



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 3/2023**  
Dated 8<sup>th</sup> December, 2023

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

**Complainant.**

Narayana Panicker Sailajan  
Kalpavilakathu Veedu, Kulathoor, Karodu Village  
Uchakkada P.O., Neyyatinkara,  
Thiruvananthapuram, Pin- 695506.  
(Adv. Arun Chand, Adv. Vinayak G. Menon)

**Respondents.**

1. M/s Sowparnika Projects and Infrastructure Pvt. Ltd.,  
having its registered office at No 750, 'C' block, 1<sup>st</sup> Main Road,  
AECS Layout, Kundalahalli, Bangalore-560037.

Branch Office at Vettakkulam Arcade, opposite, Mar Ivanious  
College Main Gate Nalanchira, Thiruvananthapuram, Kerala  
Pin- 695015. (for service of notice)

2. S. Sreenivasan, Director,  
M/s Souparnika Projects and Infrastructure Pvt. Ltd.,  
Vettakkulam Arcade, opposite, Mar Ivanious College Main Gate  
Nalanchira, Thiruvananthapuram, Kerala Pin- 695015.



3. Meenakshi Ramji, Director,  
M/s Souparnika Projects and Infrastructure Pvt. Ltd.,  
Vettakkulam Arcade, opposite, Mar Ivanious College Main Gate  
Nalanchira, Thiruvananthapuram, Kerala Pin- 695015.  
(Adv. V.Ajakumar, Adv. P. Ravikumar).

The above Complaint came up for hearing on 16-10-2023 for which the Complainant and the Counsels for the Complainant Adv. Arun Chand and the Counsel for the Respondents Adv. V. Ajakumar attended physically.

### **ORDER**

1. The Complainant is an allottee/owner in the project, "Sowparnika Gardens" developed by the 1<sup>st</sup> Respondent Pvt Ltd Company. Respondents 2 and 3 are the Directors representing the 1<sup>st</sup> Respondent Company.

2. According to the Complainant, he is an ex-NRI, hails from Neyyatinkara, the only child of the Complainant is suffering from locomotive disability since her birth and is undergoing treatment around hospitals in Thiruvananthapuram. On 28-04-2011, being attracted the fanciful advertisement regarding construction of four independent premium villa in dry land classified as 'purayidam' at Manacaud Thiruvananthapuram, within the vicinity of hospitals, the Complainant decided to get executed sale deed for purchase of 5 cents from the 1<sup>st</sup> Respondent company through its Director, the 2<sup>nd</sup> Respondent for a total consideration of Rs. 15,00,000/- since the child was suffering from permanent disability, he demanded for installation



of lift facility in his villa to move his child upstairs. Thereafter agreement for construction was entered in to with 1<sup>st</sup> Respondent company through its Director, the 2<sup>nd</sup> Respondent on 29-05-2012 for carrying out construction of a residential villa admeasuring 2200 sq. ft in the land purchased, for a total consideration of Rs.42,80,500/- within 15 months from the date of agreement. The payment had to be disbursed at 7 stages commencing from the date of signing agreement till the date of handing over. The Complainant had availed housing loan from Canara Bank for an amount of Rs. 46,00,000/- in order to enable the Respondents to disburse the amount proportionately according to the stage wise construction. While so, the Complainant was served with notice from the Corporation, stating that building cannot be constructed since land is classified as 'Nilam' in the revenue records. The other allottees also received similar notice, the Complainant realized that the Respondents were cheating him behind the back and demanded return of the entire sale consideration from the Respondents. Respondents stated that it was a clerical mistake from the part of revenue officials and assured to rectify the error and obtain building permit at the earliest and further directed the Complainant to disburse initial slab wise amount. The Respondents managed to obtain approved building plan from the Corporation and demanded huge amount from the Complainant stating that construction was already started. Building Permit was obtained on 30-04-2012 and an amount of Rs 27,28,325/- was



