# KERALA REAL ESTATE REGULATORY AUTHORITY

## THIRUVANANTHAPURAM

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

**Complaint No.144/2022**
Dated 12th September 2023.

**Complainants**

1. Radha Sitaraman,
   Flat No.10/152,
   Sardar Nagar-4,
   Sion – Koliwada P.O,
   Mumbai – 400 037.

2. T. R. Sitaraman,
   Flat No.10/152,
   Sardar Nagar-4,
   Sion – Koliwada P.O,
   Mumbai – 400 037.
   [Adv. H.L.Sitaraman and Adv. R. Sreenivasan]

**Respondents**

1. Dr. Kamarudheen N. P,
   Door No. C-781-56(a),
   Cochin Corporation, Thevara P.O,
   Kochi- 682 013.

2. Dr. Suhra Kamarudheen,
   Door No. C-781-56(a),
   Cochin Corporation, Thevara P.O,
   Kochi- 682 013.
   [Adv. K.P. Santhi]

3. Ideal Properties & Developers,
   Represented by its
   Managing Partner, Sri. T S Harikrishnan,
   Parvathy Mandir, P & T Quarters Road,
   Poothole P O, Thrissur- 680 004.
   [Adv. J.P.Sandhya, Renoj S., K.V. Santhosh and Sreelatha M.V]

4. Sri. Vinod Krishnan,
   Prop.Kaizen Projects & Constructions,
   'Narayana', Krishna Nagar,
   Poothole P O, Thrissur- 680 004. (Died)

5. Rathnam Krishnan, (Additional 5th Respondent)
   'Narayana', Krishna Nagar,
   Poothole P O, Thrissur- 680 004.

The above Complaint came up for virtual hearing 04-07-2023. The Counsel for the Complainants and the Counsels for R1, R2, and R3 attended the hearing. R4 no more and R5 Legal heir not attended.

## INTERIM ORDER

1.The case of the Complainants are as follows: Complainants are senior citizens, they are natives of Trissur but presently in Mumbai and with a view to settle down in their home

town during the rest of life, on the lookout for a suitable apartment in close in temples and other land mark places the 1st complainant after coming to know of the project 04,12.2006 entered into an agreement with Respondents No. 1,2,3 for the purchase of Flat No. 9E on the 9th floor with car park in the basement floor in 20 cents (8.10Ares) in Trissur Village jointly owned by the Respondents 1and 2, in the project 'LAND MARK' being developed by 3rd Respondent, a partnership firm of which T. S. Harikrishnan is the Managing Partner and the 1st Respondent is a partner. The property agreed to be purchased is 1722/38000 undivided share over the above 20 cents of property and the flat admeasuring 1722 sq.ft along with car park in the project named 'LAND MARK' for a consideration of Rs. 50,000/- for land and Rs.26,06,900/- towards the construction cost of flat, with aggregate cost of Rs. 26,56,900/-. The aggregate consideration was to be paid in instalments as stipulated in the agreement dated 04-12-2006 and the project was to be completed within 16 months from the date of sale agreement and conveyance executed in the name of the 1st Complainant or to her nominees. According, the project was to be completed on or before 04-04-2008. In terms of agreement the applicant paid Rs. 17,25,000/- and the compliances were ready always and willing to pay the balance amount and to take conveyance of the property. But for reasons best known to the Respondents they did not receive the balance consideration and to complete the construction as agreed. While

so, the 3rd Respondent vide letter dated 04.11.2011 informed the 1st Complainant that the project was being restarted and in lookout of new service providers for completion of the project and there will be substantial increase in the construction cost and shall communicate as to the requirement of minimum additional funds to be borne by the Complainants for completion and hand over of the project in the shortest possible time. Respondents 1 to 3 represented to the complainants that the project is interested to Respondents No. 4 (since deceased) and the work was resumed in the project and due to the escalation of price of construction materials and wages the cost of flat agreed to be purchased was increased to Rs. 40,85,270/- and the construction will be completed by the end of 2017 and the project name is changed to "phoenix apartment". The compliant received a letter dated 08.12.2015 to that effect. The consent of the Complainant were not obtained for the changes effected unilaterally. As the Complainant had already paid a substantial portion of consideration as per agreement dated 04.12.2006 and they wanted to settle down in Trissur, the Complainant had no other option but to agree for the revised cost fixed by the Respondents. The Respondents also promised that on payment of Rs. 8,91,700/- the Respondents 1 and 2 are ready to execute the sale deed and the project would be completed and actual physical possession of flat would be given to the Complainant by the end of 2017. The Complainant believing the said representation and promise of

