochure were not provided, e) The building tax assessment certificate issued by the Panchayat cannot be treated as a completion certificate under Section 2(q) of the Act, f) The Respondents are still conducting unauthorized construction on the 5th floor, encroaching upon common areas, and have not handed over the terrace and other common areas to the Association. The reply arguments and contentions put forwarded by the learned counsel for the Respondents were briefly as follows: 1) The project is not covered under the Act 2016 as: a) The flats/apartments were completed and tax was assessed in the financial year 2006-2007, b) The building is approximately 14-19 years old (as per the certificate from Panchayat), c) The complainants/owners took possession and have been occupying the apartments since 2006-2007, d) Properties have been mutated in the name of owners concerned as evidenced by Thandaper accounts, e) The project was completed before the enactment of the Act 2016, and therefore no registration under Section 3 was required. According to the Respondents, the Complainants have already approached multiple judicial forums for the same



grievances such as by filing: 1) OS No. 474/2019 before Munsiff Court, Pathanamthitta for fixation of boundary and recovery of possession, 2) WP(C) No. 35534/2019 before the Hon'ble High Court of Kerala regarding unauthorized construction, 3) CC No. 81/2019 before the District Consumer Disputes Redressal Forum, Pathanamthitta.

15. After careful consideration of the submissions made by the learned counsels appeared for both parties and the documents placed on record, the following points are being emerged for determining the question of maintainability of the above Complaints:

1. Whether the project "Mulamoottil Homes Alphonsa Apartments" at Kozhenchery qualifies as an "ongoing project" under Section 3 read with the relevant provisions of the Act 2016?

2. Whether the present complaints are barred under the principles of forum shopping and res sub judice, considering the pendency of proceedings in other forums?

Point No. 1:

(1) As far as the status of the Project in question and the applicability of the Act 2016 is concerned, Section 3 of the Act 2016 mandates that no promoter shall develop any real estate project without registering it with the Authority and the proviso to Section 3(1) exempts the projects where the completion certificate



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has been issued prior to the commencement of the Act. Here, with regard to the 'Completion Certificate' (Occupancy Certificate in the case of Kerala), the Respondents have produced only a certificate dated 27.02.2021 from the Secretary of Kozhencherry Grama Panchayat stating that building tax was assessed for the flats in the year 2006-2007. The Section 2(q) of the Act 2016 defines "completion certificate" as a certificate issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws. Obviously, the building tax assessment certificate produced by the Respondents does not certify that the project has been developed according to the sanctioned plan or layout plan. It merely indicates that tax was assessed for certain flats in 2006-2007. However, it is undisputed that the Complainants/flat owners took possession and have been occupying the apartments since 2006-2007 and the Tax assessment and mutation of properties in the names of flat owners have been completed. It is also to be taken into consideration that the Association of flat owners was formed in 2014 itself, indicating substantial completion of the basic structure.

(2) In the Exhibit A3 sale deed dated 28.04.2016, it was seen stated that the building along with water connection, electricity connection, right to use common path way, car parking area, veranda, stair case, with other common amenities have been

transferred to the Complainant/allottee and as per Form 1B appended with the sale deed, the details of building transferred have been described. "The building number assigned by the local authority is 8/346, the area of apartment is 1223 sq ft, year of construction of building is 2002, the building tax assessed is Rs 519/- receipt No. 11503100290 dated 13.04.2015, the building is with RCC roof, floor with tiles and cost of building Rs. 5,25,000/-As per Exhibit A4, copy of advertisement published in Malayala Manorama daily on 13.07.2006, it was stated that "16 luxury flats at affordable rate in the heart of Kozhencherry near Muthoot Hospital ready for occupation". In the advertisement issued during 2006 common amenities are not seen mentioned. As per Exhibit A5 series copies of email communications dated 28.06.2007 and 29.06.2007, the facilities offered are two bed room, study room, living room, dining hall, kitchen, two bath room and veranda, 24hour water supply, electricity, security, elevator, covered roof top. At the same time, as per the sale deed executed, these facilities and the common facilities are seen transferred. In Exhibit A6 letter, issued by Respondent No. 1 in favour of the Complainant, it was stated that the top floor of building is owned by the Respondents No. 1 and he is having complete right for stocking goods, for construction there and for letting out the property and these have also been specifically mentioned in the conveyance deeds executed with the allottees. In the copies of sale deeds produced, a strange clause was seen inserted as clause 3 stating that the Respondents



No. 1, 2 and their successors have right to construct flats above the flats to be constructed by the Complainants. As per Exhibit A7, copy of sale deed dated 07.12.2015 executed by one of the flat owners for its second sale in favour of the present owner of flat as document No. 1085/1/2015 of Kozhencherry SRO shows that 1/16 share in land was transferred and details of building were annexed in Form 1B to the document as per which the building was constructed in the year 2007 and building number assigned was 13/340 amount of tax was Rs. 1076/-and area of building is 1135 sq ft, with concrete roof and tiled floor. It is true that the Respondents/promoters could not produce occupancy certificate to show that the project had already been completed. However, Exhibit B1, copy of certificate dated 27.02.2021 the Secretary of the Kozhencherry Grama Panchayath has certified that the buildings 338 to 357 (total 20 numbers) in the apartment was assessed for the purpose of tax in the year 2006-2007 and the buildings are 14 years old. The Exhibit B2 copy of tax receipt dated 04.10.2016 issued by the Kozhencherry Grama Panchayath shows that the building tax for the four units including that of Complainant in Complaint No. 34/2021 were remitted on 04.10.2006. The documents placed on record indicate that the project was completed much before the commencement of the Act, 2016, ie before 01.05.2017.