demanded by the Respondents as against the initial amount of 10% of the total cost agreed ie, an amount of Rs. 4,28,050/- and forwarded request dated 03-07-2012 to the bank for disbursing an amount of Rs 27,28,325/-. Even after disbursing an amount of Rs. 27,28,325/- the 2<sup>nd</sup> Respondent demanded entire outstanding balance amount from the complainant on the pretext of accelerating the construction work in his villa. The promised date of completion was on 29-08-2013 i.e. 15 months from the date of agreement. The Complainant was regularly paying the housing loan upon the belief that the Respondents were duly carrying out the construction adhering to the approved building plan. Separate septic tank, soak pit, entrance door in teak wood, rain water harvesting tank etc promised were not complied with. The lift pit constructed is entirely contrary to the specified ratio. The dimension of the lift is 115x 165 however the Respondents constructed the lift entirely contrary to the specified ratio. The Respondents illegally utilized the hard-earned money of the Complainant for their other projects and deliberately failed to carry out the construction of the villa. While so, when they confronted the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents regarding the same they demanded for an amount of Rs. 10,00,000/- in order to regularize the structure and complete the villa within 2 months. Believing the assurance of the Respondents, three and a half year from the agreed date of handing over on 31-01-2017 transferred Rs.10,00,000/-. The Corporation refused to issue occupancy



certificate to the villa constructed by the Respondents and directed to carry out constructions adhering to the sanctioned plan. Thereafter on 5.01.2018 after remitting Rs 5415/- towards penalty, the Corporation regularized the unauthorized construction. The Complainant requested for immediate handing over of the villa and visited the property for enquiring the status of construction and he was shocked to see the structure remains the same without rectifying the structural defect occurred due to the lapse of supervision from an authorized engineer of the Respondent company even after receiving substantial amount on the pretext of rectifying the defects. The Respondent constructed a single septic tank for the entire 4 villa as against the individual septic tank. While so, the Complainant contacted the Respondents for immediate possession after waiving off Rs. Rs.5,52,175/-, the remaining amount due towards agreement on account of delay of more than 4 years in handing over the same and not completing the construction as per approved plan. The Respondents agreed to the waving of remaining amount and directed the Complainant to take the alleged possession of the villa taking account of the non-completion and assured to rectify the entire defect in construction and the remaining works at the earliest and also assured him the occupancy certificate so as to avail civic amenities and further issued NOC to the Complainant to remit building tax, land tax and obtain ownership certificate as well in the name of the Complainant. The alleged handing over of



possession does not withstand in the eye of law because without a valid occupancy certificate, the Complainant and other allottees remained as unauthorized occupants and as such, the alleged possession cannot be treated as a valid handing over of possession. Thereafter the Complainant applied for ownership certificate to produce before the bank and the same was received on 24-07-2019. From the land tax receipt, he came to know that the land is still 'Nilam' and when the Complainant cross-checked with the BTR register maintained with the village office the same stood corroborated. The Complainant obtained copy of occupancy certificate dated 05-01-2018 under Right to Information Act, 2005 with respect to the then building plan. The date of completion in the occupancy certificate was recorded as 02-06-2017. In the mean while the Complainant confronted with the Respondents regarding the gross illegality and fraud committed upon the Complainant and demanded for the entire amount along with interest. While so, on 26-04-2019 the Respondents illegally break open the front door lock of the villa and installed new lock and prevented the Complainant from entering into the villa. Later, with respect to the dispute and break open of lock of the villa by the respondents, police complaints were filed but no action was taken. Thereafter the Respondents hoisted advertisement in the sun-shade of the villa offering the villa for sale and published the contact number of the Complainant and instituted CMA(Arb) No 302/2019 before the



District Court Thiruvananthapuram, the said case was transferred to the Principal Sub-Court (Commercial Court) and where the same was closed vide order dated 12.11.2019. Thereafter the Respondents approached the Hon'ble High Court of Kerala, by filing Arbitration Request No 171/2022 arraying the Complainant as the Respondent. The Respondents failed to hand over the documents related to the sanctioned plan, NOC's, lay out plans along with specifications approved by the Competent Authority, failed to obtain completion certificate and occupancy certificate at the time of handing over the alleged possession. It was submitted that the respondents after receiving Rs. 37,28,325/- failed to handover completed possession of villa, as a result huge financial loss caused, since the Respondents are deliberately refusing to repay the amount, he is not in apposition to take a new house for the treatment of the child. Among 4 villas in the compound only one family is residing as unauthorized occupant, since the building was not completed. The Respondents are liable to refund the entire amount with interest at 14.15%.