Respondents 1 to 3 paid an amount of Rs. 8,91,700 to the 4th Respondent and a sum of Rs. 2,25,000/- was also paid towards stamp duty for the sale deed. Thereafter, the sale deed was executed on 28.01.2016 by the Respondents 1 and 2 whereby 4.17% undivided share over an extent of 7.61 Ares of properties along with apartment under construction and carparking space was sold to the Complainant. The extent of property was reduced to 7.61 Ares from the original 8.10 Ares, an extent of 0.49 Ares was surrendered to Thrissur corporation by the Respondents 1 and 2. The fact was also not disposed by the Respondents till execution of sale deed. In the sale deed flat number was wrongly shown as 9W instead of 9E. the said mistake was rectified by executing a rectification deed on 07.05.2016. Ever since the execution of the sale deed the Complainant were waiting for completion of construction and to take physical possession of the apartment. As required by the Respondents to a further amount of Rs. 7,50,000/-was also paid by the Complainant to the 4th Respondent (since deceased) on 30.07.2016 towards balance consideration. Accordingly, an amount of Rs. 33,66,700/- was paid as total cost. But to the Complainants' great shock and surprise there was no progress in the construction even by an inch from the date of sale. The Respondents misrepresented the facts and extorted money from them. The Complainant apprehended that the Respondents for their own good discontinued and stop their business of developing the project and have no intention to

revive the same. The Respondents had failed to complete the project and the and to give physical possession in a habitable condition and have also abandoned and discontinued the project. The Complainant issued a lawyer notice to the Respondents dated 26.06.2020 calling upon the return sum of money Rs. 35,91,700/- with interest at 12% per month from 28.01.2016 till payment and further amount of Rs.15,00,000 for mental agony and sufferings. Respondent 1, 2 and 4 did not comply with the demand nor sent any reply. The 3rd Respondent sent a reply raising false contentions. The Complainants, therefore withdrawing from the project as they have left with no other option but to get return of money with interest by reserving their right to file application for compensation under the Real Estate (Regulation and Development) Act, 2016. The complaint sought relief for a direction to the respondents to return the sum of money of Rs.33,66,700/- paid towards consideration and Rs.2,25,000/- towards stamp duty, with 12% interest from 30.07.2016, along cost of Rs. 50,000/- and for such other reliefs deemed fit to grant in the circumstances of the dispute.

2. In the objection filed by the 3rd Respondent on 27-10-2022, it was stated that a takeover agreement dated 14-11-2015 was executed with 4th Respondent for taking over the project. A settlement agreement dated 28-11-2015 was executed between Vinod Krishnan proprietor "Kaizen Projects and Constructions" as first party and Harikrishnan and his wife Vishalam

Harikrishnan as second party for handing over one of the apartments in the above project. The 3rd Respondent was a partner only up to 14-11-2015. Copy of take over agreement dated 14-11-2015, settlement agreement dated 28-11-2015 and encumbrance certificate dated 01-07-2022 were produced.

