



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaints No. 67/2023

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

Dated 29th September, 2023

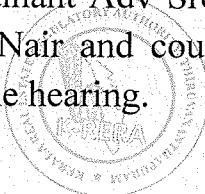
Complainants

PVS Emerald Owner's Welfare Association
Represented by Secretary, Shalu A.K
Residing at PVS Emerald Apartment
No.6D, Tower A, Door No. 33/1882 C.27,
Pokkунnu Post, Kozhikode- 673 007

Respondents

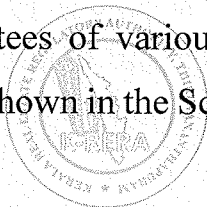
1. M/s Kerala Transport Company
Represented By Managing Partner
P,V Chandran, KTC Building, YMCA Road,
Kalathinkunnu amsom and desom, Kozhikode.
2. P.V Chandran,
Keralakala, Azhchavattom,
Mankave Post, Kozhikode
3. M.A Sajeev
"Panchajanyam", IMA Hall Road,
Near Indian Medical Association,
Nadakkavu Post, Kozhikode – 673 011

The above complaint came up for final hearing on 31/07/2023.
Counsel for the Complainant Adv Sreenivas, counsel for Respondents 1
and 2 Adv. Rajendran Nair and counsel for 3rd Respondent Adv. N.B
Padmakumar attended the hearing.



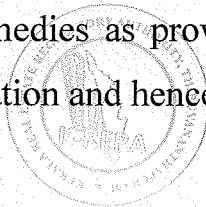
ORDER

1. The Complainant is a society, PVS Emerald Owners Welfare Association, incorporated under the societies Registration Act, by the flat owners of a residential apartment Project PVS Emerald, promoted by the first Respondent situated in Valayanad village of Kozhikode taluk. The Residential apartment "PVS Emerald" was promoted as a premium residential apartment project by the 1st Respondent. The Project is registered with the Real Estate Regulatory Authority with registration No. K-RERA/PRJ/185/2020, valid upto 30/10/2021.
2. The Complainant submits that the total area of the land dedicated to the real estate project was 41.607 Ares and no portion of the said land or any undivided interest therein or any portion of the building proposed to be constructed in the said land was excluded from the residential project or set apart for any separate independent commercial activity of the promoter. The total floor area of the said residential project was shown 17667.73 Sq. M. Out of the said total floor area, an extent of 17441.40 Sq. M was intended for residential use and an extent of 226.33 Sq. M was intended for commercial or other uses associated with residential project.
3. The Complainant further states that the Brochure / prospectus issued by the 1st Respondent for the promotion of the said real estate project specifically mentions about the "General Store" as convenience provided under the project. The space shown as General store to the prospective purchasers was shown as department store in the plans approved by the corporation, so it is clear that it is a convenience or facility afforded to the apartment units and not something carved out or excluded from the residential project to be dealt with by the promoter as its exclusive and independent commercial venture. In the agreement entered into between the 1st Respondent and the allottees of various apartment units it was clearly stated that the entire land shown in the Schedule thereto was earmarked for



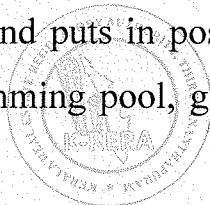
the purpose of constructing a residential project consisting of Basement + Ground + Fourteen Upper floors of multi storied apartment buildings known as PVS Emerald.

4. The Complainant submits that he came to know that the 1st Respondent created and registered a document before the Chalappuram Sub-registry bearing No. 1775 of 2022 purporting to assign one of the apartments held by the first Respondent having apartment No. 1 C and bearing assessment No. 33/1882/C6 along with the department store bearing assessment Nos. 33/1882/C , 33/1882/C1 and 33/1882/C2 in favour of the third Respondent who is closely connected to the Managing partner of the 1st Respondent firm. The Respondent had created and registered such a document in the name of the third Respondent, only to defraud the apartment owners of the said residential apartment project and the document created by the third Respondent is illegal and ab-initio void from its very inception and therefore none-est in the eye of law. The Respondent further submits that a civil suit was filed by some of the allottees as OS No. 433 of 2022 before the Hon'ble Munsiff Court I, Kozhikode against the first Respondent for a decree of permanent prohibitory injunction to restrain the 1st Respondent from alienating the space provided for department store/general store. When then Complainant came to know about the secretive intention on the part of the first respondent to create document in the nature of transferring the same in the name of the third parties. The petitioner herein was impleaded as second defendant in the said and the same is pending. The Respondents had taken a stand that all the contentions in the suit are absolute false and the general store/ department store is not an amenity included in the residential apartment project that it has separate independent right over the same. As per the meeting held on 21-08-2022 the Complainant association decided to approach the appropriate Authority under law to work out their remedies as provided for under the statute through the Complainant Association and hence this complaint.