3. The reliefs sought for by the Complainant are:-

- (i) for declaring the project, a Registrable one and directing to register the said real estate villa project before this Authority, under Section 3 of the Real Estate (Regulation & Development) Act, 2016,
- (ii) for direction to the respondents to return the initial amount of Rs. 27,28,325/- with 14.15% interest from 10-07-2013 and a



further amount of Rs. 10,00,000/- with 14.15 % interest from 31-01-2017,

(iii) declare the alleged handing over of possession of villa by the Respondents to the Complainant without obtaining a valid occupancy certificate and taking into consideration of the prior refusal of authorities,

(iv) declare that the Respondents had not carried out the construction adhering to the then building rules approved building plan and permits and specifically not constructed the lift as per building plan measuring 115x165 and separate septic tank soak pit rain water harvesting etc.,

(v) to declare that no amount stands due from the complainant to the Respondent, to initiate prosecution proceedings against the Respondents under relevant Sections of the RERA Act, allow Rs 50,000/- towards cost of litigation and to pass appropriate orders as the Authority deems fit and proper under the circumstances of the Complaint. The Complainant had produced copies of sale deed dated 28-04-2011, executed by the 1st Respondent represented by the 2<sup>nd</sup> Respondent, agreement for construction dated 29-05-2012 executed between the Complainant and the 1st Respondent represented by the 2<sup>nd</sup> Respondent, letter dated 03-07-2012 addressed to the Manager Canara bank written by the Respondents, occupancy certificate dated 05-01-2018, land tax receipt dated 18-10-2021 produced by the Complainant for having remitted the tax for the period 2021-22, copy of order of





regularisation issued by the Corporation, approved building plans and disability certificate.

3. After hearing both sides on 24-02-2023, by invoking the powers under section 37 of the Act, 2016 [herein after referred to as the Act, 2016], the Authority had directed the Respondents 1 to 3 to show cause why the project, "Sowparnika Gardens" was not registered before this Authority under section 3 of the Act 2016, till date and why the penalty as provided under section 59(1) of the Act, 2016 should not be imposed on them for violation of Section 3 of the Act 2016.

4. The Respondents represented by its State Head, Mr. Joji Joseph filed reply statement on 18-04-2023, denying the averments in the Complaint and explaining that the Complainant is a purchaser of 5 cents of property out of 23 cents owned by the Respondent Company and thereafter executed an agreement for construction for an independent dwelling unit in the above 5 cents and the permit obtained by the Complainant in his name. Possession of the property of 5 cents was handed over to the 1<sup>st</sup> Respondent for construction and the 1<sup>st</sup> Respondent is holding possession of the property. The Complainant after availing loan from Canara Bank, Neyyatinkara had paid Rs 27,82,325/- during construction, the Complainant insisted for many modifications from the approved plan, which along with non-payment of construction cost had delayed submission of completion plan and getting the occupancy certificate. Later, the Complainant



obtained regularization of unauthorized construction vide order dated 5-01-2018 and obtained occupancy certificate dated 05-01-2018 in respect of his house. The building was also assessed to tax. The Complainant made a further payment of Rs. 10,00,000/- on 31-01-2017. According to the 1<sup>st</sup> Respondent a balance amount of Rs, 9,69,030/- as on 2012 along with interest for delayed payment is due to the 1<sup>st</sup> Respondent. Due to the non-production of NOC from the bank as per agreement and due to non-payment of balance amount the Respondent company refused to hand over possession. The Complainant had raised illegal demands to waive the balance amount and hand over possession of building. The Respondent further submitted that the land area proposed to be developed is only 200 sq ft (5 cents) and the number of units developed is only one. So, by virtue of Section 3(2) read with Explanation to the said Section the area sold to the Complainant is not under any project and is not registrable under the Act, 2016. The plot was sold independently and the house was agreed to be constructed independently under a separate agreement which never refers to any villa project and hence requested to drop further actions.

5. As per order dated 18.04.2023 of the Authority, it was directed to depute 2 officers of the Authority to inspect the project site and to submit detailed report as to whether it is a registrable project and also with regard to the grievances of the Complainant. The Officers inspected the site on 06.05.2023 and



submitted a report, wherein it was submitted that the Complainant and the Respondents and their Counsels were present. The Complainant mainly informed that though the promoter agreed to provide lift as his daughter was differently abled person, lift was not provided. The Respondents informed that they did not agreed to provide lift, as per the plan there was only lift provision which has been provided. The Report reveals that the total area of the land project was 23 cents (930.81Sq) and the total number of villas in the project is 4 and the villas are not fully finished, provision for lift is provided in the Complainants villa and the Complainant's villa is not good for human habitation. Only 3 villas have received occupancy certificate. The Complainants villa has not been handed over to the owner. In the report it was recommended that as the project has not yet been completed and the total area of the project land was 23 cents (930.81Sq) the project has to be registered under Section 3 of the Act, 2016.