3. When the matter came up for hearing on 31-05-2023, Respondent 1 to 3 filed written statement stating that the Complaint is not maintainable as the provisions of the Real Estate (Regulation & Development) Act, 2016 were not applicable in the case and the Authority had no jurisdiction to entertain the Complaint. The Respondents had no valid permit with them. They further stated that the 4th Respondent had entered in to an agreement with the Respondents 1 to 3 for the completion of a project undertaken by them. The project originally started in the year 2005, while so as requested by Government property owners surrendered more than one cent of land free cost for road widening. The construction was started after obtaining building permit from Trissur Municipality on 21-07-2005, with ground floor, 1st floor and terrace, and the building permit was valid up to 20-07-2008. The neighboring land owner Sri. Sreenivasan filed complaint before the Government alleging that the construction would cause damage to his property, consequently Municipality issued stop memo dated 07-07-2007 to the 3rd Respondent. Sri. Sreenivasan filed WP(C) 21790/2005 before the Hon'ble High Court of Kerala also filed OS No 3123/2005 before Munsiff's

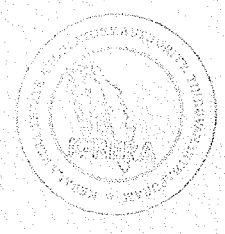
Court Trissur praying for injunction and interim order of injunction was granted on 13-10-2005, while so the the 3rd Respondent obtained another building permit on 28-10-2006 for the construction of apartment with 11 floors in modification of the earlier permit based on direction from the Hon'ble High Court of Kerala in WP(C)No 10506/2006. The Municipality, while considering the Complaint of Sri. Sreenivasan, as directed by the Hon'ble High Court of Kerala in WP (C) No 21790/2005 and 10506/2006 issued proceedings dated 09-05-2006 holding that the apprehension of Sri. Sreenivasan was un warranted and accordingly the stop memo dated 29-03-2006 was reviewed permitting the 3rd Respondent to continue the construction in accordance with the sanctioned plan. Sri. Sreenivasan continued litigation by filing WP (C) No 13022/2006, which was disposed by the Hon'ble High Court of Kerala, on 21-06-2006 directing him to approach appropriate Forum for redressal of grievances. Meanwhile the 3rd Respondent was granted NOC by the Fire and Rescue Department for construction. The 3rd Respondent filed WP(C) No. 23109/2007, the Hon'ble High Court passed interim order dated 31-07-2007 to complete the plastering work, meanwhile the Tribunal for local Self Government Institutions dismissed appeal No 246/2006 filed by Sri. Sreenivasan holding the construction would not cause damage to his building and another WP(C) was filed by Sreeenivasan praying to stop construction, which was not entertained by the Hon'ble High

Court, considering the report of the Head of Department Trissur Engineering College. Then Srenivasan filed WP(C) No 14868/2007 in which interim order was passed holding that the construction would be at the risk of the 3rd Respondent. The said WP(C) was dismissed along with WP(C) No 23109/2007 and WP(C) No. 28045/2006 directing the Municipality to consider the validity of the permit dated 28-10-2006. Sri. Sreenivasan filed WA No 2301/2008, 2316/2008 and 2319/2008 which were disposed by judgement dated 23-05-2009 directing the Government to take final decision with regard to the disputes og alleged violations. The Government vide order dated 07-12-2009 directed the Municipality to conform zoning regulation, construction of proper retaining wall and verify structural damages to the building due to the construction activities. Sri. Sreenivasan challenged the Government order by filing WP(C) No.26084/2010, and the 3rd Respondent also filed WP(C) No. 38371/2010 before the Hon'ble high Court of Kerala. WP(C) No. 38371/2010 was disposed on 25-08-2011 declaring that the 3rd Respondent is entitled to construct the building in accordance with the sanctioned plan and permit. O.S No. 3123/2005 was refiled as O.S. No 1569/2009 before Sub Court Trissur which was disposed the Respondents from excavating the plaint schedule property, directing the defendants to construct a retaining wall, 2 lakhs were directed to be paid to the plaintiff as compensation. RFA No 205/2016 was filed by Sreenivasan before the Hon'ble

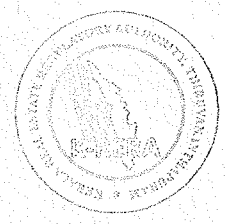
High Court of Kerala against judgement in OS No 1569/2009. WP(C) No 26084/2010 was disposed on 15-02-2019 setting aside the Government order dated 07-12-2009 and directed to reconsider the matter afresh. The Government in compliance of judgement issued order dated 10-07-2019 without hearing the 4th Respondent. The 4th respondent filed review petition. The Chief Town planner submitted a report pointing out certain defects regarding violation of building Rules and that the exemption granted was not valid. The 4th Respondent filed WP(C) No. 2081/2022 and petition to implead the Respondents as additional petitioner was filed and the matter pending, the 4th Respondent died on 19-05-2022. The incidents that occurred were beyond the control of the Respondents. The project could not be completed due to the continuous litigation by Sri. Sreenivasan and the Complainant was fully aware of these transactions.

