



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaint No. 175/2022**

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

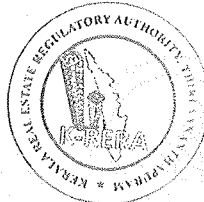
Dated 20<sup>th</sup> February 2025

**Complainants**

1. Sujin Jose,  
Bless Bhavan, Pulluvilla P.O  
Thiruvananthapuram,  
Pin: 695526
2. Jolly Sujin,  
Santhi Bhavan, Pulluvila P.O  
Thiruvananthapuram,  
Pin: 695526  
[By Adv. C.R. Suresh Kumar.]

**Respondents**

1. Hamnet Builders & Developers Pvt. Ltd  
Rangoon Ln, Kowdiar, Thiruvananthapuram,  
Kerala – 695005
2. Mr C.H. Noushad, Chairman  
Chekidapurathu House,  
Downhill P.O Malapuram, Kerala.

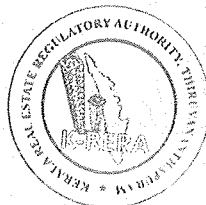


3. Mr. Shelus Chandrasenan,  
Managing Director,  
Chandras, Edakkidom P.O  
Ezhukone, Kollam, 691 505.

The above Complaint came up for final hearing on 10.10.2024 along with I.A 14/2024 & I.A. 15/2024. The Complainants and their Counsel appeared and the 3<sup>rd</sup> Respondent representing all the other Respondents also appeared for the online hearing.

### **ORDER**

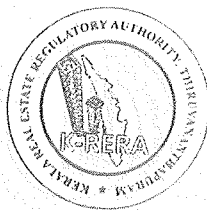
1. The Complainants are joint allottees in the villa Project, “Hamnet Hillcrest”, Karakulam, Aruvikkara, Trivandrum and the Respondents are Promoters of the said project. The Complaint filed on 18.06.2022 was amended with the permission of the Authority and the amended Complaint was filed on 10.10.2023. The factual matrix of the amended Complaint in brief is as follows: The Complainants were drawn to the projects of the Respondents through radio advertisements in UAE which specified that a villa can be secured without hurdles. The Complainants initially met the Respondents in Grand Hotel, Dubai during November, 2014 during the marketing and promotional activities of the Respondents. The Respondents No. 2 & 3 had promised that the



villa project would be completed and handed over in 18 months once the construction activities begin. Accordingly, an agreement for construction of villa was entered on 12.02.2015 between the Power of Attorney Holder of the Complainants and the 2<sup>nd</sup> Respondent representing the 1<sup>st</sup> Respondent. By believing the promises of the Respondents, the Complainants have booked a plot for villa H, in the project at Karakulam, Aruvikkara, Thiruvananthapuram, promoted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by paying a sum of Rs. 1,00,000/- (Rupees one lakh only) as booking amount in November 2014. As the Complainants were abroad during that time, the Respondents initiated loan process and completed all formalities of the bank loan, and as per agreement with the HDFC bank, the Complainants instructed the bank to release funds at each stage after verifying stage wise process of villa. Meanwhile the land registration and other documentations were done. The Respondents started construction in June 2015 and instructed the Complainants not to interfere into their work till the end. Even as late in August 2018, the work was not completed but in a stagnant position. The stipulated period of 18 months was over by 2016 itself. By 2016 itself entire loan amount was availed by the Respondents. Further, the construction was not done as the approved plan. Thus, in August 2018 the Complainants demanded the Respondents to construct the villa as per the terms agreed/ quality and approved plan. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shared many photos regarding the progress of construction, but the photos



