



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No.62/2023

Dated 20th November, 2023

Present: Sri. M.P Mathews, Member

Complainant

Jeevan Chacko,
TC 8/1155-5-C-50, Mythri Nagar,
Valiyavila, Thirumala P.O,
Thiruvananthapuram – 695 006.
Now residing at 51 Rugman Crescent, Stonemanor woods,
Springwater ON Canada – L9X2A4
(Rep. by Power of Attorney Holder Tomy Xavier,
Parappuram House, South Parur,
P M U P School, Udayamperoor,
Manakunnam, Ernakulam – 682 307.

(Adv P O Thomas)

Respondents

1. M/s ERA Homes and Projects Pvt. Ltd,
17/239-C, PS Mission Convent Road,
Maradu, Kochi-682 304.
Rep. by its Managing Director Mr. Elias Joy.
2. Elias Joy,
Managing Director,
M/s ERA Homes and Projects Pvt Ltd.,
Pakkunnel House, Poothrikka P.O, Pin – 682 308.
3. Ramesh Shivam,
Director,
M/S ERA Homes and Projects Pvt Ltd.,
223/1, Nethaji Nagar, Nanjundapuram Road,
Ramanathapuram, Coimbatore – 641036.

(Adv.Paul Kuriakose K)



4. Eliyamma Markose,
Pallivathukkal, Kandanadu P.O,
Mankunnam Village, Pin – 682 305.
5. Mini,
Pullickaparambil House,
Mulakulam North P.O.
Piravom Village, Pin – 686 664.
6. Susan Alias Susan Boban,
Karimankulam, Kandanadu P.O,
Manakunnam Village, Pin – 682 305.
7. Reena Alias Reena Binoy,
Puthenpurayil House, Kadathi Desom,
Velloorkunam Village, Pin – 686 673.

The above Complaint came up for virtual hearing today. Counsel for Complainant Adv.P O Thomas and Counsel for the Respondents 1 to 3 Adv.Paul Kuriakose K attended the hearing.

ORDER

1. The Complainant is an Allottee of project named 'Era Prime' located at Kandanadu, Ernakulam District, developed by the Respondents. The said project is registered with the Authority under section 3 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred as 'Act,2016). Registration No. K-RERA/PRJ/201/2021).

2. The facts of the Complaint are as follows:- The 1st Respondent is a private limited company incorporated under the provision of the Indian Companies Act 1956 and engaged in the real estate business. The 2nd Respondent is the managing director of the



1st respondent company and the 3rd is the Director of the 1st Respondent Company. The Respondents 4 to 7 are the owners of the property having a total extend of 74.60 Ares in Re-survey No. 110/16, in Block No. 19 of Manakunnam Village, Ernakulam District, obtained by Partition Deed No. 3674/2004. The Respondents have made wide advertisements in print and electronic media that the they are proposing to develop a residential villa project in the name and style of "ERA PRIME" in the above property. Based on the advertisements made by the Respondents, the Complainant approached the Respondents intending to purchase a villa. When the Complainant approached the Respondents, the Respondents represented to the Complainant that construction will be completed at the most in 11 months and the construction will be of very good quality.

3. It was further submitted that based on the discussions the Complainant had entered into an agreement for construction dated 17/04/2019 with the Respondents 1 to 3 for the construction of villa in the property. An understanding was also reached between the Complainant and the Respondents, whereby Respondents 4,5,6 and 7 agreed to sell Plot No. 24 with an area of 5.88 cents with an undivided share in the aforesaid property of the Respondent along with the other amenities stated in the agreement to the Complainant. Thereupon the possession of the aforesaid property owned by the Respondents 4 to 7 was handed over to Respondents 1 to 3 to enable them to make the construction. Thereafter, the sale



deed of the Plot No. 24 was executed on 20.05.2019 in favour of the Complainant by Respondents 4 to 7. The Respondents 1 and 2 undertook to complete the construction within 11 months from the date of the agreement dated 17.04.2019 and to hand over possession of the building with all facilities and amenities, including car parking. It was orally and mutually agreed that the Respondents would complete the construction by the month of March 2020 and hand over possession of the apartment with all facilities and amenities, including car parking. It was agreed in the agreement that they would complete the villa and hand it over in a ready-to-occupation condition on or before 16.03.2020.

4. The Complainant further submitted that as per the agreement dated 17.04.2019, entered into between the Complainant and the Respondents, the Complainant agreed to pay a total amount of Rs. 75,00,000/- as consideration. Even before the execution of the agreement, the Complainant started making the payment to the Respondents. Out of the above amount, the Complainant paid a sum of Rs.10,001/- on 30.03.2019, Rs. 90,000/- on 04.04.2019, and Rs. 10,00,000/- on 17.04.2019. Apart from this, the Complainant also paid sum of Rs.21,00,000/- on 24.04.2019, Rs.3,00,000/- on 31.05.2019 and Rs.4,00,000/- on 08.07.2019, Rs.5,00,000/- on 13.08.2019, Rs.3,00,000/- on 02.09.2019, Rs.8,00,000/- on 26.09.2019 and Rs.8,00,000/- on 16.10.2019. Thereafter the Complainant paid an amount of Rs. 8,00,000/- on



19.04.2022 from the State Bank of India Home Term Loan. Thus, the Complainant altogether has paid an amount of Rs. 71,00,000/-. The remaining amount to be paid to the Respondents is only Rs.4,00,000/-. This amount was agreed to be paid as per the agreement only at the time of handing over the villa, and this amount has yet to be paid since they have not handed over the villa to the Complainant. The Complainant has paid the installments as per the schedule of the payment. As per the above agreement, the Respondents agreed to complete the construction and to handover possession of the villa in a ready-to-occupy condition within 11 months from the agreement dated 17.04.2019; that is, the villa should be constructed and handed over on or before 16.03.2020.

