

**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

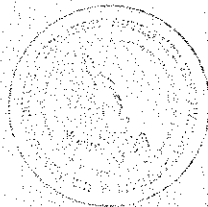
Present: Sri. P. H Kurian, Chairman
Smt. Preetha P Menon, Member

Complaint Nos. 52/2022, 53/2022, 55/2022, 81/2022 & 150/2022

Dated 20th April, 2023

Complainants

1. Mr. P K Viswanathan Pillai
& Mrs. Sreekumari V Pillai
F41, Panikers Lane,
Sasthamangalam,
Thiruvananthapuram
[Adv. Vinodini Nair] Complaint No-52 of 2022
2. Mr. Satheesh K
'Vinayaka', Padanilam,
Chirayankeezhu P O
Thiruvananthapuram-695304 Complaint No-53 of 2022
presently residing at
PEARL MANOR, Second Floor(2C),
Opposite to CPT, Vattiyoorkavu P O
Thiruvananthapuram- 695013
3. Ramees Raja
PEARL MANOR, 6th floor (6B), Complaint No-55 of 2022
Opposite to CPT, Vattiyoorkavu P O
Thiruvananthapuram- 695013



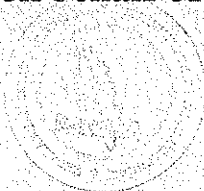
When the above Complaints came up for final hearing on 20-12-2022 the Complainant and the Counsel for the Complainant in complaint No 52/2022 Adv. Vinodini Nair, Complainants and Counsel for the Complainants in complaint No 53/2022, 55/2022, 81/2022 & 150/2022 Adv. R. Rammohan and Adv. Vinod and the Counsel for the 3rd Respondent Adv. Sandeep T. George appeared online. The 1st, 2nd & 4th Respondent did not attend the hearing.

COMMON ORDER

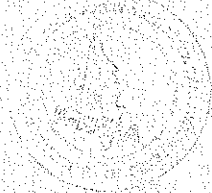
1. As the above five complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought for in all the complaints are one and the same, these Complaints are clubbed and taken up together for joint hearing and Complaint No: 52/2022 is taken as a leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The facts of the complaint No. 52/2022 are as follows: - The 1st Respondent entered in to an agreement dated 03-12-2007, with 3rd and 4th Respondents, the land Owners, for developing the land belongs to 3rd and 4th respondents in Peroorkkada village into a project by constructing a residential

cum commercial complex namely "PEARL MANOR" in the land and the Complainants are allottees in the said project. The Complainants entered into an agreement for land and construction dated 22.09.2012 with the 1st Respondent with regard to the apartment unit No. 2D located in the second-floor admeasuring 975 sq. ft of built-up area with one car parking area including common area and the common amenities and undivided interest of such common amenities in common with all other allottees. The total consideration fixed for the flat in the agreement for land and construction was Rs. 23,00,000/- which excluded the actual stamp duty, registration charges, taxes and services connections namely water sewage, telephone cable, power cable, electricity meter and deposit and other departmental charges. The Complainant have made all the payments as directed by the 1st and 2nd Respondents. The Complainant made payments on 22/09/2012- Rs. 5,00,000/-, on 19/10/2012- Rs. 8,00,000/-, on 29/10/2012- Rs.2,00,000/-, on 01/03/2013- Rs.5,00,000/-, on 15/02/2016- Rs.2,00,000/- on 14/03/2017- Rs.50,000/-, and on 10/11/2021- Rs 50,000/- After executing the agreement for land and construction, the 1st Respondent issued an allotment letter dated 16/10/2012 and assured completion and handing over by August 2013. Since the construction was not completed as assured, the Complainant wrote the 2nd Respondent letter dated 18/07/2014 seeking an update on the construction as well as completion and handing over. On 26/10/2016, 2nd Respondent on behalf of the 1st Respondent send a



letter to the Complainant and demanded the balance payment of Rs. 1,00,000/- from the Complainant. In the said letter, the 2nd Respondent informed that it was decided to complete the work by 30/12/2016. However, the Respondents have not completed the entire works as agreed through their written agreement for land and construction till date. As per the agreement, the 1st Respondent offered round the clock security, recreation area in roof top, intercom facility, common drivers, servants' toilets, generator backup for lifts, common lights and water pumps and paved drive ways. In 2016, the Respondents permitted the allottees to reside in their respective incomplete apartments without obtaining the corporation building number. Since the building is incomplete and the building number was not allotted to the apartment, the Complainant had not occupied the apartment in 2016. The car parking area had not been fixed, lift was not in proper condition, common area had not been tiled or electrified so far. On 16/08/2021, the Thiruvananthapuram Municipal Corporation, vide letter No. VTZ/A3/A2/3661/2017, estimated the tax in the name of the 3rd and 4th Respondents. The Respondents were not ready to pay the arrears of tax and they compelled the allottees to pay the amount for obtaining valid building number for their individual apartments. Thus on 15/11/2021, the Complainants remitted Rs. 21,401/- in the name of the 3rd and the 4th Respondents, as building tax for the apartment No. 35/2578-42 for the period from 2016 to 2021. After obtaining the valid building number, the Complainants