6. After hearing the parties on 30-06-2023, and perusing the documents produced by the complainant and the report submitted by the officers of this Authority after inspecting the site, this Authority on 02-08-2023 passed orders on registrability of the project. The Authority held that the project in question is an "ongoing real estate project" falling under the purview of the Act, 2016 and is required to be registered before the Authority as provided under Section 3 of the Act, 2016 and directed the Respondents vide order dated 02.08.2023 to register



the project "Sowparnika Gardens" under Section 3 of the Act, 2016 within one month from the date of receipt of the order.

7. The Respondents 1 to 3 filed Written statement on 18-08-2023, denying the allegations and that the Complaint is not maintainable, stating that the Complainant never mentioned to the Respondents about his child or any special reasons for purchasing the plot, all these were raised for sympathy and to hide the defaults of the Complainant. The sale of plot took place before the commencement of RERA Act and the project is not registrable as the number of villas are less than 8 in number. The sale deed was executed on 28.04.2011 and the same was a fully concluded transaction thereby the plot was absolutely transferred to the Complainant as seen from the sale deed. The construction agreement was a totally independent transaction and was executed on 29.05.2012, and the Respondent were not responsible for the alleged delay in construction. The period of completion was subject to issue of approved plan and due payments by the Complainant. The Respondents were not aware of the any notice issued by the Corporation declining the sanction of permit. The sale deed in favour of the 1st Respondent never state that the property sold was a 'nilam'. The building permit was applied for and obtained by the Complainant himself and the same was obtained on 30.04.2012. The total consideration mutually fixed was Rs. 42,80,500/-and the same had to be paid as per schedule annexed to the agreement. The Complainant



defaulted the payments in accordance with the agreement. The Complainant paid Rs 27,82,325/- through his bank only on 09.07.2013. which is after completion of roof slab of 1<sup>st</sup> floor. The amount was delayed as the complainant delayed to give his consent to release the amount to the bank. Inspite of non-payment of amount, the Respondents had progressed with the construction. The Complainant had insisted to provide provision for lift as he intends to install a lift in his villa, the Complainant was requested to arrange meeting with lift vendor to finalise specifications and have produced copies of email communications. An Advocate notice was issued on 05.08.2016 pointing out the defaults on the part of the Complainant and demanding payment due. Inspite of non-payment of the agreed instalments villa was completed incorporating the modifications suggested and approved by the Complainant. The facility for lift was provided as per specifications and the same were reported by the officers of K-RERA visited the villa as per direction of the Authority. The cost of extra work comes to Rs.3,35,994/- and copy of statement was produced. In addition to that Rs.2,00,000/- was spent for providing facility for lift. There was no promise made by the Respondents to waive any amount due to the Respondents as falsely alleged by the Complainant. The Complainant is making allegations against the Respondents to make unjust enrichment on his part. The revised plan and regularization were required due to modifications suggested by the Complainant and not due to any



default of the Respondents. The septic tank was constructed as agreed by the villa owners near v the entrance gate for its easy clearance and to connect the same to the public drainage lane as and when installed. The Corporation had already issued occupancy certificate and the Complainant was directed to take possession after making balance payments, but the Complainant had illegally demanded to waive the balance amount due and the Respondents cannot accept the illegal demand. He has attempted even to take forcible possession of villa but the same was prevented by the Respondents. The Complainant had not taken possession after paying the balance amount. The Corporation had issued ownership certificate in favour of the Complainant since the land and permit were in the name of the Complainant. After resurvey, many properties in which buildings were standing constructed years back has been wrongly notified as 'nilams' ignoring the fact that these properties were converted as dry land years back. This anomaly could be rectified by filing applications before the revenue authorities. The occupancy certificate was issued based on valid records after verification, the building was completed as on 02.06.2017 as perv completion certificate signed by the Architect as well as the Complainant and the same was only mentioned in the occupancy certificate after due verification. It was not correct that the Respondent had changed the lock and took forcible possession of the building. The Complainant attempted to change the front lock to take forcible possession of