5. It was further submitted that the building was constructed with various defects. Still, amenities and facilities as per the agreement have yet to be completed for reasons solely attributable to the Respondents. The Respondents have not obtained the occupancy certificate for the building so far, even though the Complainant could manage to get a door Number from the Panchayat. The Complainant has been unable to occupy and reside in the villa as the Respondents are yet to provide amenities and facilities as per the agreement dated 17.04.2019. Even though the sale of Plot No. 24 is over, the villa constructed therein has yet to be handed over to the Complainant. Therefore, there is a delay of 3 years in handing over the possession of the building for the use of the



Complainant. The Complainant has arranged the money payable to the Respondents as per the agreement in periodical installments in advance. There was no delay in paying any of the periodical installments payable to the Respondents as per the above agreement. The Respondents stopped the construction at its various stages, and because of this, substantial damage has already been caused to the structure due to corrosion and other natural processes. The Respondents diverted the funds collected from the Complainant and other purchasers, and they could not undertake or complete the work within the stipulated time. By the above agreement, the Respondents agreed to obtain the requisite statutory clearances, like the occupancy certificate, from the local authorities by the month of March 2020. It is submitted that the Respondents failed to discharge their obligations on them under the agreement only for the reason that they diverted the money obtained from the intending purchasers of the building agreed to be constructed on the property belonging to the Respondents 4 to 7 to other projects. Had the funds obtained from the intending purchasers been utilized for the project in hand, the Respondents could have very well completed the construction within the agreed time and handed over the key of the villa to the Complainant. It is submitted that the Complainant agreed to purchase the villa for their residential occupation. They intended to occupy the villa by the month of March 2020. Even after the elapse of around 3 years from the stipulated time, the Respondents still needed to complete the construction and hand over possession of the villa of



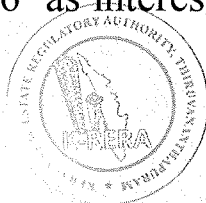
the Complainant. The action/inaction as above on the part of the Respondents is in clear violation of the terms and conditions of the agreement dated 17.04.2019 entered into between the Complainant and the Respondents and also in clear violation of the provisions contained under the Real Estate (Regulation and Development) Act, 2016. ‘

6. The Complainant further submitted that the Complainant has always been ready to perform his part as per the agreement at all points of time, whereas Respondents were not all ready and willing to perform their part at any point. The Complainant issued a legal notice on 03.01.2023 to the Respondents, and they have not sent any reply to the legal notice issued by the Complainant. Since, as per the agreement dated 17.04.2019, the Respondents agreed to complete the construction and to handover the building for the occupation of the Complainant on or before 16.03.2020, there is absolutely no justification on the part of the Respondents for delaying the handing over of the possession of the building for the occupation of the Complainant. Therefore, since the delay in completing the amenities and facilities and handing over the possession of the building to the Complainant occurred solely due to reasons attributable to the Respondents, the Respondents are liable to compensate the Complainant for the loss caused to the Complainant for the delay in completing the project and in handing over the villa in a ready to occupy condition to the Complainant. The Respondents are also liable to pay interests as per the provisions stipulated under



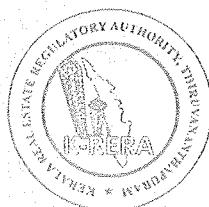
Section 18 of the Kerala Real Estate (Regulation and Development) Act 2018 and Real Estate (Regulation and Development) Act, 2016 to the Complainant for the delay in handing over the villa. Therefore, the Complainant is entitled to get interest for the amounts paid before March 2020 and those paid from March 2020 onwards. My client is entitled to get interest @ 15.45% for the amount paid before March 2020 and after March 2020 from its payment date. Therefore, the Complainant is entitled to get a sum of Rs. 30,33,762.46/- as interest as stipulated under Section 18 of the Kerala Real Estate (Regulation and Development) Act 2018 and Real Estate (Regulation and Development) Act, 2016. All the Respondents are jointly and severally liable.

7. The reliefs sought by the Complainant are as follows:- (1) Direct the Respondents to complete the construction of the villa in the property having an extent of 74.60 Ares in Re-survey No. 110/16, in Block No. 19 of Manakunnam Village, Ernakulam District, as expeditiously as possible and to handover the possession of the villa Plot No. 24 having a built-up area of 2184 square feet in the name 'ERA PRIME' after obtaining the requisite occupancy certificate from the local authority in terms of the agreement dated 17.04.2019 entered into between the Complainant and the Respondents within a time frame fixed by this Honourable Authority, so as to secure the ends of justice. (2) Direct the Respondents to pay a sum of Rs.30,33,762.46 as interest for the delayed completion of



the construction of villa (Plot No.24). (3) Award cost of the proceedings to the Complainant.

8. The Respondents 1 to 3 has filed objection by denying the averments stated in the Complaint and submitted that the Complaint has been filed by suppressing the material facts. The Respondents 4 to 7 were the owners of the property having an extent of 74.60 Ares comprised in Re-Sy.No. 110/16 in Block No. 19 of Manakunnam Village. It was decided by the Respondents 4 to 7 to develop the aforesaid property owned by them through the 1st Respondent-company into a villa project by name, "ERA PRIME" with common areas, amenities and facilities like drainage, electricity, recreation center and club house as a joint development agreement dated 21.09.2017 entered into between Respondents 4 to 7 with the 1st Respondent. As per the said joint development agreement it was agreed by the parties thereto to sell independent plots forming part of the project aera having an extent of 74.60 Ares stated above, to those who are interested in constructing villas in the said plots through the 1st Respondent, as per the Building Permits which are to be obtained in the name of such purchasers. In the circumstances stated above, the Complainant entered into an agreement for sale and construction dated 17.04.2019 with the Respondents, in respect of plot No. 24 having an extent of 2.38 ares (5.88 cents) for a total consideration of Rs. 75 lakhs. The sale consideration in respect of the aforesaid plot of land was agreed to be Rs. 14 lakhs. As per the said agreement

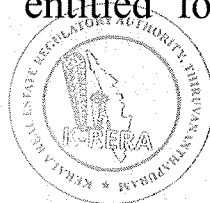


dated 14.07.2019 construction of the villa having an area of 203 square meter was entrusted by the Complainant to the 1st Respondent for a construction cost of Rs. 61 lakhs subject to the terms and conditions and specification stipulated in the said agreement.