5. The reliefs sought by the Complainant are as follows: -

- (a) Direct the first respondent/promoter to execute and register a regular deed of conveyance in favour of the Petitioner in respect of the common area, common amenities and facilities like the swimming pool, general store or department store, store rooms, home-theatre, car parking slots etc.;
- (b) Declare that the document number 1775 of 2022 of Chalappuram Sub-Registry registered by the first Respondent/Promoter in the name of the third Respondent in relation to the portion of the building intended to accommodate the department store/general store and bearing assessment numbers 33/1882/C, 33/1882/C1 and 33/1882/C2 is illegal and ab-initio void and not binding on the various apartment owners of the said residential apartment project viz. PVS Emerald or their rights in the property;
- (c) Pass a decree for permanent prohibitory injunction restraining the third Respondent from entering into or in any manner occupying or conducting any construction/ fit-out or other activities in the portion of the building bearing assessment number Nos. 33/1882/C, 33/1882/C2 comprised in the residential apartment project viz. PVS Emerald;
- (d) Pass a decree for permanent prohibitory injunction restraining the Respondents from in any manner alienating or encumbering any portion of the building or property comprised in the residential apartment project viz. PVS Emerald, bearing registration No. K-RERA/PRJ/185/2020 in Kerala State Real Estate Regulatory Authority or inducting any third party in to possession in respect of any such portion of the said building or property comprised therein;
- (e) Directing Respondents 1 and 2 to pay compensation at the rate of Rs. 1,00,000-00 per month from 05-01-2021 onwards till the first Respondent conveys and puts in possession of all the amenities and facilities like the swimming pool, general store or department store,



store rooms, home-theatre, car parking slots etc. to the Petitioner, for loss and damage caused to the apartment owners as a result of the illegal withholding of the common amenities and facilities, especially the department store/general store and thereby preventing the Petitioner from effectively utilizing the same to inure to the benefit of the apartment owners of the said real estate project;

(f) Directing the Respondents to pay the entire cost of this Complaint;

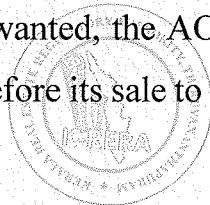
(g) Such other reliefs as may be prayed for from time to time and which this Hon'ble Authority may deem fit to grant.

6. The Respondents 1 & 2 filed their objection in which they admitted that the 3 shops were sold to R3 along with one Apartment. The Respondents submitted that irrespective of the merits of the claim in the complaint, title of the third Respondent to the three shops cannot be divested by any proceedings under the Real Estate Regulatory Authority Act. The Complainant's remedy is only a title suit in the civil court for declaration of its alleged rights, with a consequential relief of cancellation of the sale deed and recovery of possession. The Respondents allege that the Real Estate Regulatory Authority is not a substitute for the civil court and does not have jurisdiction to grant any declaration of title to any property, or to cancel a registered sale deed. The Respondents contend that the shop rooms are not part of the residential units covered by the sale agreements or sale deeds to the allottees and are not part of the "common area" vis-à-vis the residential units. As the determination of the title is in the exclusive domain of the civil court, the composite complaint for a direction to transfer admitted and disputed title to different portions immovable property is bad for misjoinder of causes of action.
7. The Respondents further submits that the copy of the sale deed in favour of one the allottees produced by the Complainant as Document No.3 is intentionally incomplete. The B schedule to that deed has been deliberately suppressed and if the B schedule is exhibited it will be apparent that none of



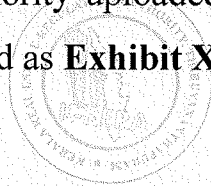
the allottees have any right over the three shops at all. These three shops were intended by the builder to be sold to traders to take advantage of the captive market and they were not intended or not advertised as part of the “common area” attached to the residential units. The store shown as G, in the Ground Floor plan of the Tower A is the part of the dwelling units in that tower. The location and the area of the store is conspicuously different from the Department store, which is outside the enclosed area of the dwelling units. The Shop rooms are shown separately in the plan, with their own parking space in front with independent access to the main road, outside the gated community of the allottees.