4. Vide order dated 19-12-2022 the Authority directed the Respondents to register the project u/s 3 of the Real Estate (Regulation & Development) Act, 2016, [herein after referred to as 'the Act, 2016'] within 30 days. Vide order dated 31-05-2023 the Authority directed the Respondents to show cause within two weeks why penal action u/s 59(1) of the Act, 2016 shall not be taken for violating the earlier order to register the project u/s 3 of the Act, 2016.

7. The matter finally heard on 04-07-2023, though the Counsel for the Respondents 1-3 were present, no satisfactory



explanation could be submitted for not registering the project. The additional 5th Respondent was again absent. The Authority after hearing the learned Counsels for the Complainants and the Respondents No. 1 to 3, the case was taken for orders. The Documents produced by the Complainant are marked as Exhibits A2 to A22. The documents produced by the Respondents No. 1, to 3 are marked as Exhibit B1 to B14. The copy of agreement for sale dated 04-12-2006 between Respondents No 1 to 3 and the 1st Complainant is marked as **Exhibit A1.** In the agreement it was specified that the Respondents No. 1 and 2 were land owners and the Respondent No was the developer and they formed a scheme of development of the schedule property in to a housing complex consisting of multi utility buildings either being residential/commercial having common areas, pathways, roads and other amenities etc and the housing complex named as 'Land Mark. As per the agreement the Complainant agreed to purchase 1722/38000 undivided share in the property measuring 20 cents survey No. 1857/2 of Trissur village and a three-bed room apartment with super built up area of 1722 Sq.ft in the building with car parking slot to be constructed on the property for a total value of Rs.26,56,900/- of which Rs. 50,000/- towards undivided share and Rs 26,06,900/- towards cost of construction and carpark. It was also agreed to pay Rs. 60,00,00/- for deposits and other charges to be paid to the Electricity Board, Water Authority, Trissur Corporation, Labour welfare tax, registration



fees etc and if the amount exceeds the Complainant should compensate the balance amount to the Respondents No 1 to 3. The completion of project was agreed within 16 months from the date of agreement. The copy of payment receipt of Rs. 5,75,000/- dated 08-12-2006 issued by the 3rd Respondent is marked as **Exhibit A2.** The copy of payment receipt voucher of Rs. 3,00,000/-dated 26-12-2006 issued by the 3rd Respondent is marked as **Exhibit A3.** The copy of payment receipt voucher of Rs. 1,00,000/-dated 26-12-2006 issued by the 3rd Respondent is marked as **Exhibit A4.** The copy of payment receipt voucher of Rs. 3,00,000/-dated 26-12-2006 issued by the 3rd Respondent is marked as **Exhibit A5.** The copy of payment receipt of Rs. 2,00,000/-dated 15-05-2007 issued by the 3rd Respondent is marked as **Exhibit A6.** The copy of payment receipt voucher of Rs. 2,50,000/-dated 21-07-2007 issued by the 3rd Respondent is marked as **Exhibit A7.** The copy of payment receipt of Rs. 2,25,000/-dated 05-12-2015 issued by the 4th Respondent is marked as **Exhibit A8.** The copy of payment receipt of Rs. 8,91,700/-dated 08-12-2015 issued by the 4th Respondent is marked as **Exhibit A9**. The copy of payment receipt of Rs. 7,50,000/-dated 30-07-2016 issued by the 4th Respondent is marked as **Exhibit A10.** The copy of building permit no. PW8/BA/503/04-05 dated 28-10-2006 (revised and modified), issued by Trissur Corporation in the name of 1st and 2nd Respondents is marked as **Exhibit A11.** The copy of sale deed