the building and the same was prevented by the Respondents. The building was admittedly constructed by the Respondents and is in absolute possession of the Respondents. The Complainant can take possession of the building by paying the balance amount due to the Respondents. The Arbitration Request could not be perused further since the postal receipt showing the issue of demand notice was lost from the 1<sup>st</sup> Respondent. There is no limitation for the claims against the Complainant as the same could be recovered from the Complainant even under the RERA Act. The Complainant is making false claims and allegations. As per Section 19(6) of the RERA Act, the Complainant is bound to make payments. As there is balance amount due from the Complainant the possession of building was never handed over to the Complainant and the Respondents have every right to withhold the possession. At the time of sale deed RERA Act was not enacted. The project is not an ongoing project registrable under Section 3 of the Act as the number of units are 4. The occupancy certificate issued had become final and the Complainant cannot challenge the same. The complainant is not entitled to any reliefs claimed. The Copies of sale deed of property sold to the Respondents, email communications from respondents dated 31.12.2014, and 19.11.2014 to the Complainant, Advocate notice dated 05.08.2016 issued to the Complainant along with postal receipt, email communication dated 26.09.2016, 29.09.2016 and letter dated 19.06.2017 from respondent to the branch Manager,



Canara bank and statement dated 30.01.2013 regarding cost of extra work were produced by the Respondent. As per the direction of the Authority, to produce copy of e-mail communication, if any received from the Complainant, the Respondents on 28.10.2023, has produced copy of e mail communication received from the Complainant dated 18.10.2014 as additional evidence to substantiate the authenticity of email address used by the Complainant.

8. The copy of sale deed dated 28-04-2011, executed in favour of the complainant by the 1st Respondent represented by the 2<sup>nd</sup> Respondent, is produced and marked as **Exhibit A1**. As per Exhibit A1, the Respondents sold 2.02 Ares (5 Cents) of land in Muttathara village, described in the Schedule attached to the sale deed with right to use the common areas, common roads and common facilities for a consideration of Rs. 15 lakhs on that stamp duty of Rs.1,35,000/- was levied and the sale was after fully satisfying the entire sale consideration of Rs 15 lakhs. The copy of agreement for construction dated 29-05-2012 executed between the Complainant and the 1st Respondent represented by the 2<sup>nd</sup> Respondent, is produced and marked as **Exhibit A2**. It is stated in the agreement that the 1<sup>st</sup> Respondent proposed to develop and complete independent Residential villa made up of several independent units in the Schedule A property, and for this purpose the Developers shall: (a) Identify Nominees for the villa in the property described as Schedule 'A' hereto and arrange for





the landowners to register, at the cost of such nominees, such specific plot in favour of each such nominee (b) Require each such nominee to likewise appoint the Developers as their contractor to construct upon the property mentioned in the Schedule 'A', a residential villa as part of the proposed Multi Residential Complex as mentioned in Schedule 'A' hereto as also for several persons who hold or propose to hold a portion of the land described in Schedule 'A' along with the purchasers. As per Exhibit A2, the construction of villa in the plot owned by the Complainant was entrusted to the Respondents. As per the agreement for construction, the Respondents proposed to develop and complete independent residential villa in the schedule 'A' property as part of the proposed multi residential complex made up of several independent units in the 23.5 cents of property. It is further stated that the Respondent shall construct common amenities for the Complainants and they would enjoy undivided interest of such common amenities in common with all the other allottees in the complex named as 'Souparnika Gardens'. It was also stated that an association shall be formed by the Respondents on completion of the project including the representatives of the Respondents and the allottees. The residential villa that the Respondents would construct for the Complainant admeasures 2200 sq.ft and the total consideration payable was Rs. 42,80,500/- excluding statutory payments. The delivery of the villa would be within 15 months from obtaining sanction from the



competent authorities and a 3 months grace period was allowed over and above 15 months. The copy of letter dated 03-07-2012 to the Manager, Canara bank written by the Respondents is produced and marked as **Exhibit A3**. Exhibit A3 letter states that the Respondents have sold a villa in plot No D in 'Souparnika Gardens' for a total consideration of Rs 42,80,500/- and requested to release the loan amount of Rs. 27,82,325/- in favour of the Respondents. The occupancy certificate dated 05-01-2018 issued by the Corporation in favour of the Complainant is produced and marked as **Exhibit A4**. The copy of land tax receipt dated 18-10-2021, produced by the complainant for having remitted the tax for the period 2021-22 is produced and marked as **Exhibit A5**. In the above tax receipt, the land is shown as 'Nilam'. The copy of order of regularisation No. FE1/6458/17 dated 5.01.2018 granted by the Corporation in favour of the Complainant is produced and marked as **Exhibit A6**. As per Exhibit A6, the Complainant had applied for regularisation and on paying Rs.5415/- absolved from the liability in respect of construction and the construction has been regularised. The copy of approved plan dated 30.04.2012 issued by the Town Planning Officer, Corporation of Thiruvananthapuram is produced and marked as **Exhibit A7**. In this approved plan, the location of the lift is shown in between the Kitchen and the living room. The lift can be accessed from the dining room and the dimensions are shown as 115x165 cm. The copy of the plan showing the completed building, regularised as