took possession of the flat No. 2D and thereafter, the Complainants made repeated demands to the Respondents to register the conveyance deed. But the Respondents were not ready to comply with their duty to register the sale deed or to complete the pending works in their project. The Respondents are developers within the meaning of Promoters u/s 2(zk) of the Real Estate (Regulation and Development) Act, 2016 and the complainants are allottees u/s 2(d) of the said Act. The relief sought by the Complainants in Complaint No 52/2022 are: i) to direct the Respondents to execute the conveyance deed in favour of the Complainants along with the share in common service area and all other facilities and amenities provided as per the agreement for land and construction, ii) to direct the respondents to complete the pending works in common area and all other facilities and amenities as assured through the written agreement, iii) to allow the Complainants to realize the simple interest on the sale consideration of Rs. 23,00,000/- at the rate of State Bank of India's Prime Lending Rate plus two percent from the Respondents jointly and severally and through their assets. The relief sought by the Complainants in Complaints No. 53/2022, 55/2022, 81/2022 and 150/2022 are i) to impose penalties as envisaged in the Act and Rules to pass orders to the Respondents to submit application according to the procedures mentioned u/s 4 of the Act, 2016, ii) to execute sale deed in favour of the Complainants iii) for enabling the Complainants to obtain the Occupancy Certificate, Completion Certificate and building



number from the Respondents, iv) to provide the water connection, v) to provide independent electricity connection in the name of the Complainant and vi) to perform obligations as per agreement and such other directions as the Authority find it necessary for the redressal of grievances of the complainant. The copies of the Agreement dated 03-12-2007 between the Respondents/developers and Respondents/land owners, the Agreement dated 22-09-2012 for sale & construction between the complainant and the 1st and 2nd respondent, the allotment letter dated 16-10-2012 issued by the 2nd respondent, the receipts issued by the 2nd respondent for the payment made by the complainant, the letter dated 18-07-2014 from the complainant, the letter dated 26/10/2016 from the Respondents, the Notice dated 16/08/2021 issued by Trivandrum Corporation, the Building tax receipts dated 15-11-2021 in favour of the 3rd and 4th Respondents were produced by the Complainant in Complaint No 52/2022.

3. The Complainants in Complaints No. 53/2022, 55/2022, 81/2022 and 150/2022 have also submitted that though the registration of the project u/s 3 of the Real Estate (Regulation and Development) Act, 2016 is mandatory, the Respondents have not yet submitted application for registration with a malafide intention to escape from the obligations/ liabilities imposed by the Act and Rules and with intention to defraud allottees by misappropriating huge money collected from the

allottees and thus the respondents are liable to be punished under section 59 of the said Act. According to them, though the Respondents obtained occupancy certificate, electricity connection, building number, etc the same have not been obtained to them as the sale deeds are not executed so far by the Respondents.

4. The 1st and 2nd Respondents submitted reply statement in Complaints No. 52/2022, 53/2022, 55/2022, and 81/2022 as follows: The Complaints are not maintainable either in law or on facts as the project was completed as early as 23-02-2017, but the Trivandrum Corporation failed to consider the completion plan or to issue occupancy certificate for the building on time and finally, the occupancy certificate was issued only on 28-06-2021. At the time of Joint Venture agreement, the 3rd and 4th Respondents had handed over the originals of the title deeds to the 1st and 2nd Respondents as mentioned in the agreement but the original title deeds were collected back on 11-10-2021 and have issued receipt for the same. Furthermore, the sale deed can only be executed by the Owners of the land (3rd and 4th Respondent) for which the 1st and 2nd Respondents can only join with them in the sale deed for conveying rights over the building/apartments in respect of the apartment. As the Land Owners have not executed any Power of Attorney empowering the 1st and 2nd Respondents to execute sale deed on their behalf, the Respondents 1&2 would

not be in a position to execute the sale deed in favour of allottees including the Complainants and they are ready to join the Respondents/Land Owners for executing the sale deed. They may not be held responsible for the non-cooperation or inaction on the part of other Respondents/Land Owners. The Land Owners had already executed a sale deed No. 1866 of 2021 on 10.10.2021 in favour of one of the allottees Mr. Vijay Shankar and Chithra Vijay Shankar, without the knowledge or consent of the 1st and 2nd Respondents. The 1st and 2nd Respondents had already sent a letter/ email asking the Land Owners to co-operate in the execution of sale deeds, failing which RERA may enforce orders against them, as they are also well within the definition of Promoter as per the Act and they are liable to act/comply as per the orders of the RERA, and they are bound to transfer title in favour of allottees as per sec 17 of the RERA Act. With regard to the water connection, it was submitted that allottees including the Complainants herein are drawing water from the tube well and necessary mechanical support like water pump is already provided. The water connection from the KWA is under process and the same would be completed very soon. With regard to the change of name in the electricity connection in favour of the Complainant, it can be done only after executing the sale deed by the Complainants and by giving proper application to the KSEB by the purchaser/allottee and on inspection of the electrical appliances and fittings retained in the apartment. As per the agreement, the Complainants will have to

meet the registration expenses which include stamp duty, registration, and documentation fee, and also GST charges.

5. The 1st and 2nd Respondents further submitted that if the Complainants are ready to meet the aforesaid expenses there will be no reason to further delay in execution of sale deed in favour of the Complainant and they are willing to join the 3rd and 4th Respondents in the execution of Sale Deeds. Regarding the common area, the same is provided as agreed and the Apartment Association is very satisfied with the facilities provided. The car parking area is also assigned for the respective apartments of the allottees. The improper usage of lifts by the allottees has damaged the lifts several times and the 1st & 2nd Respondents have repaired the same, to ensure its smooth functioning. The 1st and 2nd Respondents prayed to dismiss the Complaint and the copy of the Occupancy Certificate dated 28-06-2021 is produced by them.