8. The complaint was filed by the Complainant not to transfer the common area, but to establish that the three shops denoted as the departmental store in the sanctioned plan, constructed in front of a residential complex with its own yard and independent access to the main road belongs to the allottees of the residential units, even though no payment has been made by any of the allottees towards the construction cost of these rooms. The Department store has never been intended nor it has been intended nor has it been projected as a “common area” in the Brochure, the sale agreements or in the sale deeds. The 1st Respondent has the right to sell the three shops rooms, just like its right to sell the 112 residential units constructed.
9. The Munsiff Court I, Kozhikode dismissed the injunction application in OS 433 of 2022, filed by some member of the association against Respondents 1 and 2 to prohibit the alienation of the three shops to the third Respondent, who is a stranger to the suit. The suit filed was not initiated by the AOA, but by a minuscule minority of its members without any authorisation from the general body of the AOA, and the present Complainant association, which was arrayed as the third defendant in that suit did not take any active part during the hearing of the injunction application. The Complainant has no right over the three shops and cannot intermeddle with the sale of those shops by the promoter, if it was wanted, the AOA could have purchased the shop rooms from the promoter before its sale to R3. The AOA has not suffered any

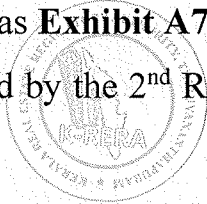


damage due to the sale of the three shop rooms to the third Respondent and the Respondents are under no legal obligation to pay any amount as damages to the Complainant. The percentage calculation of the rights of the allottees also shows that three shops are not part of the residential project.

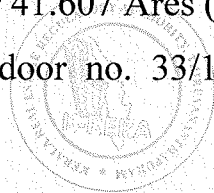
10. The 1st Respondent obtained occupancy certificate on 04.01.2021 and at that time there was no AOA in existence. The AO A in this case came into existence only on 08.03.2022. Conveying rights by a registered deed to them within the time limit prescribed by the Act was therefore impossible. The association of allottees formed in March 2022, has not, made any request to the first Respondent to handover the common amenities or to execute a conveyance to them of the common area like staircase, corridors, swimming pool, pump house etc. till date. The Complainant has also not made any arrangement to take over the common amenities from the builder. The allegation of the Complainant that the transfer was not affected in spite of repeated requests is false and is denied. The 1st Respondent is prepared to execute and register a conveyance of the common area [as specified in B schedule to the sale deeds to the allottees, excluding the department store], in favour of the Complainant, at their cost, immediately, if the K RERA issues an order to that effect in this complaint. The 1st Respondent is also ready to handover the common amenities and facilities to the Complainant as soon as the conveyance is registered. It is made clear that R1 expressly reserves its rights to execute sale deed in respect of the one unit [Flat No. 11 D /Tower B] as and when it receives the full consideration for the same.
11. The Authority heard the learned counsel for both the parties on 31/07/2023 and gave careful consideration to their submissions, and perused the material documents available on record. Documents produced by the Complainant are marked as **Exhibit A1 to A11**. Documents produced by the Respondents are marked as **Exhibit B1 to B7** and documents obtained from the website of the Authority uploaded by the Respondents and the approved drawings are marked as **Exhibit X1 to X3 series**.



12. The copy of the Kerala RERA Application No. T1/OL/461/2021 submitted by the 1st Respondent is marked as **Exhibit A1**. According to Exhibit A1, the total land area is 4160.70 Sq. mts and the total floor area of the proposed project is 17667.73 Sq. mts which made up of the floor area under residential use is 17441.40 Sq. mts and 226.33 for commercial use. Copy of the Agreement for sale entered into between 1st Respondent and one of the Allottee, Deepak Pullikuth and another is marked as **Exhibit A2**. This agreement is entered into between the above allottee and the 1st respondent represented by the 2nd respondent for purchase of Apartment No. 5A in Tower B having carpet area of 1065square feet (1592 square feet super built up area) in the PVS Emerald Apartment along with undivided share in the said land and pro rata share in the common areas along with the right to use car parking space specifically marked as Slot No. 69. Copy of the sale deed executed by 1st Respondent in favour of the Allottee Deepak Pullikath and another is marked as **Exhibit A3**. Certified copy of the minutes of the meeting of the general body of the 2nd Respondent association held on 21.08.2022 is marked as **Exhibit A4**. 64 members of the PVS Emerald Owner's Association attended the general body meeting. The brochure produced by the Complainant is marked as **Exhibit A5**. As per the brochure, the amenities offered include general store and the Complainants are arguing that the department store transferred as per Exhibit A9 sale deed is the general store promised to be provided as part of the amenities in the brochure. The ground floor plan shown in the Exhibit A5 brochure has marked the store room near the lift, staircase, electrical room and adjacent to drivers' room with entry from the parking area. The Registration copy issued in favour of the Petitioner by the District Registrar on 08.03.2022 is marked as **Exhibit A6**. Sale deed dated 10.11.2022 registered as document No. 1775/2022 is produced by the Complainant and marked as **Exhibit A7**. The sale deed is executed by the 1st Respondent represented by the 2nd Respondent in favour of one of the