per order No. FE1/6458/17 dated 5.01.2018 is produced and marked as **Exhibit A8**. In this plan, the lift is seen located adjacent to the dining room and the dimension shown 165x150 cm, whereas, the width of the toilet in between the kitchen and the bedroom, where the lift was proposed as per Exhibit A7 is shown as 210 cm. The copy of ownership certificate issued by the Corporation dated 24.07.2019 in favour of the Complainant is produced and marked as **Exhibit A9**. The copy of certificate of disability dated 09.04.2021 issued in respect of Panchami Sailajan, the daughter of the Complainant is produced and marked as **Exhibit A10**.

9. The copy of sale deed No 5289/2007 dated 19.12.2007 by which the property was purchased by the 1<sup>st</sup> Respondent from Sudheer Das and Shakthidharan Nair is produced and marked as **Exhibit B1**. The copy of email communications from Respondents dated 31.12.2014 and 19.11.2014 to the Complainant is produced and marked as **Exhibit B2 series**. The copy of Advocate notice dated 05.08.2016 issued to the Complainant along with postal receipts is produced and marked as **Exhibit B3**. In the notice it is stated that the first Respondent had conceived a villa project at Manakkad and the Complainant had purchased 5 cents of land vide Sale Deed No. 1558/2011 dated 28.04.2011. It is further stated that after execution of the sale deed the first Respondent had obtained a building permit in the name of the Complainant for the construction of a villa upon



the above referred property sold to the Complainant by the 1<sup>st</sup> Respondent. As per the notice, agreement dated 29.05.2012 was entered into by the 1<sup>st</sup> Respondent with the Complainant for the purpose of construction of villa in the said land. On 09.07.2013 a one-time payment of Rs. 27,82,325/- was received by the 1<sup>st</sup> Respondent from the Bank as stated in the notice. The copy of email communications dated 26.09.2016, 29.09.2016 issued to the Complainant is produced and marked as **Exhibit B4 series**. As per email communication dated 26.09.2016 the 1<sup>st</sup> Respondent requested the release of the balance of Rs.14,98,175/- and the current stage was reported as villa completed. As per email communication date 29.09.2016, the current stage was reported as construction of villa completed (TC No, KSEB and KWA connections are pending). In this letter the demand was to release Rs.10 lakh as the current stage payment in favour of the 1<sup>st</sup> Respondent. The copy of letter dated 19.06.2017 addressed to the branch Manager, Canara bank Neyyantikara by the 1<sup>st</sup> Respondent is produced and marked as **Exhibit B5**. In this letter, the breakup is shown as Rs. 47,51,355/- out of which Rs. 37, 82,325/- was reported as received and the balance due was Rs. 9,69,030/- The copy of extra work costing dated 30.01.2013 prepared by the 1<sup>st</sup> Respondent is produced and marked as **Exhibit B6**. As per Exhibit B6 statement the total amount for extra work is shown as Rs.3,35,994/- IA No 156/2023 was filed on 18-10-2023 by the Respondent along with copy of e-mail



communication dated 18.10.2014 from the Complainant to the 1<sup>st</sup> Respondent and the same is and marked as **Exhibit B7**. In Exhibit B7 email communication the email address and mobile number is shown.

10. The site inspection report dated 24-05-2023, by the Officers of the Authority who inspected the project site, in the presence of the Complainant and the Respondents and the Counsels of both parties and owners of other villas in the project is produced and marked as **Exhibit X1**. In the report it has been specified that the total land area of the project is 23.5 cents and there are 4 villas in the project of which 2 are occupied, the villas are not fully furnished and the provision for lift is seen provided in the Complainant's villa which is not seen good for inhabitation. According to the said report the project has not been completed and the total land area is 23.5 cents (930. 81Sq.ft) and hence the project has to be registered under Section 3 of the Act, 2016.