9. The Respondents 1 to 3 further submitted that as per Sale Deed bearing No.1068/1/2019 dated 20.05.2019 of SRO, Tripunithura, 2.38 Ares of land comprised in Re.Sy.No. 110/16 in Re.sy.Block No. 19 was conveyed by Respondents 4 to 7 in favour of the Complainant. It is evident from the said sale deed that the 1st Respondent is a contractor, entrusted with the duty of construction of the villa by the Complainant. It is true that as per agreement for construction dated 17.04.2019 the 1st Respondent had agreed to complete the construction of the villa within 11 months from the date of the agreement. However, after the execution of the agreement for construction, changes in the plan of the proposed villa were suggested by the Complainant and after mutual discussions and communications the plan of the proposed villa was finalized on 06.05.2019. Thereafter, application for grant of permit and approval of the proposed plan were made. The permit was granted on 06.06.2019 and the plan was approved on 27.06.2019, by the Udayamperoor Grama Panchayat. It is pertinent to note that, the time taken for Governmental sanctions or statutory clearances shall not be constructed as delay in handing over possession of the building after construction, as per the agreement for construction. In view of the



above, the commencement of the period of construction can only be treated as from 27.06.2019. Apart from the above, additional structures were constructed by the 1st Respondent as required by the Complainant as extra works. Consequently, additional payments are due from the Complainant to the 1st Respondent. Moreover, as per the terms of the agreement for construction, the Complainant is also bound to bear the service connection charges for electricity and water as well as proportionate costs for availing such connections. The proportionate share in the cost of installing transformer and cost of cables required for electric connection is also to be borne by the Complainant. Such payments are also due from the Complainant. It is true that, the Complainant has paid a total amount of Rs. 71 lakhs. However, the amount due from the Complainant to the 1st Respondent is not Rs. 4 lakhs but much more than that. It is further submitted that, the construction activity which was being carried out by the 1st Respondent, for the Complainant, was badly struck due to Covid-19 Pandemic. The Lock-down which was declared by the Government from 24.03.2020 completely stalled the construction of the villa of the Complainant. Even prior to 24.03.2020 construction workers belonging to northern states of India started leaving the project area back to their homes. Consequently, the progress of the construction works was badly affected since 15.03.2020. Even after the Lock-Down, labour and material supply was scarce, which also affected the rate of the progress of the construction works. The 1st Respondent is therefore entitled for exclusion of the Covid-19



pandemic period from the time stipulated for construction as per the agreement for construction.

10. The Respondents 1 to 3 further submitted that the construction of the villa of the complainant entrusted by him to the 1st Respondent had been completed in 2020. Application for issuance of Occupancy Certificate and Door Number had also been made at that time. Accordingly, allotment of building number as 4/252 A was made by Udayamperoor Grama Panchayat. The Property Tax Assessment of the villa constructed by the 1st Respondent for the Complainant bearing Door No. 4/252 A was completed during the 2nd half of 2021. Accordingly, the Complainant is paying the Property Tax in respect of his villa. The Complainant is also remitting Land Tax to the Revenue Authorities in respect of the land in which his villa is constructed.

11. The Complainant has submitted rejoinder stating that the Respondents failed to keep up his promises to complete the roadways within 4 months and drinking water well within 2 months as agreed in the email dated 08.04.2022 from respondents. As of date, both the promises still need to be fulfilled. The complainant is ready to pay the balance of Rs. 4,00,000/- to the Respondents as agreed in the email dated 08/04/2022. The Respondents have been operating with their illegal metered electric connection to 3 residents since May 2022 in the ERA Prime Project. The KSEB officials inspected the premises on 19.04.2023, and they

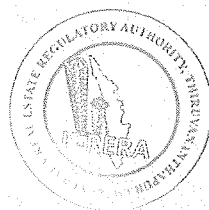


slapped a penalty of Rs.2,63,432.00 on the Respondents for using an electricity connection intended for construction purposes under Section 123 of the Indian Electricity Act 2003. The Respondent No.1 is not a contractor entrusted with the villa's construction duty but also a developer of the entire project defined under Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The complainant remitted the payment amount of Rs. 21.00 lakhs for the execution of the sale deed as agreed in the Agreement for Sale cum Construction dated 17.04.2019 to the Respondent builder/developer by bank transfer on 24.04.2019 and not to the Respondent landowners. The Respondent builder/developer started construction of the complainant's villa at Plot No. 24 immediately after execution of the Agreement for Sale cum Construction dated 17.04.2019. The foundation work was completed by 27.05.2019 as per the email dated 27.05.2019 from the Respondents. Therefore, the commencement of the period of construction, as stated from 27.06.2019 by the respondent builder/developer, is an utter lie and misleading statement. No additional structures were constructed other than that the complainant and the 1st respondent agreed to as per agreement for sale cum construction dated 17.04.2019 and the email dated 10.04.2019, along with the drawing, comprising Ground Floor Area of 111 M2 and First Floor Area of 92 M2 with a Total Area of 203 M2 (2184 FT2) from the Sales Department, Era Homes and Projects Pvt Ltd., without any extra works. The Respondents obtained the building permit in the landowners' name. They later transferred it to



the complainant's name during the Door No. application process from the Manakunnam Village and Udayamperoor Panchayat. The complainant was present in Kerala during the completion date of 16.03.2020. The complainant did not seek any extra work in the villa from the Respondents.

12. The Respondents 1 to 3 has submitted additional objection stating that the Complainant has not made any payment to the Respondents for electricity connection from the KSEB. The Respondents have not promised any time limit for the completion of their development project, to the Complainant. The Complainant sought for payment schedule to be effected in respect of sale of plot and subsequent construction of the villa from the 1st Respondent. Thereafter the Complainant requested to slightly change the size of plot extending the area by 0.4 cents. The additional cost that the Complainant has to incur in view of the additional area was informed by the 1st Respondent vide email dated 04/04/2019. Further amount of Rs.10 Lakhs and 21 Lakhs were paid by the Complainant on 17/04/2019 and 24/04/2019. On 25/04/2019, the 1st Respondent has issued mail correspondence attaching the draft of sale cum construction agreement to the Complainant. The Complainant had sought for changes from the original plan. Copy of email issued by the daughter of the Complainant to the Respondents is also produced. The Complainant was out of India and had returned to India only in November 2021. It was thereafter he made the application for



issuance of occupancy certificate in respect of the villa constructed by him through the 1st Respondent. The date of occupancy or allotment of door number to the villa of the Complainant cannot therefore be a factor parameter to allege that there was delay in execution of the construction.