Allottees of the project transferring 0.7369% undivided share over 41.607 Ares (102.77 cents) and 2-bedroom apartment No. 1C bearing door no. 33/882 C6 of Corporation of Kozhikode in the first floor of tower A PVS Emerald, having a super built up area of 1102 Sq. Ft (Carpet Area of 732 Sq. Ft) along with the exclusive right use the open terrace area of 405 Sq. Ft adjacent to the flat and car parking area demarcated as 18. Further department store situated in the land shown in schedule A in the ground floor of PVS, Emerald bearing door nos. 33/1882/C, 33/1882/C1, 33/1882/C2 of Kozhikode Corporation having 3 rolling shuttered openings admeasuring built up area of 2390 Sq. Ft carpet area of 2332 sq. Ft (including 3 toilets) having direct vehicle or access from Manakavu-Pokkunnu Public Road and exclusive right to use the front yard of the department store for parking vehicles for business purpose is also seen transferred. Statement filed by the Petitioner showing the 'percentage of undivided interest over land demarcated for the project 'PVS Emerald', assigned in favour of apartment owners' is marked as **Exhibit A8**. Sale deed dated 25.03.2022 registered as document No. 588/2022 is produced by the Complainant and marked as **Exhibit A9**. The sale deed is executed by the 1st Respondent represented by the 2nd Respondent in favour of one of the Allottees of the project transferring 0.7369% undivided share over 41.607 Ares (102.77 cents) and 2-bedroom apartment No. 8C bearing door no. 33/1882 C34 of Corporation of Kozhikode in the 8th floor of tower A PVS Emerald, having a super built up area of 1102 Sq. Ft (Carpet Area of 732 Sq. Ft) along with the right use the common amenities, facilities easement and car parking area demarcated as 118.. Sale deed dated 02.09.2021 is produced by the Complainant is marked as **Exhibit A10**. The sale deed is executed by the 1st Respondent represented by the 2nd Respondent in favour of one of the Allottees of the project transferring 0.7369% undivided share over 41.607 Ares (102.77 cents) and 2-bedroom apartment No. 12C bearing door no. 33/1882 C50 of Corporation of



Kozhikode in the 12th floor of tower A PVS Emerald, having a super built up area of 1102 Sq. Ft (Carpet Area of 732 Sq. Ft) along with the right use the common amenities, facilities easement and car parking area demarcated as 98. Sale deed dated 07.10.2021 registered as document No. 1289/2022 is produced by the Complainant is marked as **Exhibit A11**. The sale deed is executed by the 1st Respondent represented by the 2nd Respondent in favour of one of the Allottees of the project transferring 0.7369% undivided share over 41.607 Ares (102.77 cents) and 2-bedroom apartment No. 14C bearing door no. 33/1882 C54 of Corporation of Kozhikode in the 13th floor of tower A PVS Emerald, having a super built up area of 1102 Sq. Ft (Carpet Area of 732 Sq. Ft) along with the right use the common amenities, facilities easement and car parking area demarcated as 21.

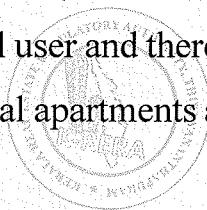
13. True copy of the sale deed No. 1332 of 2021 is marked as **Exhibit B1**. Copy of the Calculation Sheet of percentage rights for Tower A is marked as **Exhibit B2**. Copy of the Calculation sheet of percentage rights for Tower B is marked as **Exhibit B3**. Copy of Form A1 serial No.72 – floor-wise common area for Tower A is marked as **Exhibit B4**. Copy of Form A1 serial No.72 for Tower B is marked as **Exhibit B5**. Copy of Form A1 serial No.76 - common area is marked as **Exhibit B6**. Notarised copy of occupancy certificate is marked as **Exhibit B7**.