6. The 3rd Respondent filed objection in Complaint Nos. 52/2022, 53/2022, 55/2022, 81/2022 and 150/2022 and submitted as follows: The complaint is not maintainable either in law or on facts. The 3rd Respondent is an unnecessary party and hence the complaint is bad for mis joinder of parties. The Complainants along with the other allottees occupied the flat during 2013 without waiting for the formal handing over by the builder and registered an association viz "Pearl Manor Resident's

Association” with Register No: TVM/TC/1294/2017 with the Complainant as the President and Late George Mathew as the Secretary. The Association is already functional and hence the association is a necessary party to these proceedings for solving the entire issue as the builder has abandoned the project. Even after the formation of the association, they were not doing proper maintenance of the common facilities, which resulted in great loss. The Respondent is having right, title and interest over 9.890 Cents (4 Ares) comprised in old Sy.No.2009/7/2/2, Sy.No.7/2/1 (Re-Sy. No. BL 88/42) of Peroorkada Village, Thiruvananthapuram Taluk, Thiruvananthapuram District, which was obtained as per Sale Deed No.1186/2009 and changed patta in favour of him and is paying land tax under Thandaper A/c.No.17282. The neighbouring property owner Mr. Robinson Panicker, the 4th respondent herein is also having 9.890 Cents having Thandaper A/c.No.17283 adjacent to the property of this respondent. The 3rd and the 4th Respondent had an idea to construct a residential flat by name “Pearl Manor” in the said property owned by them as a joint venture. Accordingly, they approached Vasthu Silpa Consultancy Ltd., Kowdiar, Thiruvananthapuram and consulted with the said Consultancy, who is engaged in Architectural services and designing of flats. The design for the flat was drawn by them and the payment was done by the 3rd respondent on behalf of the 4th Respondent also. An amount of Rs.7,50,000/- was paid to the said Vasthu Silpa Consultancy for approval of plan, permit, fire NOC,

site elevation and other miscellaneous expenses. The 1st and 2nd Respondents approached 3rd and 4th Respondents and entered into an agreement for constructing a residential cum commercial complex. Accordingly, the 3rd and 4th Respondents along with the 1st and 2nd Respondents executed the agreement regarding construction on 03/12/2007 based on the approved plan and permit obtained by the 3rd Respondent. It was specifically agreed by the 1st and 2nd Respondents that being the owners of the property wherein the construction is done, the 3rd and 4th Respondents would get 25% of the saleable area of residential cum commercial space in the proposed Apartment complex and car parking. It was also agreed that being the builder, the 1st and 2nd Respondents should make necessary arrangements to sell the apartment complex. As per the agreement, the apartment complex had to be completed within 24 months. The terms in the agreement specifies that in the first floor of Apartment, four floors are allotted to the 3rd Respondent including Flat No.1A and 1B which is the saleable area allotted to the original owners of the property. Furthermore, the 3rd and 4th Respondents entered into an understanding that the saleable area of 25% in the first floor is exclusively taken by the 3rd Respondent and the 5th Floor was taken by the 4th Respondent. The basement area, which is the commercial area wherein also 25% saleable area was allotted to the 3rd and 4th Respondents including car parking, security room etc. The 1st and 2nd Respondents are having right over the Ground floor, 2nd, 3rd and

4th and 6th floors allotted to the 2nd Respondent, the builder. The 3rd and 4th Respondents are having a total number of 10 units in the said building. The 2nd Respondent by way of construction agreements sold his entire area, but execution of Sale Deeds has not been happened as the construction was delayed and building numbers were not obtained from the Corporation of Thiruvananthapuram. But the flats were occupied by the respective purchasers and the Corporation authorities had already imposed fine for unauthorized occupation for three years on those persons who had occupied the same, including the complainants. After the execution of Agreement dated 03-12-2007, the 1st and 2nd Respondents completed the construction of Flat No.1A and 1B and an agreement for sale was executed with one Radhakrishnan Unnithan, the flats were exclusively owned by the 3rd Respondent. The 2nd Respondent received an amount of Rs.68,50,000/- from Radhakrishnan Unnithan which was illegally received on 08-07-2013. In spite of the receipt of the said amount on 08-07-2013, the 2nd Respondent had not paid the entire amount to the 3rd Respondent. The 3rd Respondent was not aware of the agreement between Radhakrishnan Unnithan and the 2nd Respondent. On getting information, the 3rd Respondent enquired the same and accordingly the 2nd Respondent admitted the same and executed a joint agreement dated 23-7-2014 with Mr. Radhakrishnan Unnithan, P.K. Viswanathan Pillai, N.S. Panicker in favour of the 3rd Respondent acknowledging the execution of agreement and

receipt of amount from Radhakrishnan Unnithan and further agreed that, the balance payment to the 3rd Respondent would be done on or before 31-03-2015. So far, an amount of Rs.37,10,000/- has only been paid and the remaining amount of Rs.31,40,000/- is still pending.