13. The Complainant has submitted reply to the additional objection filed by the Respondents stating that the amenities agreed are clearly mentioned in the agreement for sale cum construction dated 17/04/2019 and not what the amenities mentioned in the additional objection filed by the Respondents. The Complainant has not sought any changes from the original plan. In the room above the car porch an extended wall from the bathroom was wrongly constructed by the 1st Respondent, not adhering to the approved plan by reducing the entry space to the room shorter after the door space. The Respondents as of date breached the conditions of the agreement for sale cum construction agreement dated 17/04/2019. The building permit No.A5-BA(159375) dated 06/06/2019 was obtained by the Respondents from Udayamperoor Grama Panchayath without the knowledge or consent of the Complainant or signature and obtained in the landowners name. The Complainant is entitled to delayed interest from each remittance of amounts made by him to the Respondents until an occupancy certificate is provided by the Respondents under Section 11(4)(b) of the Act, 2016.



14. The Authority heard the learned counsels and perused the documents available on record. The documents produced from the part of the Complainant is marked as **Exbt.A1 to A19**. The documents produced from the part of the Respondents are marked as **Exbt.B1 to B9**.

15. **Ext.A1** is the copy of agreement for sale cum construction dated 17/04/2019 executed between the Complainant and 1st Respondent represented by the 2nd Respondent and Respondents 4 to 7. As per the said agreement the Respondents 4 to 7 agreed to sell and the Complainant agreed to purchase a plot having 2.38 Ares in Re. Sy.No.110/16-2 and Re Sy.No.110/16-5 comprised in Plot No.24 which is more fully described in the A schedule together with right of way through the private road and right to use the common areas like club house, recreation centre to be constructed for a total consideration of Rs.75,00,000/-. Out of the said amount Rs.14,00,000/- shall be the value of land having 2.38 Ares (Plot No.24) together with right of way. As per the said agreement the 1st Respondent represented by the 2nd Respondent / Builders undertook the construction of the villa in plot No.24 having an area of 2.38 Ares (5.88 cents) in the project, having an area of 203 sq.mtr along with for a total consideration of Rs.61,00,000/- . The Respondents 1 & 2 undertook to complete the construction of villa within 11 months from 17/04/2019 to extension to cover due execution of any extra works required by the Complainant that is not in adherence of the



terms and conditions of the agreement and force major conditions affecting the construction industry. The 1st Respondent agreed to arrange for providing electric connection from the electricity board and common water connection for the entire connection from the water authority, subject to the conditions that all the deposits and KWA Contractors fee shall be paid by the Complainant. The Complainant while taking the possession of the villa in accordance with the provisions of the agreement was to verify and make himself satisfied with the sufficiency of common areas, equipment's and systems provided in the building complex constructed in the schedule A land referred to in the agreement, for its efficiency and its functions and the Complainant was not entitled to make any claim or alteration further improvements on the facilities, any alterations to the systems at any point of time after taking over possession. The Complainant was to pay all charges like stamp duty, stamp paper charges, registration charges legal and other miscellaneous charges being incurred for the registration of the land and undivided share over the land and the villa in their name. The 1st Respondent had the responsibility to take necessary sanction for the individual villa to be constructed from Udayamperoor Panchayath. It was also stated in the agreement that works not mentioned in the agreement was subject to the additional payment and the additional work and cost of such works was to be mutually agreed and signed by both parties mentioning the amount involved before the commencement of additional works. The amenities as stated in the agreement are 6000



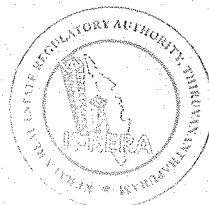
Sq. ft Club house, Childrens play area, 200 pax auditorium., games room, fitness centre, swimming pool and guest room. **Ext.A2 series** are the copies of payment receipts issued by the 1st Respondent for an amount of Rs.63,00,001/-. **Ext.A3** is the copy of legal notice dated 03/01/2023 issued by the counsel for the Complainant to the Respondents calling upon them to complete the project with all amenities and facilities as per the agreement and to handover the villa, to the Complainant in a ready to occupy condition at the earliest. It is also stated in the said notice that the 1st Respondent had agreed to complete the construction and handover the villa by March 2020, but the building was constructed with various defects and amenities and facilities as per the agreement was not yet completed. It is also admitted that the complainant managed to get a door number from the panchayath but was not able to occupy and reside in the villa as the amenities and facilities as per the agreement was not provided. As per the Ext.A3 legal notice there was a delay of two years and 9 months in handing over the possession of the building for the use of the Complainant. Copy of email dated 08/04/2022 issued by Respondent to the Complainant is produced and marked as **Ext.A4**. In this mail the meeting they had at the site in connection with the partial handing over in plot No.24 was discussed. It was stated by the Respondent that the conditions and payment schedule suggested by the Complainant is acceptable to the Respondent. It was also agreed that partial possession for occupancy of the villa was offered if payment of Rs.8,00,000/- and the following facilities was promised