were of another construction. The Complainants instructed the bank to release fund only after evaluation of progress of construction but the Respondents availed loan by using influence. The bank, without evaluating the progress of work, released whole amount and the Complainants are paying EMI for an uncompleted villa. As per the statement released by the Respondents the loan was availed by March 2016. During that period the Complainants have been following up with the Respondents to complete the villa as promised. The Respondents demanded payment of 10% of total estimation which is supposed to pay at the time of handing over of villa. During the pandemic Covid 19, Complainants lost their job in UAE and decided to return to Kerala and communicated the same to the Respondent/Promoter to which the Respondents informed that if they paid 2 lakhs from their outstanding balance, the villa would be completed within 2 months and they would be able to move in by April 2021. The Complainants paid Rs. One lakh arranged from parents and Respondents sent a few photos showing that labourers are working in villa and they are about to finish the work. The Respondents shared picture of front door while the actual work has not been done. The Respondents further promised that the works will be completed by November 2021. The Complainants informed the Respondents No 2 and 3 that the Complainants will be in India by the 1<sup>st</sup> week of April 2021 and need to do housewarming and start living in the villa. The Complainants had to spend 14 days in quarantine and as part of



that the Respondents arranged a villa No. S in the very same project for the limited period of quarantine and the same was duly paid by the Complainants. After the quarantine period the Complainants realized the actual condition of the villa, having no doors, no plumbing, no painting, no sanitary works and no electrical works. Even after several requests by the Complainants the Respondents failed to complete the Villa. Aggrieved by the same The Complainants lodged a complaint before the Peroorkkada Police, wherein the 2<sup>nd</sup> and 3<sup>rd</sup> respondents tried to settle the dispute by stating stipulated period for completion. The 2<sup>nd</sup> Respondent assured that the Complainants will be allowed to stay in "Villa No. S" where the Complainants stayed during the quarantine period and for which the Complainants will not be liable for any rent or charges. The said fact was reiterated by Dr. A Sharad Kumar owner of the villa who had assured that the Complainants can stay in his villa till completed villa is handed over to the Complainants. Since there was no space for keeping all the personal belonging of the Complainants in "Villa No. S" the Respondents permitted the Complainants to keep their belongings including cot, mattress, electrical equipment, books, household items at "Villa No. R". Now the Complainants are restrained from taking their own personal belongings kept in "Villa No. R". The Respondents No. 2 and 3 were reluctant to meet the Complainants in person they shifted burden between them. The owner of the rented villa asked Complainants to pay the rent or vacate after one

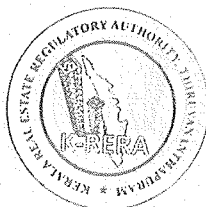


month. The Respondents just ignored the Complainants and refused to answer their calls whenever they called or visited their office. The 3<sup>rd</sup> respondent abused the 2<sup>nd</sup> Complainants asking 1<sup>st</sup> Complainants to lock her in the room as a barking dog to be locked in the room, which was highly humiliating. Still the Complainants were forced to pay rent and house loan. In August 2021 the Complainants filed a complaint against the Respondent in Peroorkada Police Station, initially the police hesitated to file case and later after several follow up they talked to the Respondents and the Respondents agreed for a settlement and during the sitting with police the 2<sup>nd</sup> Respondent agreed to complete villa by October, 2021 and to handed over villa and till completion, Complainants' residence will be taken care by the Respondents and until completion and hand over no money would be asked for completing villa. The 2<sup>nd</sup> Respondent had given a written assurance to the Police that they have arranged alternative residence to the Complainants and accommodation will be taken care by the Respondents till the villa is completed and no money would be asked. The Respondents without complying the settlement started demanding money. The Complainants had paid the entire amounts. The Respondents could not fulfil their promises as per agreement dated 12.02.2015. The Respondents given many promises of completion. The 18-month period ended in 2016 and failed to comply with the promise after 7 years. The condition of villa is still with no kitchen, no windows, no sanitary fittings,



compound levelling, exterior painting, plumbing works, leakage of roof etc. The relief sought by the Complainants is for (1) direction to the Respondents to complete the remaining civil works at the instance of the Respondents as agreed within two months. (2) if the Respondents fail to do the remaining civil works within two months the Complainants may be permitted to complete the remaining civil works in tune with the agreement. (3) since the project ought to have completed by 12.08.2016 the applicants are entitled to get interest for delay at 12% annum till date of realization from the Respondents (4) order penalties to the Respondents for violating the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules thereunder (5) order cost of proceedings.