14. The building permit No. TP6/E2/16418/08 dated 18.03.2014 issued by the Kozhikode Municipal Corporation uploaded on the Website of the Authority is marked as **Exhibit X1**. The total plinth area of the residential cum commercial building is shown separately from the basement floor up to the 14th floor and terrace as 17667.73 Sq. mts is shown in Exhibit X1 permit. Order dated 12.04.2017 extending the validity of X1 building permit to 17.03.2017 is marked as **Exhibit X2**. The approved drawings produced by the 1st Respondent for obtaining registration under section 5 of the Act, 2016 is marked as **Exhibit X3 series** and it includes service plan, basement floor plan, ground floor plan, 1st floor plan, typical floor



plan 2nd to 14th floor, terrace floor plan, sections and STP plan. It is found from the ground floor plan in Exhibit X3 series, that a department store opening into the main road is proposed along with a store room within the apartment building as shown in the Exhibit A5 brochure.

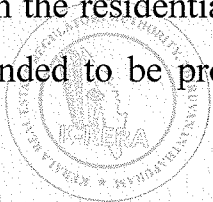
15. The Complainant filed argument notes stating that the objection raised by the Respondents regarding the maintainability of the complaint are devoid of any merit whatsoever. It was argued by the counsel for the complainant that the very first relief sought for in the complaint is to direct the first Respondent/promoter to execute and register a regular deed of conveyance in favour of the complainant in respect of the common area, common amenities and facilities like swimming pool, general store or department store, store rooms, home theatre, car parking slots etc., which is well within the jurisdiction of the Authority, and the Respondents 1 and 2 have no objection, and they have also expressed their willingness to execute an assignment deed, except for the department store, as admitted in paragraph 26 of the counter affidavit filed by the Respondents. According to the Counsel if the department store is part of the common area and common amenities and facilities agreed to be provided under the project, the alleged assignment deed purported to have been executed by the Respondent No. 1 in favour of Respondent No.3 is ab-initio void and none-est in the eye of law as held by the apex court in the decision rendered in Bikram Chatterji & others vs Union of India & others and the Respondents 1 and 2 will be liable to execute a document as sought for in the first prayer or liable to hand over possession of the entire common area and common amenities and facilities, including the department store, in favour of the Complainant. The Respondents contention that the department store is not a part of the common area on the plea that the approved plan for the project distinctly shows that the project is not merely a residential project but a mixed project with provision for commercial user and therefore the project has to be taken as a mixed project of residential apartments and commercial units. The fact,



that corporation has shown the residential part of the building and commercial area separately in the sanctioned plan and assigned separate assessment numbers to the residential apartments and departments cannot be decisive at all in deciding the issue.

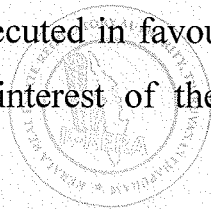
16. In Bikram chatterji & others vs Union of India & others, the Honourable Supreme Court held that “It is clear that common areas as provided under section 17 have to be ultimately handed over to the association of allottees or the competent Authority as the case may be. Thus, any sub-lease, alienation or transfer affected by the promoter of the common area as defined in the RERA and otherwise reserved under the plan shall be void and inoperative.”

17. The Complainant further argues that the application submitted by the promoter before KRERA, the total area of land dedicated to the residential real estate project PVS Emerald was shown as 14.607 Ares or 102.77 cents. No portion of said land or any undivided interest therein or any portion of the building proposed to be constructed in the said land was excluded from the residential project or set apart for any separate independent commercial activity of the promoter. The total floor area of the said project is shown as 17667.73 Sq. Meters. Out of the said total floor area, an extent of 17441.40 Sq. Meter was shown for residential use and an extent of 226.33 Sq. Meter was shown for commercial or other uses. Since the total extent of land and the total floor area of the project is registered under a single residential project, it goes without saying that the floor area shown under commercial is within the residential project and not falling outside, otherwise it would have been very specifically stated in the application form and a definite portion of land or certain undivided interest over the land would have been set apart from the department store. Since the entire extent of 102.77 cents was exclusively dedicated for the residential project, it is clear that the department store was within the residential project and an integral part of the residential project, intended to be provided as a commercial facility



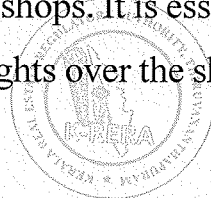
under the project. This is well supported by the brochure, which mentions about a general store as a commercial amenity to be provided under the project and the Respondents could not show any commercial area except the portion dedicated to the department store. In the agreement to sell entered into by the promoter with the allottees, it is stated that the entire land shown in the schedule thereto was earmarked for the purpose of constructing a residential project consisting of Basement + Ground + Fourteen upper floors of multi-storied apartment buildings known as PVS Emerald. It is further stated in Clause D that the corporation has granted building permit and plan to construct an apartment project along with a department store therein. Therefore, it is clear that the department store is within the apartment project and not outside.