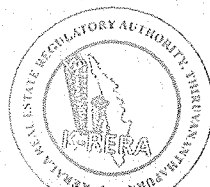
to be provided. 1. Temporary metered connection from the site at the rate of Rs.12.5 per unit. 2. Water facility for domestic purposes from the borewell. 3. Roadway to the villa. The following commitments on completion was made roadways within 4 months, KSEB Connection subject to the collection of payments from all customers and drinking water well within 2 months. The customer had agreed to pay the balance payment of Rs.4,00,000/- in 4 equal instalments, and the 1st instalment was to be paid on completion of the foundation of the club house, the 2nd instalment on completion of structure works of club house and the 3rd instalment on total completion of the club house and the 4th and final instalments on total completion of all the amenities as promised by the 1st Respondent. In addition to the above additional works that have been done in plot No.24 was to be billed and payments settled. **Ext.A5** is the printout of photographs taken on 24/06/ 2023. **Ext.A6** is the copy of list of amenities of the project uploaded in the website of the Authority. **Ext.A7** series is the copies of show cause notice dated 20/04/2023 and temporary assessment order dated 24/04/2023 issued by the KSEB obtained under RTI Act. The Copy of joint venture agreement dated 21/09/2017 entered into between the 1st Respondent represented by the 2nd Respondent and the 7th Respondent is marked as **Ext.A8**. As per the said agreement the Respondents 1 & 2 undertook to develop the property owned by the 7th Respondent having an extent of 14.95 Ares and for the said purpose the land owner had obtained development permit from Udayamperoor Grama Panchayath vide No.A5-4228/17 dated



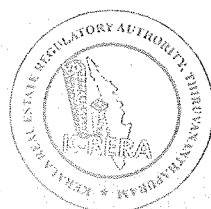
03/08/2017. Copy of email dated 27/05/2019 issued by the Respondents to the Complainant attaching the photographs is marked as **Ext.A9**. As per Ext.A9 it is seen that the Respondent had commenced work and the basement photographs forwarded to the Complainant. **Ext.A10** is the copy of email dated 10/04/2019 along with drawing of the villa. **Ext.A11** is the copy of letter dated 18/03/2022 issued by the Udayamperoor Grama Panchayath to the Complainant. It is stated in the said letter that there is a violation in the Building Rules as far setback of the septic tank is concerned. The 1.2 M set back is not provided for the septic tank. **Ext.A12** is the copy of ownership certificate dated 20/05/2022 issued by the Udayamperoor Grama Panchayath for the purpose of ownership change in KSEB. **Ext.A13** is the copy of correspondence through email between the Complainant and Respondent dated 14/06/2022 & 25/06/2022. **Ext.A14** is the copy of printout of photographs showing the status of the project. **Ext.A15** is the copy of draft sale deed forwarded by the 1st Respondent to the Complainant. **Ext.A16** is the copy of drawing of the 1st floor and status of the villa. **Ext.A17** is the copy of email dated 11/04/2022 issued by the Respondents to the SBI for disbursing the amount due as per the agreement. **Ext.A18** is the copy of building permit dated 06/06/2019 issued by the Udayamperoor Grama panchayath issued in the name of Respondents 4 to 6. **Ext.A19** is the copy of General Power of Attorney dated 10/02/2023.



16. The documents produced from the part of the Respondents are marked as **Exbt.B1 to B9**. **Ext.B1** is the copy of sale deed No.1068/1/2019 dated 20/05/2019 executed by the Respondents 4 to 7 in favour of the Complainant for a total extent of 2.38 Ares for a total consideration of Rs.14,00,000/-. Copy of letter dated 13/02/2023 issued by the Udayamperoor Gramapanchayath under RTI Act is produced and marked as **Ext.B2**. It is stated in the letter that tax was accessed for building number 4/252A from 2nd Quarter of 2021. Copies of email communications dated 30/03/2019 issued to the Complainant by attaching payment schedule is marked as **Ext.B3 Series**. Mail dated 30/03/2019 addressed to the addressed to the Complainant states that the total land extent is 5.5 Cents and the villa type-C is having an area of 2390 sq.ft. The total price is shown as Rs.78,20,000/-, in which the land value, construction cost, GST and workers welfare fund were included. The land registration expense KSEB expense, KWA expense, association deposit etc. were not included in the above rate. **Ext.B4 series** is the copy of email communications dated 03/04/2019 and 04/04/2019. From the Ext.B4 series mail dated 04/04/2019 it is clear that the Respondent had agreed to add 0.4 Cents of land at a cost of Rs.2,00,000/- only and the advance payment was made by the Complainant. The reply to the mail from the Respondent by the daughter of the Complainant suggesting revisions shows that the living room size was to be modified and the bathroom on the ground floor and the bathroom on the 1st floor was to be aligned by shifting the ground floor bathroom



to the opposite side of the room. So that it is on the same line as the upper one. Another revision suggested was to reduce the bathroom size by 40 sq.ft so that there is good amount of ventilation into the upper living room and the room above the living room was to have three sliding doors without grill. **Ext.B5 series** is the copies of email communications. As per Ext.B5 series mail dated 09/04/2019 from the Complainant to the Respondent about spreading of construction cost with lessor amount was responded to by the Respondent, on 10/04/2019 wherein the total amount was shown as Rs.80 Lakhs. Further it was communicated by the Respondent that the sale and construction agreement shall be executed on 17/04/2019 against an advance of Rs.10,00,000/- and the work shall be commenced in the plot on 24/04/2019, sale deed execution on 25/04/2019 or 29/04/2019 as per the convenience of the Respondent against the payment of Rs.21 Lakhs. It was also made clear in the above mail that the total amount will be Rs.32 Lakhs including the booking advance already received at the time of sale deed execution. Vide email dated 11/04/2019 the Complainant agreed in principal on payment schedule and promised to arrange payments accordingly. **Ext.B6** is the copy of email dated 25/04/2019 issued by the Respondents. The details of the registration of land was conveyed by the Respondent to the Complainant in which the project name, extent of land and the name of land owners, and the purchasers were shown and the draft sale cum construction agreement was also attached for plot No.24 comprising of 2.16 Ares in Eliyamma's property. **Ext.B7**



is the copy of email dated 06/05/2019 & 08/05/2019. As per mail dated 06/05/2019 addressed to the Respondents it is confirmed that corrections were made in the draft sale deed showing the value of land as Rs.14,00,000/- as per the new fair value and mail dated 08/05/2019 addressed to the Respondents it has been made clear that the sale consideration has been modified to Rs,14,00,000/- based on the fair value applicable from 01/05/2019 whereby the stamp duty was also modified. **Ext.B8** is the copy of email dated 13/11/2020 issued to the Respondents stating the changes required in the construction **Ext.B9** is the copy of email dated 30/04/2021 issued by the Respondents.