dated 28-01-2016 by the 1st and 2nd Respondents in favour of the Complainants are marked as **Exhibit A12.** In the sale deed it has been specified that the Respondents 1 and 2 constructed a multi storied building namely 'Phoenix Apartment' over the schedule property as per building permit dated 21-07-2005 for a consideration of Rs. 27,80,500/- and transferred 4.17% of the undivided share of land and the apartment described in the schedule. In the schedule, the property is described as under construction apartment No.9W having area of 1722 Sq.ft having three bed-rooms, one car parking and other common facilities. The copy of rectification deed dated 07-05-2016 in favour of the applicants is marked as **Exhibit A13.** As per the rectification deed the apartment number has been corrected as 9E instead of 9W. The copy of lawyer notice dated 26-06-2020 sent on behalf of the Complainants to the Respondents 1 to 4 is marked as **Exhibit A14.** In the lawyer notice it has been stated that the Complainants were not interested in the property sold to them by misrepresentation, fraud and cheating them and therefore requested to return sum of money of Rs. 35,91,700/- with interest at 12 % per annum from 28-01-2016 and a further sum of Rs. 15 lakhs as damages for mental agony etc. The Copy of served postal acknowledgement dated 29-06-2020 by the 1st Respondent is marked as **Exhibit A15.** The copy of reply notice dated 12-08-2020 by the 3rd Respondent is marked **Exhibit A16.** In the reply the 3rd Respondents had denied all the averments in the notice

issued on behalf of the Complainants. The copy of earlier letter dated 08-12-2015 of the 4th Respondent to the 1st Complainant is marked as **Exhibit A17.** In the said letter, the 4th Respondent acknowledged that the Complainant had paid an amount of Rs. 17,25,000/- out of Rs. 25,96,000/- and requested to pay balance amount of Rs. 8,71,900/- As per increase in cost he also requested an additional amount of Rs. 12,91,500/- and an additional tax amount of Rs. 1,96,870/-, with a total payable as Rs. 23,60,270/- The copy of brochure of the project is marked as **Exhibit A18.** The copy of order of adjudicating officer dated 01-04-2022 is marked as **Exhibit A19**. As per the order, the CCP filed was dismissed as withdrawn. The copy of photographs of the project showing the present status is marked as **Exhibit A20.** The copy of take over agreement dated 14-11-2015 is marked as **Exhibit A21.** As per the agreement the partners of M/s Ideal Properties had decided and consented to hand over the entire project with all rights and liabilities of the firm in the project to Vinod Krishnan, the 4th Respondent herein. The copy of certificate of encumbrance of property dated 01-07-2022 is marked as **Exhibit A22.** As per the above Certificate 4.17% of the property is owned by the Complainants.

8. The Respondents No 1 to 3 had produced copy of take over agreement and copy of building permit etc. The copy of application dated 17-06-2005 relinquishing 1.2 cents of land to the Government for road widening is marked as **Exhibit B1.** The

copy of building permit no. PW8/BA/503/04-05 dated 21-07-2005 issued by Trissur Corporation in the name of 1st and 2nd Respondents is marked as **Exhibit B2.** The copy of stop memo dated 07-07-2007 issued by the Corporation on a petition filed by one Sreenivasan is marked as **Exhibit B3**. The copy of interim order of injunction by the Munsiff's Court in OS No 3123/2005 dated 13-10-2005 on a petition filed by Sreenivasan is marked as **Exhibit B4.** The copy of proceedings dated 09-05-2006 of the Municipal Secretary permitting 3rd Respondent to continue construction in accordance with sanctioned plan and fixing terms and conditions is marked as **Exhibit B5.** The copy of no objection certificate dated 29-07-2006 by the Fire and Rescue Department for the proposed construction is marked as **Exhibit B6**. The copy of report of the Head of Dept of Trissur Engineering College is marked as **Exhibit B7.** The report stated that the construction of raft foundation will not induce dynamic force on neighbouring structures. The copy of common Judgement of the Hon'ble High Court in Writ Petitions dated 23-10-2008 and the copy of Judgement in common Writ Appeals dated 23-05-2009 are marked as **Exhibit B8 Series**. The copy of Government order dated 7-12-2009 directing the Municipality to take further action that building shall conform zoning regulations etc.is marked as **Exhibit B9**. The copy of Judgement of the Hon'ble High Court in Writ Petitions 38731/2010 & 26084/2010 dated 25-08-2011 & 15-02-2019 are marked as **Exhibit B10**