18. The counsel for the complainant in his argument further submitted that as per the sale deed executed, the first respondent has already transferred to each allottees the respective apartment together with the proportionate undivided interest over an extent of 102.77 cents of land, which as already mentioned, is the common area dedicated to the residential apartment project. The statement submitted by the Complainant shows the percentage of undivided interest of land assigned by the Respondents 1 and 2 in favour of each of the allottees in Tower A and Tower B. Thus, it is clear that even as per the assignment deeds executed by Respondents 1 and 2, they have transferred the undivided interest over the common area agreed to be transferred in favour of the different allottees as per the individual agreements for sale entered into with them. Thus, by executing 111 assignment deeds (including the impugned assignment deed in favour of the third respondent) the Respondents 1 and 2 have already exhausted the entire undivided interest over an extent of 102.77 cents, except the undivided interest earmarked for the one unassigned apartment. As per the impugned assignment deed allegedly executed in favour of the 3rd respondent, only the proportionate undivided interest of the apartment included in the



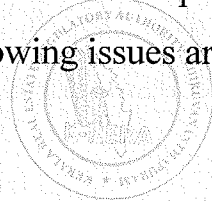
document alone is purported to be transferred in favour of the third respondent, to show that the figure 0.7369 is the proportionate undivided interest in relation to the apartment covered by the document, the Complainant has produced few copies of similar assignment deeds executed in respect of apartments of similar size, for perusal by this Honourable Authority. These documentary evidence would unerringly point to the fact that the entire extent of 102.77 cents of land shown in the documents was really dedicated as common area for the residential apartment project of PVS Emerald and no portion of the property was earmarked separately for the department store, since the department store was only intended to be provided as an amenity to the apartment owners and that it was never intended to be promoted as a separate independent commercial venture of the promoter. Therefore, it is clear that the Respondents 1 and 2 had absolutely no right or Authority under the Real Estate (Regulation and development) Act, 2016 to execute any assignment deed, seemingly transferring the department store in favour of the third Respondent. The Document No. 1775 of 2022 of Chalappuram Sub- Registry created and registered by Respondents 1 and 2 in favour of the third Respondent, who is the son-in-law of the 2nd respondent, in collusion with one another, with ulterior motives was only intended to deceive and defraud the apartment owners of the said residential real estate project, for their self-aggrandizement.

19. The Counsel for Respondents 1 and 2 argued that, although prayer pertains to the transfer of common area to the AOA, the real intention of the complaint is to establish their alleged right over the three shop rooms, demarcated as the department store in the plan. It is admitted that the three shop rooms had been sold by R1 to R3 by a registered document before the filing of this complaint. As long as the deed stands, the Complainant cannot claim any rights over the shops. It is essential for them to have the sale deed set aside so as to claim rights over the shops. It is settled law that only civil



courts can deal with questions related to title over the immovable property; cancellation of a sale deed and declaration of title come under the provisions of the Specific Relief Act. Real Estate Act does not confer jurisdiction on this Authority to decide title of anyone over any property. Except by filing a suit in the civil court, for declaration of title and cancellation of the sale deed. The AOA cannot ask for the relief of declaration of title and cancellation of the registered sale deed to be granted by this Authority. The Sanctioned plan for the project, distinctly shows that it is not merely a residential project but a mixed project, with provision for commercial user, as permitted by the rules. The area of the residential part of the project of the project is confined only to 17441.40 Sq. M. Common area, as per curial interpretation is an area without which the residences cannot be utilised. The shop rooms having an area of 226.Sq. M is outside the area of the residential units, and they are not at all necessary for the usage of the residences by the allottees.