17. The Authority vide notice dated 06/07/2023 directed the Secretary, Udayamperoor Grama panchayath, to report the status of the building permit issued for the construction of villa and occupancy certificate issued if any. In compliance of the same the Secretary has filed a report dated 09/08/2023 stating that the building number (A5-2586/22) for the villa been issued in the name of Complainant and no application has been submitted till date for the purpose of occupancy Certificate. The said report submitted by the Udayamperoor Grama Panchayath is marked as **Ext.X1**.

18. After hearing the learned counsels and perusing the documents available the following issues were framed for consideration by the Authority.



- 1) Whether the construction of the villa as per the agreement for sale cum construction was complete and the possession handed over to the complainant.
- 2) Is the complainant eligible for interest for delay under section 18 of the Act, 2016.

19. **Issue No.1:** As per Ext.A1 agreement the Respondents 1 & 2 undertook to complete the construction of villa within 11 months from 17/04/2019 to extension to cover due execution of any extra works required by the Complainant that is not in adherence of the terms and conditions of the agreement and force major conditions affecting the construction industry. The building permit for construction of the villa was obtained on 27/06/2019 as per Ext.A18. Hence commencement date of construction according to the Respondents shall be considered as 27/06/2019 and completion date as 27/05/2020. Ext.A9 mail dated 27/05/2019, confirms the fact that work had commenced before 27/05/2019, but Ext. B4 series Emails dated 03/04/2019 and 04/04/2019 confirms that the extent of land was increased and modifications were suggested by the complainant to the Villa. Though the foundation was completed the superstructure work was delayed as the permit was obtained only on 27/06/2019 after incorporating the changes as required by the complainants. Therefore, the commencement date has to be considered as 27/06/2019 as per Ext.A1 and the completion date as 26/05/2020. As per Order No. K-RERA/T3/102/2020 dated



15/05/2020 and 19/07/2021 the Authority had taken cognizance of the adverse effects of Covid-19 Pandemic and the lock downs on the real estate projects in the state and resolved to treat this an event of force majeure as per the provisions of the Act, 2016. In this context, Clause 9 of Annexure A Format agreement prescribed under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018 is also important, which is as follows:

“9.1 Subject to Force Majeure clause, the Promoter shall be considered under a condition of Default, in the following events:

i) Promoter fails to provide ready to move in possession of the Apartment /Plot to the Allottee within the time period specified. For the purpose of this clause, ready to move in possession shall mean that the apartment shall be in a habitable condition which is complete in all respects;

ii) Discontinuance of the Promoters business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.

9.2. In case of Default by Promoter under conditions listed above, the Allottee is entitled to the following:

i) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter the

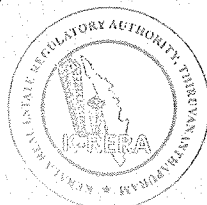


Allottee be required to make the next payment without any penal interest.

- ii) *The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate specified in the Rules within forty-five days of receiving the termination notice*

Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over of possession of the Apartment/Plot”.

20. The Respondent was not able to complete the project on 26/05/2020 as promised in the Ext.A1 agreement due to the Covid 19 pandemic situation that prevailed in the country and shut down from 25/03/2020. Considering the above the completion date for the purpose of calculating interest for every month of delay in handing over of possession under Section 18 has to be taken as 26/05/2021 adding force majeure as per the above public orders and the citations in the prescribed format in the sale agreement. The construction of the villa as per the agreement for sale cum construction and force majeure clause in the agreement for sale cum



construction and Act, 2016 should have been completed and possession handed over on 26/05/2021, but this did not happen. **Issue No 1 is decided accordingly.**

21. **Issue No.2:** As per Ext.X1, regularisation of building permit was granted on 09/05/2022 and as per Ext.A12 the ownership certificate was issued on 20/05/2022 by the Udayamperoor Grama Panchayath in the name of the Complainant. As per Ext.A4, email dated 08/04/2022 the Respondents had expressed their desire to handover partial possession for occupancy of villa by paying Rs.8,00,000/- as per the meeting they had. Accordingly, an amount of Rs.8,00,000/- was paid on 19/04/2022 and it is to be presumed that the possession was handed over to the Complainant before 20/05/2022 on which date the ownership certificate is seen issued in the name of Complainant. Hence considering the above facts there was a delay in handing over the villa as per the terms of the agreement and the complainant is eligible for interest for delay under Section 18 of the Act, 2016. Ext.B4 series email dated 04/04/2019 issued from the daughter of the Complainant to the Respondents suggesting revisions to which the Respondents has replied that the revisions are possible. The Ext.A1 agreement was executed on 17/04/2019 and the Ext.A18 building permit was obtained on 06/06/2019. On going through Ext.B8 dated 13/11/2020 forwarded by the daughter of the Complainant to the Respondents, it is seen that the room above the car porch, the extended wall from the bathroom was required to be cut



out additional work was suggested as per the drawing attached to the mail. A real estate project is defined under Section 2(zn) of the Act, 2016 and it means the development of a building for the purpose of selling the agreement is for sale cum construction and the land has already been sold to the Complainant. What is remaining is the construction of villa as per the sanctioned plan and project specifications. Under Section 14(1) of the Act, 2016 the project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. It is seen from the submissions of the concerned parties that there are changes suggested by the Complainant and approved by the Respondents based on mutually agreed rates over and above the consideration shown in the agreement executed. As per the Ext.A1 agreement the Respondents 1 & 2 undertook to complete the construction of villa within 11 months from 17/04/2019 to extension to cover due execution of any extra works required by the Complainant that is not in adherence of the terms and conditions of the agreement and force major conditions affecting the construction industry. Therefore, even as per the above agreement the delay due to additional works was to be taken care of. In such cases delay in execution of the work cannot be accessed under this Act. However, the Respondents have not produced any documentary evidence to substantiate days lost due to execution of additional works or payments due for additional works. The complainant is eligible to claim interest for delay in completion and handing over possession of



the villa under section 18 of the Act, 2016. **Issue No 2 is decided accordingly.**