11. After hearing the learned counsels for the parties on 16.10.2023, and perusing the documents produced before the Authority, the Complaint was taken for orders. The real estate project is not registered under section 3 of the Act, 2016 even after directions issued in this regard by this Authority. On going through the Exhibit A1 sale deed, it is confirmed that the 1<sup>st</sup> Respondent had sold 2.02 Ares (5cents) of land to the Complainant from the 23.5 cents of land that the 1<sup>st</sup> Respondent proposed to develop and complete independent residential villas



made up of several independent units. As per Exhibit A2, the Respondents/developers were to identify nominees for the villa in the property described as schedule A attached to the agreement and arrange for the land owners to register, at the cost of such nominees. The intention of the 1<sup>st</sup> Respondent to develop a multi residential complex in the 23.5 cents of land for several persons who hold or proposed to hold a portion of the land is very clear from the Exhibit A2 agreement. It is also stated that the Respondents shall construct common amenities for the complainants and they would enjoy undivided interest of such common amenities in common, with all the other allottees in the complex named as Souparnika Gardens. It is also confirmed that the total consideration was Rs. 42,80,500/- out of which Rs. 37,82,325/- was admittedly received vide Exhibit B5 by the Respondents. Though Exhibit B6 shows the total amount towards extra works as Rs.3,35,994/- it is not seen reflected in Exhibit B5, according to which the balance due is Rs. 9,69,030/-. Exhibit B3 Advocate Notice states that the painting works and modifications were completed in September 2014 and it was informed in November 2014 that within 45 days the villa can be taken over. However, the only communication showing the current stage as villa completed is on 26.09.2016 (Exhibit B4).

12. Exhibit B3 Advocate Notice confirms the fact that the 1<sup>st</sup> Respondent had obtained a building permit in the name of the Complainant for the construction of the villa. As per Exhibit A7



approved building plan, the position of the lift well is between the kitchen and the bed room and the size was 135x165 cm. It can be presumed that the building permit obtained by the 1<sup>st</sup> Respondent was as per the requirement of the Complainant. There is no communication necessitating change in the location of the lift. Exhibit A8 building plan regularized vide Exhibit A6 order was necessitated due to the modifications made by the 1<sup>st</sup> Respondent without the consent of the Complainant. According to the Complainant, he had decided to purchase the villa within the vicinity of the hospital for the treatment of his only child who was suffering from locomotive disability since her birth. Exhibit A10 confirms the statement made by the Complainant. The promised date of completion as per Exhibit A2 agreement was 29.10.2013, but the occupancy certificate was received only on 05.01.2018. It is confirmed that possession of the building was never handed over to the Complainant by the Respondents as per the written statement filed by the Respondents on 18-08-2023. According to the Hon'ble Supreme Court in M/s New Tech Promoters & Developers Pvt Ltd. Vs State of U P & Others, the only option available to the promoter/Respondent is to cancel the sale and return the amount in case of default in payment by the allottee/Complainant. However, no such notice demanding payment failing which cancellation of the agreement shall be made, is seen issued by the Respondent. It is true that Exhibit B3 notice was issued on 05.08.2016 demanding payment of Rs.



26,54,167/- along with interest @ 15% from the date of notice till demand and upon failure shall be constrained to set law in motion. The Arbitration request could not be perused further as admitted by the Respondent due to the postal receipt showing the issue of demand notice being lost from the Counsel for the 1<sup>st</sup> Respondent.

13. The land sold to the Complainant by the Respondent was classified as 'Nilam' and it was left to the Complainant to apply for conversion of the land after paying the requisite amount as contemplated under the Kerala Conservation of paddyland and wetland Act, 2008 [herein after referred to as the Act, 2008]. It is true that the sale was effected by the Respondent after the commencement of the Act, 2008 knowing fully well that the property sold to the Complainant came under the provisions of the Act, 2008. As per Section 18(2) of the Act, 2016 the promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land , on which the project is being developed or has been developed and the claim shall not be barred by limitation provided under any law for the time being in force. Therefore, the Complainant is entitled to refund of the amount paid under Section 18 of the Act, 2016. Since the land is in the name of the Complainant, the Respondent is entitled to get the land transferred in to their name upon payment of the amount shown in the Exhibit A1 sale deed as consideration or the fair value, whichever is higher.





14. The interest payable by the Respondents to the allottees is at State Bank of India Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.85%. Hence, the allowable interest rate is  $14.85\% + 2\% = 16.85\%$ . The relevant portions of Rule 18 of the said Rules is extracted below: *“(1) The annual rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be at the State Bank of India’s Benchmark Prime Lending Rate plus two percent and shall be computed as simple interest. (2) In case of payment from the promoter due to the allottee, the interest on amount due shall be computed at the rate as per sub-rule (1) above from the agree date of payment on such amount from the allottee to the promoter as per the agreed payment schedule as part of the agreement for construction or sale.”* The Complainant and the Respondents admitted as having paid and received Rs. 37, 82,325/- The present SBIPLR rate is 14.85%. However, the Complainant herein has claimed interest only at the rate of 14.15%.