7. The 3rd Respondent submits that the 1st and 2nd Respondents failed to complete the constructions as agreed and there are so many works to be completed as agreed even now. The failure in completion of flats was solely due to the irresponsible handling of the construction works by the 2nd Respondent. When approached for making construction, as per the approved plan and permit, being the builder, the 2nd Respondent promised, assured and agreed that whatever expenses met by the original owners (3rd and 4th Respondents) for the approval of plan and other miscellaneous expenses will be paid back and accordingly, the property was handed over by the 3rd and 4th Respondents. It was agreed by the 2nd Respondent that the construction would be completed within 24 months from the date of the agreement, which was not done and now an amount of Rs.31,40,000/- with 12% interest from 08-07-2013 and the amount of Rs.7,50,000/-, which was paid to Vasthu Silpalaya Consultancy, has to be recovered from the 1st and 2nd Respondents. The 3rd Respondent also paid an amount of Rs.44,896/- for soil test etc., Rs.75,000/- for road NOC from neighbour and Rs.1,53,450/- for Vasthu Silpalaya

Consultancy for the drawings is also to be recovered from the 1st and 2nd Respondents. Thus, a total amount of Rs.72,70,546/-, is to be recovered from the Respondents 1 and 2. It is submitted that the said amount of Rs.72,70,546/- was demanded through Lawyer's notice twice but the same was postponed by the 1st and 2nd Respondents stating that it would be paid on receipt of the building numbers allotted by the Corporation of Thiruvananthapuram to the respective two flats. Now the Corporation of Thiruvananthapuram had allotted the building numbers for 1A and 1B on 28-06-2021 and the demand was repeated, but so far, the amount is not paid and the Respondents are making lame excuses. In these circumstances, for recovering the said amount, the 3rd Respondent had filed an Original Suit as OS 142/2021 before the Hon'ble Subordinate Judge's Court Thiruvananthapuram and an interim order was passed for attachment and suit is pending trial. The 3rd Respondent submitted that he was not aware of the agreement entered into by the Complainant and the 1st and 2nd Respondents and were not made signatories to the said agreement. The 3rd Respondent had never given any advertisement about the project and never entered into any agreement with the Complainant and has not accepted any amount from them and had never assured construction of parking place, playground, auditorium, swimming pool, garden, jogging track and other facilities. The complainants and other allottees occupied the flats as early as on 2013 and were residing in the flat. The Complainants without waiting for these

statutory clearances, had occupied the flat and was using the same for the past seven years. The Complainants or the other occupants were not interested in getting these certificates. Even though several allottees were occupying the flats, they have not cared to form an association and to properly maintain the common amenities in the said building. The 3rd Respondent is not residing in the said flat nor using the same and is not having any information or knowledge about the allottees or the payments made by the Complainant to the 1st and 2nd Respondents. The 3rd Respondent has not received any amount as sale consideration from the Complainant. The 3rd Respondent can execute sale deed in favour of the Complainant, only as and when he receives NOC from the builder stating the total amount received by him as sale consideration from the Complainant herein and the original sale and construction agreement or else the 3rd Respondent will have to suffer huge financial implications from the Income Tax Department. The 1st and 2nd Respondents should also clear all the dues as stated above before issuing NOC to the 3rd Respondent for the registration of the sale deed as per the fair value fixed by the Government. It was submitted that the 3rd Respondent is ready and willing to execute the sale deed to the complainants as and when the 1st and 2nd Respondents settle the accounts with 3rd Respondent and issue NOC along with the documents. Moreover, the 1st Respondent failed to provide necessary car parking space for all the flat owners as there are only 14 parking lots for the 24

apartments constructed by the 1st and 2nd Respondent and hence the same cannot be mentioned in the proposed sale deeds. The said dispute also has to be sorted out by the complainants and the 1st and 2nd Respondents and with the Association before the registration of the sale deed. The 1st and 2nd Respondents have not yet completed the civil, electrical, and plumbing works and the works relating to the Lift, Generator and firefighting equipment. The 1st and 2nd Respondents have not completed the rooms for the security guards and toilets and has not installed CCTV cameras as per the construction agreement. The Complainants are not entitled for any reliefs as sought for, from the 3rd respondent. The 3rd Respondent is also an allottee under the RERA Act as the 1st and 2nd Respondents have not yet handed over the apartments due to the 3rd Respondent and also not settled the accounts with 3rd Respondent. The 3rd Respondent prayed to dismiss Complaint against the 3rd Respondent with compensatory costs to the 3rd Respondent. The copies of the decision taken dated 23-07-2014, the letter dated 27-03-2017, the letter dated 10-10-2011, the notice dated 28-01-2022, the receipt dated 09-05-2022 and the notice issued on 07-06-2022 are produced by the 3rd Respondent.

8. Heard both parties in detail and examined the documents produced by them carefully. As it was noticed by this Authority, during the initial stage of hearing itself, that the project is an ongoing project registerable u/s 3 of the Act, the

Respondent/Promoter was directed, vide interim orders dated 16.03.2022 and 08.04.2022 to register the project within 7 days. The Authority also sent 2 of its technical officers to inspect the project site and obtained a report in which it is reported that it is a registerable project under Section 3 of the Act 2016. As the aforesaid directions were not complied with the Respondent/Promoter, it has been decided to initiate actions under Section 59(1) of the Act 2016 and opportunity of being heard before imposing the penalty as provided under the said provision was given but the 1st & 2nd Respondents/Promoter failed to attend the hearing. Hence the Authority passed an order imposing penalty of Rs. 4 Lakhs on the 1st & 2nd Respondents/Promoter for violation of Section 3 of the Act 2016. Even after receipt of the said order, the 1st & 2nd Respondents/Promoter have grievously failed to comply with the direction by registering the Project and remitting the penalty and hence the Authority initiated actions for prosecution as prescribed under Section 59(2) of the Act 2016 for which notice has been issued to the 1st & 2nd Respondents/Promoter.

9. The Authority heard another Complaint as No. 114/2021 filed by one of the allottees of the same project and passed order dated 18-12-2021. As the said order was not complied with by the Respondent/Promoter, Execution Petition was filed by the Complainant therein for execution of the above said order

which was also heard and disposed of vide order in EP No 17/2022 in Complaint No 114/2021 dated 23-02-2023 imposing penalty on the Respondent/Promoter under Section 63 of the Act 2016 for violating the order of the Authority and also directing him to execute the sale deed in favour of the Complainant therein within One month from the date of receipt of the order.