(3) This Authority, during the hearings have repeatedly directed the Complainants to produce the copies of agreements for sale or other documents, if any, entered in to with the Respondents No. 1 and 2/promoters to show the promises given to them but according to the Complainants, no agreements for sale have been executed between them and the Respondents. At the same time, it is found that so called common amenities were not even mentioned in the sale deeds executed by the Respondents/promoter. On perusal of a sale deed, it was seen stated that permit for construction was obtained as per KMBR order No. 48/04-05 for construction of a flat in the manner explained in schedule B and 1/16th of total land described in schedule A, equal to the extent proportionate to flat along with right to use common amenities was transferred for a total consideration of Rs.2.5 lakhs. In Schedule B it was stated that right to construction of a flat admeasuring area of 1527 sq. ft was transferred. In page 5 as clause 3 in the sale deeds, it was seen stated that the Respondents No.1& 2/promoters and their successors have right to construct flats above the flats to be constructed by the Complainants. It is also seriously noted that out of total land area of 28.5 cents, 16 sale deeds were executed transferring 1/16th undivided shares to the buyers and later 4 sale deeds were executed transferring 1/20th share which itself is a grave error which makes the documents defective and in that case the Complainants may seek remedy before appropriate Judicial Forum.



(4) Even if no occupancy certificate produced, from the documents discussed above and the Exhibit B1 certificate issued by the local authority endorse the contention that the project in question is not an ongoing project. After considering similar with respect the issuance of Occupancy aspects to Certificate/Completion Certificate by the Local Authority, the Hon'ble High Court of Kerala made certain important observations in its recent Judgement in MSA No. 14 of 2024 P.V. Nidhish and Anr Vs Sivaprakash (2024(6)KHC 16). In the said Judgement it was made clear that even if the original Occupancy Certificate received by the Promoter is not available, the promoter is free to produce other evidences to the satisfaction of the Authority to prove that Occupancy Certificate is issued before the date of commencement of the Act or that the project was not an ongoing project as on the date of commencement of the RERA to avoid registration under Section of the Act, 2016. The relevant paragraphs of the said Judgement are reproduced herein below.

"Para 22. Proviso to <u>Section 3(1)</u> of the RERA mandates the promoter to register a real estate project if the Project is ongoing on the date of commencement of the RERA and for which the Completion certificate has not been issued. On a plain reading of this provision, the issuance of a Completion Certificate need not be before the commencement of the RERA.



<u>Section 3(2) (b)</u> of RERA, provides that no registration of the real estate project shall be required where the promoter has received the Completion Certificate for the real estate project prior to the commencement of RERA. What is relevant under Proviso to <u>Section 3 (1)</u> is the date of completion of the Project. What is relevant under <u>Section 3(2) (b)</u> is the date of receipt of Completion certificate.

para 23. On a conjoined reading of Proviso to Sub Section (1) and Clause (b) of Sub Section (2) makes it abundantly clear that what is relevant and material is the date of issuance of the *Completion Certificate. A Completion Certificate issued by the* Local Authority certifies that the building is constructed as per the approved Plan and Permit. If anybody is aggrieved by the Completion Certificate, it is for him to challenge the Completion Certificate through proper remedies available under law. The legality of the Completion Certificate is not a matter for the K-RERA to consider. The legislative intention is clear. The project should be complete as on the date of commencement of the Act in order to take it out from the purview of registration. The Completion Certificate is a conclusive proof for completion of the project as far as the RERA is concerned. When it is proved that the Completion Certificate is received by the promoter before the date of commencement of the RERA, the project is not liable to be



registered. In such case, further enquiry as to whether a project is ongoing or not is unwarranted.

para 24. The question of verification whether the project is an ongoing one or not arises under <u>Section 3</u> only in the absence of Occupancy Certificates. Even if the original Occupancy Certificate received by the Promoter is not available, the promoter is free to produce other evidences to the satisfaction of the Authority to prove that Occupancy Certificate is issued before the date of commencement of the Act or that the project was not an ongoing project as on the date of commencement of the RERA to avoid registration under <u>Section 3</u>."

(5) It is evident on perusal of the above-mentioned documents placed on record before this Authority that the flats/apartments which are the subject matter of these Complaints have already been completed during 2007, documents have been registered in individual names and the tax was assessed in their names before 2015 and occupying there, much before the date of commencement of the Real Estate (Regulation & Development) Act 2016.