20. The residential units are situated in an enclosed area, and the only access to that area is through the separate gate at the eastern end of the land. The three shops are outside this gated area and have direct access to the main road on the North. The shops have a well demarcated front yard, for unloading articles and as the customer waiting yard. The walls on the south and east of the shops separate them from the residences. The three shops have been assessed to tax separately by the local Authority, and tax is levied on them as commercial area, while the residential part is assessed at domestic rates only. This is the clearest indication that the shops do not form part of the common area connected to the residential units. The three shops have separate electrical connections with their own metres, and the charges will be on commercial basis. After hearing the arguments of the counsels for the complainant and the respondents and perusing the documents produced before the Authority the following issues are framed for consideration



1. What is the status of the shops transferred by the respondent under the Act, 2016
2. Is the respondent competent to execute a sale deed transferring the shops under the Act, 2016
3. Can any of the reliefs sought by the complainant be granted

21. The issues 1 and 2 are considered together for convenience. As per the Section 2(n)(i) of the Act, 2016 common area mean – “the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phrase, the entire land for that phase;” As per Section 17(1) of the Act, 2016 the promoter has to execute a registered conveyance deed in favour of the Allottee along with the undivided proportionate title in the **common areas** to the association of Allottees. Common area is defined under section 2(n) of the Act 2016 and is extracted as follows, "common areas" means

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

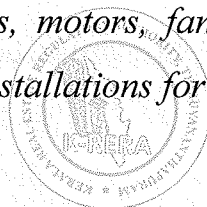
(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;



(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.

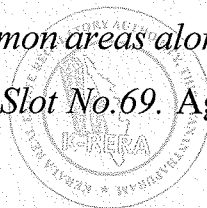
However, in the case of this project the undivided share is transferred to the Allottees and the entire land having an extent of 41.607 Ares (102.77 cents) is owned by all the Allottees and no exclusive rights can be granted to any of the Allottees and therefore, the open parking areas allotted for the commercial space falls within the definition of common area under Section 2(n) and can be used only with the concurrence of the Complainant Association.

22. From the details uploaded on the webpage allotted by the Authority it is seen that the total floor area of the project is 17667.73 Sq. mts and the commercial area is 226.33 Sq. mts which is included in the total floor area as per the building permit issued. The three department stores having carpet area of 76.18 Sq. mts, 68.75 Sq. mts, 50.90 Sq. mts is also uploaded in the apartment type details. The parking space type is shown as residential and the number of garages/covered parking is 119 numbers out of which 106 are covered car parking. The sanctioned drawings also revealed the existence of commercial space facing the main road.

23. The commercial area can be transferred by the respondents under section 17(1) of the Act, 2016 along with the undivided proportionate title in the common areas to the association of allottees. Here in this case the promoter has already transferred the proportionate title in the common areas to the allottees and no undivided proportionate share is available for the commercial area as seen from Exhibit A3 sale deed. The association is the owner of the entire land transferred to the allottees individually and the apartments and shops are under the exclusive ownership of the allottees. It is seen from Exhibits A7 and A9 that the undivided share over the land transferred remains the same but additional commercial area is seen

transferred along with exclusive right for parking in front of the commercial space, even though the apartment transferred is having the same carpet area of 732 Sq. Ft. Apartment is defined under section 2(e) of the Act, 2016 that *"apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.*

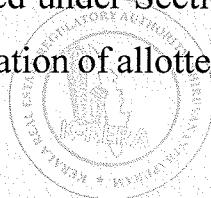
24. The apartment includes a shop also and can be transferred under Section 17(1) of the Act, 2016. Carpet area is defined under section 2(k) of the Act, 2016 as *"carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment* and it is stated in the prescribed agreement for sale under Rule 10, Annexure A Terms 1.1 " Subject to the terms and conditions as detailed in this agreement, the Promoter agrees to sell to the Allottee and the Allottee hereby agrees to purchase, the Apartment as specified in para "G". Para G Exhibit A2 is extracted as below *"The allottee had applied for an apartment in the project vide Application No. 135 dated 22/06/2020 and has been allotted apartment No. 5A, Tower B having carpet area(As per the RERA Norms) of 1065 Square feet (1592 Square feet super built up area), type A, on the fifth floor Tower B in the PVS Emerald Apartment building bearing No. 5A ("Building") along with undivided share in the said land and pro rata share in the common areas along with right to use car parking space specifically marked as Slot No.69. Agreement executed with the 3rd*