10. Exhibits A1 to A11 are the documents marked on the side of Complainants. Exhibit A1 is the copy of joint development agreement dated 4-12-2007 entered into between the Land owners and the Developer. Exhibit A2 series documents are agreement for land construction entered in to between the Complainants and the Respondents No 1 and 2. Exhibit A3 series documents are copies of allotment letters issued by the Respondents No 1 and 2 to the Complainants. Exhibits A4 Series documents are the copies of payment receipts issued by the Respondents No 1 and 2 to the Complainants. Exhibit A5 is the copy of letter dated 18-07-2014 from the Complainant in Compliant No 52/2022 to the Respondent No 2. Exhibit A6 is the Copy of letter from the Respondent No 2 to the Complainant in Complaint No 52/2022. Exhibit A7 Series documents are copies of notice issued by the Thiruvananthapuram Corporation, Exhibit A8 Series documents are copies of building tax receipts. Exhibit A9 Series documents are copies of statement of account for various periods produced by Complainants ii Complaints No. 53/2022,

55/2022, 81/2022 and 150/2022. Exhibit A10 is the copy of order of the Authority in Compliant No 114/2021 dated 18-12-2021 produced by Complainants in Complaints No. 53/2022, 55/2022, 81/2022 and 150/2022. Exhibit A11 is the Copy of Power of Attorney in Complaint No. 81/2022. Copy of occupancy certificate produced by the 1st and 2nd Respondents is marked as Exhibit B1 and the documents produced by the 3rd Respondent is marked as Exhibit B2 to B7.

11. We heard both parties directly and the learned counsels on either side, gave careful consideration to their submissions, perused the material documents available on record. After detailed hearing and perusal of pleadings and documents submitted by both the parties, following points were came up for consideration:

i) Whether the Respondents/Promoters have failed to complete and hand over the project, as agreed as per terms of agreement executed with the Complainants and to execute the conveyance deeds in favour of the Complainants?

ii) What are the duties and obligations of Respondents/Promoter and the Respondents/Land owners towards the Complainants and whether they have been complied with or not?

iii) Whether the Complainant in Complaint No 52/2022 is entitled for interest on the amount paid by them for the delay in handing over possession as per Section 18(1) of the Real Estate (Regulation and Development) Act, 2016?

iv) What order as to costs?

12. **Points No. 1 and 2:** As far as the Complaint No. 52/2022 is concerned, Exhibit A2 agreement shows that the promised date of completion and handing over falls in the month of August, 2013. But it is evident from the occupancy certificate dated 28-06-2021 produced by the 2nd Respondent and marked as Exhibit B1, that the project was ready to occupy only on 28-06-2021. The contention of the 1st and 2nd Respondents that “the project was completed as early as on 23-02-2017 but, the Trivandrum Corporation has failed to consider the completion plan and to issue Occupancy Certificate for the building on time and finally they issued the Occupancy Certificate dated 28.06.2021” cannot be taken into consideration since it is the responsibility of the Promoters of the project to procure the occupancy certificate and other approvals and sanctions on time. While perusing the copies of Exhibit A2 Series agreements executed between the Complainants as allottees and the 1st and 2nd Respondents as

Promoter/Developer, the 'expected' dates of completion and handing over are shown as follows:

1) August 2013 for the complainant in Complaint No. 52/22 and date of agreement is 22.09.2012,

2) 30.03.2016 for complainant in complaint No. 53/22 and date of agreement is 19.09.2015,

3) September 2014 for complainant in complaint No. 55/22 and the date of agreement is 05.02.2014,

4) August 2013 for the complainant in Complaint No. 81/22 and date of agreement 10.01.2013,

5) December 2013 for the complainant in Complaint No. 150/22 and date of agreement is 08.07.2013

13. From the above, it can be seen that different dates were given to the allottees for completion and handing over possession. But the Occupancy certificate has been obtained only on 28-06-2021 only after a long period of 8 years. If at all the promised date in the case of complaint No. 52/22 is taken into consideration, it is so unfortunate that the Complainants/allottees are yet to get completed many of the works in the project including permanent water connection. On perusal of Exhibit B1, Occupancy Certificate dated 28-06-2021, the date of completion was shown as 23-02-2017 and a note has been put down on the same that "Tax for three

years shall be imposed from the date of completion, since building occupied before obtaining the building number". Hence it can be presumed that some allottees had illegally occupied the building before obtaining the Occupancy Certificate. The Complainant, in the Complaint No 52/2022 have stated that "On 15-11-2021 the Complainants remitted Rs. 21401/- in the name of the 3rd and 4th Respondents as building tax for apartment No.35/2578-42 for the period from 2016 to 2021 vide receipts No. 0880258 and 0880263 of Thiruvananthapuram corporation." Anyhow, the practice of permitting allottees to occupy such buildings without obtaining Occupancy Certificate is nothing but clear delinquency from the part of the Promoter as well as the local authority concerned. Even though the Complainants have been occupying the building, no other documents placed on record to show the date of handing over by each of them and hence the date of occupancy certificate is to be taken into consideration in such cases as the date of taking over possession. Under Section 11(4)(b) of the Act 2016, the Respondent/Promoter is responsible to obtain the occupancy certificate, from the Competent Authority and as per Section 11(f) & Section 17 of the Act, 2016 after obtaining Occupancy Certificate, it is the obligation of the Promoter to hand over physical possession of the apartment/common area to the allottees/Association of allottees within 30 days after obtaining Occupancy Certificate and to execute registered conveyance deed in favour of the allottees within 3 months from the date of issuance