22. From the email communications Ext.B5 series it is understood that the total amount shown as per email dated 10/04/2019 was Rs.80 Lakhs. As per Ext.B7 series emails dated 06/05/2019 it is confirmed that corrections were made in the draft sale deed showing the value of land as Rs.14,00,000/- as per the new fair value of land by the Complainant. By email dated 08/05/2019 addressed to the Respondent the Complainant had made it clear that the sale consideration has been modified to Rs.14,00,000/- based on the fair value applicable from 01/05/2019 whereby the stamp duty was also modified. In fact, the consideration for the purpose of stamp duty is not the fair value but the actual consideration that was exchanged between the Complainant and the land owners or the fair value whichever is higher. There is a presumption that for the purpose of reducing the stamp duty the Complainant had modified the draft sale deed and reduced the consideration to Rs.14,00,000/-. It is also not clear as to how the total value as per Ext.B8 series mail dated 10/04/2019 showing the total amount as Rs.80 Lakhs was reduced to Rs.75,00,000/- in the Ext.A1 agreement. It was made clear in the above mail that the total amount will be Rs.32 Lakhs including the booking advance already received at the time of sale deed execution. In the payment schedule also Rs.32 Lakhs in all was to be paid on execution of the sale deed.



23. As per Clause 38(2) the Authority shall be guided by the principles of natural justice and subject to other provisions of this Act and the rules made thereunder and the Authority shall have the power to regulate its own procedure. There is every reason to believe that the land cost agreed was 32 Lacs and this amount was paid on execution of sale deed and possession of the property was handed over to the complainant. Next payment of 10% as per the payment schedule was due on completion of foundation work. In a villa project though sale of villa is envisaged, the practise of sale of plot and construction of villa is still continuing even after the introduction of the Act, 2016, and is a matter of grave concern. The agreement is not in the prescribed format as required under Section 13(2) and is not registered. The fact that the respondents decided to register the project under section 3 of the Act, 2016 as a villa project needs to be considered as a positive act. The fact that the land has been transferred to the complainant as per the terms of the agreement is taken into consideration and Rs 32 Lacs was paid upon execution of sale deed is taken note of by the Authority. What is remaining is the completion of the construction of villa and handing over possession as per the agreement.

24. As per the Ext.A1 agreement the 1st Respondent agreed to arrange for providing electric connection from the electricity board and common water connection for the entire project from the water authority, subject to the conditions that all the deposits



and KWA Contractors fee shall be paid by the Complainant. It is admitted that these deposits have not been paid by the Complainant to the Respondent. This Authority has vide order dated 26/11/2022 in complaint No.12/2022 directed the Respondent to complete the entire project as per the agreement as committed through the affidavit dated 23/09/2022 by the end of June 2023. The registration granted under Section 5 of the Act, 2016 to the project 'Era Prime' was valid upto 30/06/2023 and this Authority had issued notice to the respondent for extending the validity of the registration. As per this notice the Respondent was directed to upload the occupancy certificate and Form-6 within 7 days or apply for extension of registration if applicable as per the order No. K/RERA/T3/102/2020 dated 04/02/2022 of the Kerala Real Estate Regulatory Authority. Proceedings shall be initiated by the Authority against the Respondents for not complying with the directions given.

25. On verification of the webpage of the project maintained by the Authority, it is seen that out of 16 plots 10 plots are sold and out of 17 building units, 7 building units are sold and status is shown as "in progress". The proposed date of completion as provided under Section 4(2) (l) (D) of the Act, 2016 is uploaded by the Respondent as 36.06.2023, but the Occupancy Certificate and Form 6 is not uploaded in the web page so far. As per Exbt.B1, sale deed was executed in favour of the Complainant on 20/05/2019. However as per Ext.A18 building permit issued on 27/06/2019, the



applicant's name shown on the permit is that of Respondents 4 to 6. Though the sale deed was executed on 20/05/2019 the matter was not intimated to the Panchayath as required under the Kerala Building Rules and according to the Complainant the permit was transferred into the Complainant's name during the door number application process from the panchayath and further confirmed that the Complainant was present in Kerala during the completion date of 16/03/2020. The Complainant further states that the door number for the villa was made under file number C3-1439 dated 21/02/2022 at Udayamperoor Gramapanchayath. Ext.A11 is the letter issued by the Udayamperoor Panchayath to the Complainant confirming the fact that he had submitted an application for obtaining building number for the villa constructed by the Respondent. As per the Kerala Panchayath Building Rules 20(1), every owner shall on completion of the construction as per the permit issued to him submit a completion report certified and signed by him to the Secretary in the form in Appendix E-1 together with sufficient copies of plans and drawings of completed building. Instead of submitting this application it is not clear why an application for obtaining building number was submitted by the complainant/owner. The building number can be issued to a building only after the building is certified as fit for occupancy as per the Kerala Panchayath Building Rules. Hence by issuance of building number it can be considered that building was fit for issuance of Occupancy Certificate, by the Panchayath.



26. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that *“if the promoter fails to complete or is unable to give possession of an apartment, plot or building (a), accordance with the terms of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall not be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”*.

27. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below *“The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of*



refund on demand as an unconditional absolute right to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

28. As per Ext.A2 series, payment receipts, Complainant had paid an amount of Rs.63,00,001/- to the Respondents, but according to the Complainant he had paid an amount of Rs.71,00,000/- to the Respondents. The Respondents 1 to 3 in their counter statement had admitted that they received an amount of Rs.71,00,000/- from the Complainant. The details of the payment made to the Respondents is as follows:-

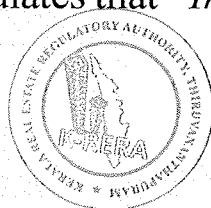
Payment Schedule

Date	Amount Rs.
30.03.2019	Rs.10,001/-
04.04.2019	Rs.90,000/-
17.04.2019	Rs.10,00,000/-



24.04.2019	Rs.21,00,000/-
31.05.2019	Rs.3,00,000/-
08.07.2019	Rs.4,00,000/-
13.08.2019	Rs.5,00,000/-
02.09.2019	Rs.3,00,000/-
26.09.2019	Rs.8,00,000/-
16.10.2019	Rs.8,00,000/-
19.04.2022	Rs.8,00,000/-
TOTAL	Rs. 71,00,001/-