15. It is clear that the Respondents have received an amount of Rs. **37,82,325/-** from the Complainant. The details of the payment made to the respondents is scheduled below:-



<u>Date</u>	<u>Amount</u>
08.07.2013	Rs.27, 82,325/-
31.01.2017	Rs.10,00,000/-

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<b>Total</b>	<b>Rs.37,82,325.00</b>
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Hence, the Complainant is entitled for refund of the amount of Rs. **37,82,325.00** paid by him under Section 18 of the Act, 2018 as the possession is still not handed over as admitted by the Respondents.

16. Vide order dated 02.08.2023, the Respondents were directed to register the project under section 3 of the Act, 2016 and the same is under challenge before the Hon'ble Kerala Real Estate Appellate Tribunal. The Hon'ble Appellate Tribunal vide interim order dated 4.12.2023 in IA No 259/2023 in REFA No. 73/2023 has state as follows: "we inclined to grant interim stay of enforcement of the impugned order till decision is made in the appeal" In the above circumstances this Authority under Section 37 of the Act, 2016 issues the following directions subject to the decision in the appeal pending before Hon'ble Appellate Tribunal.

(1) The Respondents shall refund the total amount of Rs.37, 82,325/- within **one month** from the date of receipt of this order, to the Complainant with interest at the rate of 14.15% from the respective dates of payment, as shown in the schedule above, till date of realization of the amount.



(2) The Complainant shall transfer the land into the name of the Respondent **within 15 days from the date of receipt of refund** as ordered above, upon receipt of the consideration of Rupees 15 lakhs or fair value which ever is higher.

Sd/-  
M.P. Mathews  
Member

Sd/-  
P H Kurian  
Chairman

True Copy/Forwarded By/Order



Secretary (Legal)

## APPENDIX

### **Exhibit marked on the side of the Complainant**

Exhibit A1- Copy of sale deed dated 28-04-2011, executed by the 1st Respondent represented by the 2<sup>nd</sup> Respondent

Exhibit A2- Copy of agreement for construction dated 29-05-2012 executed between the Complainant and the 1st Respondent represented by the 2<sup>nd</sup> Respondent

Exhibit A3- Copy of letter dated 03-07-2012 addressed to the Manager Canara bank written by the Respondents.

Exhibit A4-Copy of occupancy certificate dated 05-01-2018.

Exhibit A5-Copy of land tax receipt dated 18-10-2021 produced by the

Complainant for having remitted the tax for the period 2021-22.

Exhibit A6- The copy of order No. FE1/6458/17 dated 5.01.2018 of regularisation granted by the Corporation in favour of the Complainant dated 05.01.2018.

Exhibit A7- The copy of approved plan dated 30.04.2012 issued by the Town Planning Officer, Corporation of Thiruvananthapuram

Exhibit A8- The copy of the plan showing the completed building regularised as per order No. FE1/6458/17 dated 5.01.2018.

Exhibit A9- The copy of ownership certificate issued by the Corporation dated 24.07.2019 in favour of the Complainant.

Exhibit A10- The copy of certificate of disability dated 09.04.2021

**Exhibit marked on the side of the Respondents**

Exhibit B1- The copy of sale deed No. 5289/2007 dated 19.12.2007 by which the property was purchased by the 1<sup>st</sup> Respondent

Exhibit B2 Series- The copy of email communications from Respondents dated 31.12.2014, and 19.11.2014 to the Complainant.

Exhibit B3- The copy of Advocate notice dated 05.08.2016 issued to the Complainant along with postal receipts.

Exhibit B4 Series- The copy of email communications dated 26.09.2016, 29.09.2016 issued to the Complainant.

Exhibit B5- The copy of letter dated 19.06.2017 addressed to the branch Manager, Canara bank Neyyantikara by the



1st Respondent

Exhibit B6- The copy of statement dated 30.01.2013 regarding cost of extra work.

Exhibit B7- The copy of e-mail communication received by the Respondent from the Complainant dated 18.10.2014.

**Exhibit marked on the official side**

Exhibit X1- Inspection Report by the officers of the Authority dated 25-05-2023.