of Occupancy Certificate. With regard to the contention raised by the 1st and 2nd Respondents that it was the failure from the part of the Thiruvananthapuram Corporation to issue the Occupancy Certificate on time, the 1st and 2nd Respondents could not produce any documents to show that they had taken action against the Corporation for causing undue delay in this matter or they had proceeded further on the basis of the deemed Occupancy Certificate as provided under the Kerala Municipality Building Rules prevailing then. In such cases of unreasonable delay and default from the part of the local authority, the Promoters should approach the LSGD Tribunal for redressal of their grievances in this regard because the Promoter of such real estate projects are accountable to the allottees of the project in several aspects. Undoubtedly, the Respondent /Promoter of a real estate project is responsible to procure all the statutory clearances mandatorily required for the project and ensure the safety and security of the allottees who trusted him and paid their hard-earned money for their dream homes. The Hon'ble Supreme Court of India observed in its judgement dated 11.01.2021 passed in Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna & Others that "*The Occupation Certificate is not available even as on date, which clearly amounts to deficiency of service*". Here, one of the main grievances of the complainants is with regard to non-execution of sale deeds by the Promoter even after obtaining the occupancy certificate on 28-06-2021. In the Exhibit A2 Series agreements executed between the 1st

and 2nd Respondents and the complainants, it is inserted a clause under the head “Conveyance of Undivided Share” in which it is stated that *“the Allottees agrees that the undivided share in the land described in schedule B shall be conveyed to the allottees as per the information in the Application Form for allotment and only after receipt of the entire consideration as provided herein. The Allottees also agrees that the liability of the Developers for Registration of the document ceases at the time the document is presented to the Sub-registrar for registration.”* Which also reveals that it is the responsibility of the 1st and 2nd Respondents to get executed the conveyance deeds in favour of the Complainants/allottees.

14. Section 17 of the Act, 2016 lays down that *“(1)The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall hand over the necessary documents and plans, including common areas, the association of the allottees, or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

15. Hence as per provisions of Section 17 of the Act, 2016, the promoter is responsible to execute the registered conveyance deed in favour of the allottees and hand over the physical possession of the apartment to the allottees and the common areas to the association of the allottees in a real estate project within the prescribed time after obtaining Occupancy certificate. But here, it is clear that the Promoter has failed to execute the conveyance deeds in favour of the Complainants even

after obtaining the occupancy certificate. The 1st and 2nd Respondents who had executed the agreement with the Complainants as “Developer” cannot flee off from his obligations and with regard to execution of the conveyance deeds, he cannot simply state that “he cannot be held responsible for the non-cooperation or inaction on the part of other Respondents/Land Owners” because the Complainants/allottees are not at all parties to the contract between the Promoters and Land owners. Needless to say, it is for the Promoter to settle the disputes/issues arose in between him and the Land Owners. The 3rd and 4th Respondents are Land Owners and among them only the 3rd Respondent has made appearance and filed statement of objection. The 4th Respondent has not appeared despite several notices and hence he was set ex-parte. The learned counsel for the 3rd Respondent strongly argued that the 3rd Respondent is only one of the land owners and he had never given any advertisement with regard to the project and never entered into any agreement with any of the complainants and he has not accepted any amount from them and had never assured any promises to them as shown in the complaints and hence he is not a Promoter of the project. The 3rd Respondent pleaded that he can execute sale deed in favour of the Complainants, only as and when he receives NOC from the builder stating the total amount is received by him as sale consideration from the Complainants. It was submitted that the 3rd Respondent is ready and willing to execute the Sale Deed to the complainants as

and when the 1st and 2nd Respondents settle the accounts with 3rd Respondent and issue NOC along with the documents. The 3rd Respondent/Land Owner raised allegations that the 1st & 2nd Respondents have failed to provide necessary car parking space for all the flat owners as there are only 14 parking lots for the 24 apartments constructed by them and hence the same cannot be mentioned in the proposed sale deeds which also has to be sorted out before the registration of the sale deed. He also raises allegations that the 1st and 2nd Respondents have not yet completed the civil, electrical, and plumbing works and the works relating to the Lift, Generator and firefighting equipment, they have not completed the rooms for the security guards and toilets and has not installed CCTV cameras as agreed. According to him, the 3rd and 4th Respondents along with the 1st and 2nd Respondents executed the agreement regarding construction on 03/12/2007 based on the approved plan and permit obtained by the 3rd Respondent in which it was specifically agreed by the 1st and 2nd Respondents that being the owners of the property wherein the construction is done, the 3rd and 4th Respondents would get 25% of the saleable area of residential cum commercial space in the proposed Apartment complex and car parking and it was also agreed that being the builder, the 1st and 2nd Respondents should make necessary arrangements to sell the apartment complex. As per the said agreement, the apartment complex had to be completed within 24 months. The 3rd Respondent also raises contentions about the

violations of the 1st & 2nd Respondents with regard to the agreement executed between them.