Point No. 2:

The principle of forum shopping prohibits a litigant from pursuing the same cause of action in multiple forums to secure a



favourable outcome. As admitted by the Complainants, they have approached various judicial forums including the Civil Court for boundary fixation and recovery of possession, the Hon'ble High Court for directions against unauthorized construction and the Consumer Forum for unfair trade practices and deficiency in service. In O.S. No. 474/2019 before the Munsiff Court, the relief sought pertains to boundary fixation and recovery of possession of encroached land and in WP(C) No. 35534/2019 before the High Court, the relief sought is for directions to consider the representation against unauthorized construction. In CC No. 81/2019 before the Consumer Commission, the relief sought is against unfair trade practices and deficiency in service. Here, in the present complaints, the relief sought is for handing over of common areas, completion of the project, and compensation for delay. In fact, the grievances related to non-handing over of the common areas and completion of the project will be covered under deficiency in service and unfair trade practices which are to be considered by the Consumer Commission. Most importantly, the Complainants herein have not entered into any agreements with the Respondents and hence no promises are there to be shown with regard to the date of completion of the project and handing over. So, there is no scope to seek any interest (though the term 'compensation' is used in the Complaint) for delay in completion and handing over the project as per Section 18(1) of the Act 2016. Though there are overlapping issues in the various proceedings,



each forum has been approached for specific remedies within their respective jurisdictions. However, the underlying grievances and factual matrix remain substantially the same across all forums.

16. In these circumstances, this Authority has arrived at the following conclusions: 1) While there are indications of the project might qualify as an "ongoing project" due to the lack of a proper completion certificate and alleged incomplete common areas, the substantial occupation of flats since 2006-2007 and formation of Association as per Exhibit A1 dated 12.05.2014 suggests that the building was completed and habitable prior to the commencement of the Act 2016. Moreover, these Complainants have become title holders/owners of the property much earlier by getting executed the sale deeds in their favour as described in pre-paras. Furthermore, the Complainants could not produce any agreements to prove the promises given by the Respondents to them and in the sale deeds, it is seen stated that the building along with water connection, electricity connection, right to use common path way, car parking area, veranda, stair case, with other common amenities have been transferred to the Complainants/allottees. More critically, the Complainants have admittedly approached multiple judicial forums for redressal of substantially the same grievances. The principle of forum shopping is a well-established rule of law that prevents litigants from pursuing parallel proceedings on the same cause of action. Although the specific reliefs sought in each forum may vary slightly, the underlying grievances regarding



unauthorized construction, non-completion of promised amenities, and encroachment of common areas are fundamentally the same. Permitting these complaints to proceed would amount to countenancing forum shopping and potentially lead to conflicting decisions from different forums on the same issues.

17. In the light of the above facts and findings, this Authority holds that the Complaints No. 34/2021 and 8/2024 are not maintainable. The Complaints are accordingly dismissed as not maintainable, with liberty to the Complainants to pursue their remedies in the forums already approached by them.

Sd/-Preetha P. Menon Member Sd/-Dr. B. Sandhya Member

True Copy/Forwarded By/Order/

Secretary[/](Legal)

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APPENDIX

Exhibits on the side of the Complainants

Exhibit A1: The copy of certificate dated 12.05.2014

registering the Complainant Association with District Registrar, Pathanamthitta.

Exhibit A2: The copy of photographs of the apartments.

Exhibit A3: The copy of sale deed dated 28.04.2016.

Exhibit A4: The copy of advertisement published in Malayala Manorama daily on 13.07.2006.

Exhibit A5 series: The copies of email communications dated 28.06.2007 and 29.06.2007.

Exhibit A6: The copy of letter dated 30.07.2018 issued by the Respondent No. 1 to the Complainant in Complaint No. 34/2021.

Exhibit A7: The copy of sale deed dated 07.12.2015

Exhibit A8: The copy of sale deed dated 06.03.2017

Exhibit A9 series: The copies of 3 sale deeds as document No. 557/2009, 866/2008, and 1/687/2008 executed by the Respondents No. 1 & 2/promoters.

Exhibit A10: The copy of sale deed No.992/2006 dated

28.09.2006 produced by the Complainant in Complaint No. 8/2024.

Exhibits on the side of the Respondents No. 1 and 2

Exhibit B1 : The copy of certificate dated 27.02.2021 issued by the Kozhencherry Grama Panchayath



Exhibit B2: The copy of tax receipt dated 04.10.2016 issued by the Kozhencherry Grama Panchayath.

Exhibit B3: The copy of settlement deed as doc No. 334/2016 SRO Kozhencherry.

Exhibit B4 series: The copies of sale deeds executed in favour of the owners of flats.

Exhibit B5: The copy of Thandapper account.

Exhibit B6: The copy of agreement dated 30.03.2008 entered

between the Respondents 1 & 2/ promoters.

Exhibit B7: The copy of settlement deed dated 25.10.2012

executed in favour of one of the owners of flats.