29. It is seen from the above payment schedule that the Complainant had paid total amount of Rs.71,00,001/- to the Respondents, out of which 8,00,000 was paid after the promised date of completion, on 19/04/2022. An amount of Rs.32,00,000/- was paid for execution of sale deed and Ext.B1 Sale deed was executed by the Respondents 4 to 7 in favour of the Complainants as per the agreement for sale cum construction. Hence the balance payments made to the Respondents 1 to 3 for construction of villa before the promised date as per the agreement is Rs.31,00,001/-. The Complainant is eligible to get interest for every month of delay in handing over possession of the villa, on Rs.31,00,001/- which is the amount paid by the Complainant to the Respondents 1 to 3 towards construction of the villa before the promised date of completion of 26/05/2021. Rule 18(2) of the Kerala Real Estate (Regulation & Development) Rules 2018 stipulates that *"In case of payment from the*



promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment of such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement of construction or sale". As per the payment schedule in the agreement the total amount of Rs.75,00,000/- was to be paid based on the progress of construction, that included 32,00,000/- before execution of sale deed for the land. Since the Respondents failed to complete the villa and handover possession of the villa, after execution of sale deed for the land as per the agreement, the Complainant is eligible to get interest for the delay in handing over the Villa, from the Respondents as per Section 18 of the Act.

30. Hence, the Complainant herein is entitled to get interest for the delay on Rs.31,00,001/- which is the amount paid by the Complainant to the Respondents before the promised date of completion ie, 26/05/2021, for the construction of the villa and the Respondents are liable to pay interest to the Complainant according to Section 18 of the Act, 2016 for the period from 26/05/2021 till 20/05/2022 the date of handing over possession of the villa.

31. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI PLR rate is 14.85% with effect from 15/06/2023. The



claim of the Complainant is for 15.45% per annum simple interest. Hence the Complainant is eligible to receive interest on Rs.31,00,001/- for every month of delay from 26/05/2021 till 20/05/2022. It is admitted by the Complainant that an amount of Rs.4 Lakhs is due to the Respondent as per the terms of the agreement. It is also admitted that the deposits for obtaining electricity connection and water supply from water authority are not settled by the Complainant.

32. Based on the above facts and findings, invoking Section 37 of the Act, this Authority hereby issue the following directions: -

1. The Respondents 1 to 3 shall pay to the Complainant interest for every month of delay from 26/05/2021 to 20/05/2022 the date on which the possession of the villa was handed over, under section 18 of the Act, 2016 on **Rs.31,00,001/-** which is the amount paid by the Complainant to the 1st Respondent before the promised date of completion @ **15.45%** simple interest per annum.

2. The Complainant shall settle the balance payment of Rs.4,00,000/- and deposits for obtaining electrical connection from KSEB and Water supply from KWA as stated in the Ext.A1 agreement and payment towards additional works if any claimed by the Respondent, within 60 days on receipt of this order.



3. If the Respondents No.1 to 3 and the Complainant fails to pay the aforesaid amount as directed above, within a period of 60 days from the date of receipt of this order, the parties are at liberty to recover the amount from the opposite parties and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

4. The Respondents 1 to 3 shall complete the entire project as per the agreement as committed through the affidavit dated 23/09/2022 in Complaint No.12/2022 within a period of 60 days after receipt of the payments from the Complainant as directed above.

Sd/-
Sri M.P Mathews
Member

True Copy/Forwarded By/Order/


Secretary (Legal)

LJ-1

Exhibits

Exhibits marked from the side of Complainant

Ext.A1- Copy of agreement for sale cum construction dated 17/04/2019.

Ext.A2 series- Copies of payment receipts issued by the 1st Respondent.

Ext.A3- Copy of legal notice issued to the Respondents dated 03/01/2023

Ext.A4-Copy of email dated 08/04/2022 issued by the Respondents,

Ext.A5 - Copy of photographs taken on 24/06/2023.

Ext.A6- Copy of list of amenities of the project uploaded in the website of the Authority.

Ext.A7 series- Copy of show cause notice dated 20/04/2023 and temporary assessment order dated 24/04/2023 received by the KSEB under RTI Act.

Ext.A8- Copy of joint venture agreement dated 21/09/2017.

Ext.A9 Series - Copy of email dated 27/05/2019 issued by the Respondents.

Ext.A10- copy of email dated 10/04/2019 along with drawing of the villa.

Ext.A11- Copy of letter dated 18/03/2022 issued by the Udayamperoor Grama Panchayath to the Complainant.

Ext.A12 - Copy of ownership certificate dated 20/05/2022 issued by the Udayamperoor Grama Panchayath.



Ext.A13 - Copy of correspondence through email between the Complainant and Respondent dated 14/06/2022 & 25/06/2022.

Ext.A14 - Copy of printout of photographs showing the status of the project.

Ext.A15 - Copy of draft sale deed forwarded by the 1st Respondent.

Ext.A16 - Copy of drawing of the 1st floor and status of the villa.

Ext.A17 - Copy of email dated 11/04/2022 issued by the Respondents to the SBI.

Ext.A18-Copy of building permit dated 06/06/2019.

Ext.A19- Copy of General Power of Attorney dated 10/02/2023.

Exhibits marked from the side of Respondents 1 to 3

Ext.B1-Copy of sale deed No.1068/1/2019 dated 20//05/2019.

Ext.B2-Copy of letter dated 13/02/2023 issued by the Udayamperoor Gramapanchayath under RTI Act.

Ext.B3 series -Copy of email communications dated 30/03/2019.

Ext.B4 series -Copy of email communications dated 03/04/2019 and 04/04/2019.

Ext.B5 series-Copies of email communications.

Ext.B6-Copy of email dated 25/04/2019 issued by the Respondents.

Ext.B7-Copy of email dated 06/05/2019 & 08/05/2019

Ext.B8-Copy of email dated 13/11/2020 issued to the Respondents.

Ext.B9-Copy of email dated 30/04/2021 issued by the Respondents.

Ext.X1- Report submitted by the Udayamperoor Grama Panchayath.

Dated 09/08/2023.