16. On perusal of Exhibit A1 agreement dated 03.12.2007 executed between the 3rd & 4th Respondents as “owners” of land and 2nd Respondent as the Proprietor of 1st Respondent firm as “Developer”, it is seen that it is not in the nature of a pure Joint Venture agreement but more like a Promoter-allottee agreement for construction. It is stated in the 2nd para of the said agreement that *“Whereas the Developer conceived a project for constructing a residential cum commercial complex on the land described in Schedule A hereto and he made an offer whereby the Owners could sell portion of the land to Developer and/or their nominees and the Owners could receive residential and commercial space in the proposed constructions and the Developer could market the remaining residential and commercial space with proportionate undivided shares to his nominees to his own account.”* Clause 11 of the said agreement states that “the Owners shall at the request and cost of the Developer, execute and register all documents that may be necessary to implement the project” and Clause 13 says that “the Owners shall not interfere or interrupt the course of construction of the building complex proposed to be constructed...” Clause 28 says that “after executing sale deeds in respect of C schedule, the remaining area will be sold by the Owners in favour of the Developer.” The Exhibit B5 demand notice issued by the Corporation dated 28-01-2022 and Exhibit B6

land tax Receipt dated 09-05-2022 issued by the Village Officer in the name of the 3rd Respondent shows he is the owner. The Exhibit A7 Notice demanding the arrears of tax amount from 2016-17 to 2019-20 was addressed to the 3rd and 4th Respondents and the Exhibit A8 receipt of tax remitted was also in the name of the 3rd and 4th Respondents. The 3rd Respondent has stated and admitted that "Since the payment of first instalment was necessary for getting TC, this Respondent had paid an amount of Rs. 2,26,601/- to the Village Office Peroorkkada". It shows that the 3rd Respondent was actively engaged from the beginning of the project, and according to him, he who paid for Vasthu Silpalaya Consultancy, for soil test, for road NOC from neighbour, for drawing and finally paid the building tax. Hence, undoubtedly, the 3rd and 4th Respondents are responsible for executing the sale deeds in favour of the Complainants herein. Anyhow, the 1st & 2nd Respondents have pointed out that the 3rd and 4th Respondents/land owners had already executed one sale deed No. 1866 of 2021 on 10-10-2021 in favour of one of the allottees Vijaya Shankar and Chitra Vijaya Shankar and we failed to understand the reason behind execution of that single deed and then started raising multiple excuses for not executing any deeds in favour of other allottees including the complainants herein. Anyhow, Exhibit A4 Series payment receipts also reveal that all the payments are made by the Complainants to the 1st & 2nd Respondents/Promoter which substantiate the contention raised by the 3rd Respondent/Land

owner in this regard. Nevertheless, the 3rd and 4th Respondents who are the Land owners of the project, after entering into an agreement with the 1st & 2nd Respondents/Promoter for implementing the project, are duty bound to execute the sale/conveyance deeds in favour of the Complainants. The dispute between the Promoters and Land owners with regard to the terms of the 'joint venture' agreements are beyond the scope of the Act 2016 and this Authority as well.

17. The 3rd Respondent himself contended that the project is not yet completed and handed over as agreed by the 1st & 2nd Respondents/Promoter till date. All the complainants repeatedly allege that there is acute shortage of water as there is no permanent water connection from KWA. It is to be noted that the 1st & 2nd Respondents/Promoter has submitted only a vague reply statement against the allegations of the Complainants with regard to non-completion of the project and handing over it to them. He has not filed any reply statement to the statement filed by the 3rd Respondent with serious allegations as to non-completion of works and failure of the Promoter. If the 1st & 2nd Respondents/Promoter had a strong case that he had completed the project as per the terms of the agreements executed with the Complainants, he could have produced documents supporting the same including the one to show that the common area of the project along with all the documents has been handed over to the Association of allottees. But no such documents have been produced by the 1st & 2nd

Respondents/Promoter except the copy of the Occupancy certificate issued by the local authority. Needless to say, the occupancy certificate issued by the local authority certifies that “the construction has been executed in accordance with the permit and the building is now fit for occupation/use” which will not suffice to prove that the Project in total has been completed as per the terms of the contract entered into between the Promoter and allottees. In view of the above discussion, it can be concluded that the 1st & 2nd Respondents/Promoter has failed to complete and hand over the project to the Complainants/allottees as per the terms of the agreements executed with them and point No. 1 is decided accordingly in favour of the Complainants. As far as Point No.2, with regard to the duties and responsibilities of the Respondents, is concerned, undoubtedly it can be ascertained on perusal of the Exhibit A1 agreement executed between the 1st & 2nd Respondents as “Developer” of the project and 3rd & 4th Respondents as “Owners” of the project land, that the 1st and 2nd Respondents are the “Promoters” of the project in question and they have failed to comply with all the obligations towards the allottees as provided under Section 11 of the Act 2016 whereas the only obligation of the 3rd & 4th Respondents towards the Complainants herein is execution of documents as the owners of the land. The point No. 2 is answered accordingly.

18. **Point No. 3:** One of the reliefs sought by the complainant in the Complaint No 52/2022 is for direction to pay

interest for delay in completion and handing over the apartment allotted to the Complainant. According to Section 18(1) of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as "the Act, 2016"], "If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, 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 the 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."

It is obvious that Section 18(1) of the Act, 2016 is applicable in cases where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18 (1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here the

Complainant has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to him. As discussed in detail in pre-paras, as per the agreement for land and construction, the expected date of completion and handing over of the unit was August, 2013. It is evident from the Exhibit B1 occupancy certificate, that the project was ready to occupy only on 28-06-2021. Copies of payment receipts and letter issued by the 2nd Respondent to the Complainant have been produced. Out of the total amount of Rs.23,00,000/- an amount of Rs.20,00,000/- was paid before 01-03-2013, well before the promised date of completion and handing over of the unit. As the project was not ready for handing over and was delayed indefinitely, as per Exhibit A5 letter dated 18-07-2014, the Complainant had requested the 2nd Respondent to inform as to when the flats could be the handed over for occupation. In Exhibit A6 letter dated 26-10-2016, the 2nd Respondent had informed the Complainant that "it was decided to complete the work by 30th of December, 2016". Exhibits A5, A6 and B1 documents show that the project was delayed indefinitely and Occupancy Certificate has been received only on 28-06-2021.