respondent is not produced by the parties, but Exhibit A7 Sale deed is produced. Hence what is transferred under the Act, 2016 is the apartment having carpet area as specified in the agreement for sale and uploaded on the website of the Authority. Hence transfer of Apartment/Shop as per the respective sale deeds is legally correct under the Act, 2016. However, there is no proportionate undivided share attached to the Commercial area and the entire land is owned by the Association of Owners and no exclusive rights can be given to any of the Allottees. The Association shall have the power to decide as to how the common areas are to be used based on the byelaws of the Association. The status of the shops are similar to the Apartments as shops also come within the definition of Apartment under Section 2(e) of the Act, 2016, and therefore issues 1 and 2 are found in favour of the respondents to the extent that ownership of the apartments/shops covered by the carpet area exclusively vest with the Allottees, but the common areas as defined under section 2(n) are jointly owned by the Allottees and the possession rests with the Association of Owners after transfer under Section 17(1) of the Act, 2016. Direction to execute and register a regular deed of conveyance in favour of the Complainant as prayed for cannot be granted as the undivided share over the common areas have already been transferred to the Allottees. This Authority has no power to declare a duly executed sale deed with the SRO under the Registration Act as illegal, and therefore the second relief cannot be granted. Similarly other reliefs are also beyond the jurisdiction of this Authority.

25. Considering the above facts and circumstances of the case this Authority invoking Section 37 of the Act, 2016 hereby issues the following direction

The Respondents/Promoters shall handover physical possession of the common areas as defined under Section 2 (n) of the Act, 2016, to the Complainants/Association of allottees in the real estate project



PVS Emerald, and other title documents pertaining thereto within 30 days as per sanctioned plans approved by the competent Authority, through a registered agreement.

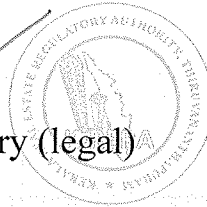
The complaint is disposed of as above with liberty to the complainant to approach the Adjudicating officer for compensation if any. Parties shall bear their respective costs.

Sd/-
Sri M.P. Mathews
Member

Sd/-
Sri. P.H. Kurian
Chairman`

True Copy/ Forwarded By/Order


Secretary (legal)



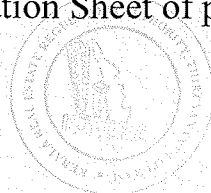
APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of the Kerala RERA Application No. T1/OL/461/2021 submitted by the 1st Respondent.
- Exhibit A2 : Copy of the agreement for sale dated 19-09-2020 entered into between 1st Respondent and one of the Allottee, Deepak Pullikuth and another.
- Exhibit A3 : Copy of the sale deed dated 01-10-2021 executed by 1st Respondent in favour of the Allottee Deepak Pullikath and another.
- Exhibit A4 : Certified copy of the minutes of the meeting of the general body of the 2nd Respondent association held on 21.08.2022.
- Exhibit A5 : The brochure issued by the 1st Respondent.
- Exhibit A6 : The Registration copy issued in favour of the Petitioner by the District Registrar on 08.03.2022.
- Exhibit A7 : Sale deed dated 10.11.2022 registered as document No.1775/2022 is produced by the Complainant.
- Exhibit A8 : Statement filed by the Petitioner showing the 'percentage of undivided interest over land demarcated for the project 'PVS Emerald', assigned in favour of apartment owners'.
- Exhibit A9 : Sale deed dated 25.03.2022 registered as document No.588/2022 is produced by the Complainant.
- Exhibit A10 : Sale deed dated 02.09.2021 produced by the Complainant.
- Exhibit A11 : Sale deed dated 07.10.2021 registered as document No. 1289/2022 is produced by the Complainant.

Exhibits on the side of the Respondents

- Exhibit B1 : True copy of the sale deed No. 1332 of 2021
- Exhibit B2 : Copy of the Calculation Sheet of percentage rights for Tower A.



- Exhibit B3 : Copy of the Calculation sheet of percentage rights for Tower B
- Exhibit B4 : Copy of Form A1 serial No.72 – floor-wise common area for Tower A
- Exhibit B5 : Copy of Form A1 serial No.72 – floor-wise common area for Tower B
- Exhibit B6 : Copy of Form A1 serial No.76- common area
- Exhibit B7 : Notarised copy of occupancy certificate.

Additional Documents Marked by the Authority

- Exhibit X1 – Building Permit dated 18.03.2014 issued by the Kozhikode Municipal Corporation.
- Exhibit X2- Order dated 12.04.2017 extending the validity of X1 building permit to 17.03.2017.
- Exhibit X3- Approved drawings produced by the 1st Respondent for obtaining registration under section 5 of the Act, 2016