**series.** As per the judgement dated 15-02-2019 in WP(C) No 26084/2010 Government order dated 07-12-2009 was set aside and directed to reconsider the matter afresh. The copy of judgement dated 08-10-2015 in O.S. No 1569/2009 before Sub Court Trissur is marked as **Exhibit B11**. The said OS was disposed by directing the defendants to construct a retaining wall, pay Rs.2 lakhs to the plaintiff Sreenivasan as compensation. The copy of Government order dated 10-07-2019 directing the Municipal Secretary to take action against illegal construction is marked as **Exhibit B12**. RFA No 205/2016 was filed by Sreenivasan before the Hon'ble High Court of Kerala against judgement in OS No 1569/2009.The report of the Municipality dated 11-06-2019 to the Government pointing out the status of construction is marked as **Exhibit B13.** The copy of report of Town Planner dated 11-06-2019 is marked **as Exhibit B14.** The copy of Government Order dated 21-10-2021 is marked as **Exhibit B15**. The copy of report of the Secretary, Trissur Municipal Corporation dated 14-03-2023 submitted before the Authority is marked as **Exhibit X1**.

9. The Respondents 1 to 3 had received an amount of Rs 17,25,000/- against Exhibit A1 agreement from the Complainants. The Complainants had paid an amount of Rs. 18,66,700/- to the 4th Respondent based on the Exhibit A21 take over agreement, and the Exhibit A12 sale deed was executed. The amount of Rs. 17,25,000/- paid to the 4th Respondent included

Rs.2,25,000/- as the expenses incurred for registration of sale deed. After an apartment is transferred by sale deed executed on 28-01-2016 before the commencement of the Act, under-construction agreement the allottee is not eligible to claim refund u/s 18 of the Act, 2016. The allottee can claim delay interest u/s 18(1) of the Act, 2016 or compensation u/s 14 of the Act, 2016. It is clear that the Respondents 1to 3 had violated provisions of Section 14 and the project was not developed in accordance with the sanctioned plan, lay out plan and the specification as approved by the competent authorities. The promised date of completion of the apartment as per the Exhibit A1 agreement is 04-04-2008 and payment of Rs. 17,25,000/- was paid to the 3rd Respondent based on the Exhibit A1 agreement executed by the Respondents 1 to 3 and the allottee. Hence, the Respondents 1 to 3 are jointly and severally liable for the violations of provisions under the Act, 2016.

10. The IA No 136 and IA No 137were filed on 16-08-2022 by the Complainant, in which it was stated that the 4th Respondent Vinod Krishnan expired on 11th May, 2022 leaving behind his mother Smt. Ratnam Krishnan for impleading the deceased 4th Respondents mother as an Additional Respondent No 5 and requested consequent amendment in the pleadings. The IAs were allowed. Since the said project has not been registered u/s 3 of the Act, 2016 the Authority issued show cause notice No.797/K-RERA/2022 dated 01-11-2022 for the personal