19. It was observed by the Hon'ble Supreme Court in the judgement passed in Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., "*Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the*

contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession.” Needless to say, the allottees of a real estate project are not supposed to be victims of the costs and consequences of the disputes/litigations between the Promoters and land owners and hence the Respondent/Promoter cannot seek such an excuse for the delay occurred in the completion of the project. Even if the Complainant/allottee had made delay in the payment of instalments, the builder has made use of the investments of the Complainant’s hard-earned money for the past years and failed to complete the work and possession was not given as per the terms of the agreement. In this case, as discussed above, it is revealed beyond doubt that the Respondent/Promoter had failed to complete the project as promised as per the terms of agreement and to comply with the obligations/liabilities towards the Complainants as prescribed under the law. Hence the Complainants herein are entitled to get the interest for every month of delay from August 2013 till the date 26.08.2021, the date of issuance of Occupancy Certificate for the project. Hence, Points No. 3 is answered accordingly in favour of the Complainants in Complaint No.52/2022.

20. Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018 prescribes the annual rate of interest payable by the promoter to the allottee as SBI PLR plus 2%, to be computed as simple interest. The present SBIPLR rate is 14.15%. The complainant in Complaint No 52/2022 claimed simple interest on the sale consideration of Rs 23,00,000/- paid by him, at the rate of State Bank of India's Prime Lending Rate plus two percent from the Respondents. Thus, the Complainant in Complaint No. 52/2022 is eligible to get interest at the State Bank of India's Benchmark Prime Lending Rate of 14.15% plus two percent, computed as simple interest for an amount of Rs.23,00,000/- for every month of delay.

21. Considering the above facts and findings and by invoking Section 37 of the Act, we hereby direct as follows:

- i) The 1st and 2nd Respondents/ Promoter shall complete all the pending works in the common area of the project and make sure that all the facilities have been given to the Complainants/allottees as promised as per the agreements executed with them and as provided under the law and hand over the common area and all the documents pertaining to the project formally to the Association of allottees within 2 months from the date of receipt of this order

- ii) The 1st and 2nd Respondents/ Promoter shall make all necessary arrangements to execute sale deeds, through the 3rd and 4th Respondents/land owners, in favour of the Complainants within 2 months of receipt of this order. The Complainants shall remit the balance amount, if any, to be paid to the Promoter along with the expenses for registration of the deeds as per the terms of the respective agreements. The additional fee/expenses for registration to be incurred as per the new amendment of the laws concerned shall be suffered jointly by all the Respondents.
- iii) The 1st and 2nd Respondents shall file a compliance report in the form of an affidavit on or before the expiry of the time period prescribed above, failing which penal actions as contemplated under Sec 63 of the Real Estate (Regulation and Development) Act, 2016, shall be initiated.
- iv) The 1st & 2nd Respondents shall pay the Complainant in Complaint No 52/2022, the interest for an amount of Rs.23,00,000/- at the State Bank of India's Benchmark Prime Lending Rate of 14.15% plus two percent, computed as simple interest, for every month of delay from 01.09. 2013 to 28-06-2021.
- v) If the 1st & 2nd Respondents fail to pay the aforesaid sum as directed above within a period of 60 days from

the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents No. 1 & 2 and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

The parties shall suffer their respective costs.

Sd/-
Smt. Preetha P. Menon
Member

Sd/-
Sri. P. H. Kurian
Chairman

True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Documents produced by the Complainants

1. Exhibit A1- Copy of Joint Development Agreement dated 03-12-2007 between the Land owners and the Developer.
2. Exhibit A2 Series - Copies of the Agreements for Land & Construction between the Complainants and Respondent No 1 and 2.

3. Exhibit A3- Series Copies of the allotment letters issued to the Complainants.
4. Exhibit A4-Series Copies of the payment receipts.
5. Exhibit A5- True copy of the letter dated 18/07/2014 of Complainant in Complaint No 52/2022 to the Respondent No 1 and 2.
6. Exhibit A6- True copy of the letter dated 26/10/2016 of the Respondents No 1 and 2 to the Complainant in Complaint No 52/2022.
7. Exhibit A7- Copy of the Notice dated 16/08/2021 issued by Trivandrum Corporation.
8. Exhibit A8- Series- Copy of the Building tax receipts.
9. Exhibit A9-Series-Copies of statement of account for various periods produced by Complainants in Complaints No. 53/2022, 55/2022, 81/2022 and 150/2022
- 10.Exhibit A10- Copy of order dated 18-12-2021 of this Authority in Complaint No 114/2021.
- 10.Exhibit A11- Copy of Power of Attorney in Complaint No 81/2022.

Documents produced by the 1st and 2nd Respondents

- Exhibit B1- True copy of the Occupancy certificate dated 28/06/2021

Documents produced by the 3rd Respondent

1. Exhibit B2- True copy of decision taken dated 23/07/2014.
2. Exhibit B3- True copy of the letter dated 27/03/2017.
3. Exhibit B4- True copy of the letter dated 10/10/2011.
4. Exhibit B5- True copy of the Notice dated 28/01/2022.
5. Exhibit B6- True copy of the receipt dated 09/05/2022.
6. Exhibit B7- True copy of the notice issued on 07/06/2022.