appearance of the Respondents on 19-12-2022 to explain why action should not be taken against the Respondents/ Promoters under section 59(1) of the Act, 2016. The Respondents neither registered the project nor filed any statement explaining the reasons for not registering the project under section 3 of the Act. They also failed to appear on 19-12-2022 personally or through their counsel. As it is evident from the Permit No.BA/503/04-05 dated 28/10/2006 produced by the Complainant and from the submissions of the Complainant and Respondent No.3 in the Complaint that the project is still not completed and occupancy certificate has not been issued for the project, the Authority found that the project is an ongoing one and registrable under section 3 of the Act, 2016 and hence the Respondents were directed vide order dated 19-12-2022 to register the project within 30 days from the date of that order, and also warned that proceedings under section 59(1) of the Act should be imposed in case of failure to register the project. The Secretary Municipal Corporation Trissur on 14-03-2023 had reported that the Corporation is awaiting the clarification of Government with respect to further action on the unauthorized construction. Vide order dated 31-05-2023, the Authority directed the Respondents No 1 to 3 to register the project failing which penalty should be imposed. Also directed to show cause within 2 weeks, why the Authority should not initiate penal action u/s 59(1) the Act, 2016, for not registering the Real Estate Project "Land Mark/Phoenix

Apartment" before the Authority under Section 3 of the Act, 2016.

11. The total cost of the project is estimated from the building permit dated 28-10-2006 as follows: The total plinth area of the building as per the permit is 3975 M2. The cost of the apartment having an extent of 160 Sq. M2 (1722sq ft) is as per Exhibit A12 sale deed Rs. 27,80,500/- whereby, the rate is calculated as Rs 17,378/- per Sq. M2. Hence the total cost of the project is taken as Rs. 6,90,77,550/ As per Section 59(1) of the Act, 2016, the penalty for contravention of the provisions of Section 3 of the Act, 2016, may extent up to ten percent of the estimated cost of the real estate project as determined by the Authority. The Authority u/s 59(1) of the Act, 2016 has decided to impose penalty equivalent of 0.5 percent of the project cost (Rs. 6,90,77,550) which is calculated as Rs. 3,45,388/- for violation of provisions of Section 3 of the Act, 2016.

12. The interest payable by the Respondents to the allottees is at State Bank of India Benchmark Prime Lending Rate plus 2% from the agreed date of completion, to be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018 (herein after referred to as the 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."*

12 . From Exhibit A2 to A7, it is clear that the Respondents I to 3 had received an amount of Rs.,17,25,000/- from the Complainant. The details of the payment made to the respondents is scheduled below: -

| Date | Amount |
|---|---|
| 08-12-2006 | Rs.5,75,000.00 |
| 26-12-2006 | Rs.3,00,000.00 |
| 26-12-2006 | Rs.1,00,000.00 |
| 26-12-2006 | Rs.3,00,000.00 |
| 15-05-2007 | Rs.2,00,000.00 |
| 21-07-2007 | Rs.2,50,000.00 |
| **Total** - | **Rs.17,25,000.00** |

13. Hence, the Complainants are entitled for interest on an amount of Rs. 17,25,000/- at the rate of 16.85% Percent per annum,

as simple interest from the promised date of completion of the apartment till date of realization of the amount.

14. In view of the above facts and circumstances of the case, invoking section 37 of the Act, 2016, Authority hereby directs as follows:

1) The Respondents 1 to 3 shall register the project 'Land Mark/Phoenix Apartment' after remitting the prescribed fees under rule 3(4) of the Rules, 2018 in favour of the Authority and by remitting penalty of Rs 3,45,388/- (Rupees three lakhs forty-five thousand three hundred and eighty-eight only) to the penalty account of the Authority along with the application for Registration within **30 days** from the date of receipt of this order. As per Section 59(2) of the Act, 2016, if the Respondents 1 to 3 does not comply with the above order or continue to violate the provisions of Section 3, they shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten percent of the estimated cost of the real estate project or with both.

2) The Respondents 1 to 3 shall pay the Complainants, interest on Rs. 17,25,000/- for every month of delay, till the handing over of the possession of the apartment completed as per the agreement at 16.85% interest calculated as simple interest per annum from 04-04-2008.

3) If the Respondents 1 to 3 fail to pay interest as directed above within a period of 60 days from the date of receipt of this

order, the Complainants are at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016

| Sd/- | Sd/- |
|---|---|
| M.P. Mathews | P.H. Kurian |
| Member | Chairman |

True Copy/Forwarded By/Order

Secretary (Legal)

## APPENDIX

**Exhibits marked on the side of the Complainants**

Exhibit- A1- The copy of agreement for sale dated 04-12-2006.

Exhibit- A2- The copy of payment receipt of Rs. 5,75,000/- dated 08-12-2006

Exhibit A3-The copy of payment receipt voucher of Rs. 3,00,000/-dated 26-12-2006

Exhibit A4-The copy of payment receipt voucher of Rs. 1,00,000/-dated 26-12-2006

Exhibit A5-The copy of payment receipt voucher of Rs. 3,00,000/-dated 26-12-2006

Exhibit A6-The copy of payment receipt of Rs. 2,00,000/-dated 15-05-2007

Exhibit A7- The copy of payment receipt voucher of Rs. 2,50,000/-dated 21-07-2007

Exhibit A8-The copy of payment receipt of Rs. 2,25,000/-dated 05-12-2015

Exhibit A9- The copy of payment receipt of Rs. 8,91,700/-dated 08-12-2015

Exhibit A10-The copy of payment receipt of Rs. 7,50,000/-dated 30-07-2016

Exhibit A11-The copy of building permit no. PW8/BA/503/04 05 dated 28-10-2006 (revised and modified) issued by Trissur Corporation

Exhibit A12-The copy of sale deed dated 28-01-2016

Exhibit A13- The copy of rectification deed dated 07-05-2016

ExhibirtA14- The copy of lawyer notice dated 26-06-2020 sent on behalf of the Complainants to the Respondents

Exhibit A15-The Copy of served postal acknowledgement dated 29-06-2020 by the 1st Respondent.

Exhibit A16 -The copy of reply notice dated 12-08-2020 by the 3rd Respondent.

Exhibit A17- The copy of letter dated 08-12-2015 of the 4th Respondent to the 1st Complainant

Exhibit A18-The copy of brochure of the project

Exhibit A19- The copy of order of Adjudicating officer dated 01-04-2022

Exhibit A20- The copy of photographs of the project showing the present status of project

Exhibit-A21 -The copy of take over agreement dated 14-11-2015

ExhibitA22-The copy of certificate of encumbrance of property dated 01-07-2022.

**Exhibits marked on the side of the Respondents 1 to 3**

Exhibit B1-The copy of application dated 17-06-2005 relinquishing 1.2 cents of land to the Government.

Exhibit B2- The copy of building permit no. PW8/BA/503/04-05 dated 21-07-2005 issued by Trissur Corporation.

Exhibit B3- The copy of stop memo dated 07-07-2007 issued by the Corporation.

Exhibit B4- The copy of interim order of injunction by the Munsiff's Court in OS No 3123/2005 dated 13-10-2005.

Exhibit B5- The copy of proceedings dated 09-05-2006 of the Municipal Secretary

Exhibit B6- The copy of no objection certificate dated 29-07-2006 by the Fire and Rescue Department.

Exhibit B7 - The copy of report of the Head of Dept of Trissur Engineering College.

Exhibit B8 series-The copy of common Judgement of the Hon'ble High Court in Writ Petitions dated 23-10-2008 and the copy of Judgement in common Writ Appeals dated 23-05-2009.

Exhibit B9- The copy of Government order dated 7-12-2009

Exhibit B10 series- The copy of Judgement of the Hon'ble High Court in Writ Petitions 38731/2010 & 26084/2010 dated 25-08-2011 & 15-02-2019

Exhibit B11-The copy of judgement dated 08-10-2015 in O.S. No 1569/2009 before Sub Court Trissur

Exhibit B12- The copy of Government order dated 10-07-2019 directing the Municipal Secretary

Exhibit B13-The report of the Municipality dated 11-06-2019 to the Government pointing out the status of construction

Exhibit B14-The copy of report of Town Planner dated 11-06-2019.

Exhibit B15- The copy of Government Order dated 21-10-2021.

**Exhibits marked on the side of the Respondents 1 to 3**

Exhibit X1-The copy of report of the Secretary, Trissur Municipal Corporation dated 14-03-2023 submitted before the Authority.