2. The 2<sup>nd</sup> Respondent filed statement of objection dated 29.12.2022 to the original Complaint filed by the Complainants on 18.06.2022, along with certain documents, in which it is stated as follows: The Respondents entered in to an agreement with the Complainants on 12-02-2015 for the purchase of plot No H having 4.5 cents and agreed to construct a villa with buildup area of 1648 Sq.Ft. The total construction cost was Rs.71,76,000/- including cost of land. In the agreement it was stated that the builders are entitled to get an interest of 12% per annum for failure of default of payment by the Complainants within the stipulated time. The payment schedule as per agreement was that, the Complainants to

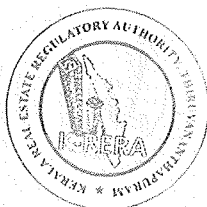


pay on booking Rs.10,0000/- on agreement Rs. 3,00,000/- on land Registration 35%, on completion of foundation 15% on completion of ground floor slabs 15% on completion of first floor slab 10% and on completion of villa 10%. The remaining amount of Rs.9,00,000/- will be paid on or before handing over of the villa. As per the agreement, at the time of registration, the Complainants had to pay Rs.22,75,000/- but paid only Rs.11,50,000/- and an amount of Rs.11,25,000/- was due at that time, however, Respondents started construction and completed foundation of villa on 01.09.2015 and as per agreement, at that time, the Respondent had to receive Rs. 9,75,000/- but Complainants paid only Rs. 8,60,000/- On 24.11.2015, the Respondents managed to complete the ground floor roof slab of the Villa, instead of paying Rs.9,75,000/- the Complainants paid only Rs.7,00,000/- and the amount due till the ground floor stage was Rs.15,15,000/-. The time required for completion of villa as per agreement was 18 months from the date of approval of building plan ie 30-09-2018 and finishing date as per payment schedule was 30-03-2017. Even though the Complainants could not make payment as per schedule, the Respondents/builders managed to complete the entire structure of the building by 10-01-2016. Plastering work completed on 10-03-2016, first phase electric works completed on 20-04-2016. The Respondents were constrained to stop work at that point due to the shortage of money from the Complainants' side. The Complainants paid the huge due amount in small splits and only



on 19-01-2018 the Complainants settled the dues. On 01-10-2018 the Respondents received a mail from the Complainants to stop the entire work of villa till they communicate with the Respondents and only on February 2021, the Complainants communicated to the respondents/builders to restart the work. As per the direction of the Complainants the Respondents restarted the works and completed 90% of the works and due to the interference of the Complainants by suggesting new works and alterations and subsequently the Respondents forced to stop the work as such huge loss was incurred to the Respondents. The Complainants filed written complaints to the Peroorkada and Aruvikkara Police Stations before filing this Complaint to RERA. As per agreement the Respondent/Builders are entitled for interest amounting to Rs.2,21,000/- and to get cost escalation as the cost of materials and labour were increased in the last 5 years. As per direction of the Authority the Respondents are ready to complete construction on condition that all due payments shall be made within the time fixed by the Authority.

3. Even after repeated directions for registration of the project, the project in question is not yet registered before the Authority under section 3 of the Real Estate (Regulation and Development) Act, 2016 [herein after referred to as 'the Act, 2016']. This Authority vide show-cause notice dated 08-11-2021, in Suo Moto Complaint No. 355/K-RERA/2021 directed the



Respondents/promoters to register the project within two weeks, along with a penalty of Rs. 1,00,000/- as provided u/s 59(1) of the Act, 2016, and warned that in case of failure on the part of the promoter, the Authority would initiate further action u/s 59(2) of the Act, 2016. The said notice was challenged by the promoter before the Hon'ble Kerala Real Estate Appellate Tribunal and the Tribunal, vide order dated 29-06-2022 in REFA No. 07 of 2022, had set aside the Suo moto Proceedings and remanded the matter for fresh inquiry and orders. The Authority after inquiry passed order dated 17-11-2022, directing the Respondents/promoters to register the project within 30 days from the receipt of the said order. As the promoter had miserably failed to comply with the said direction and register the project, the Authority, invoking Section 59(1) of the Act 2016, directed the Respondents, vide order dated 04-04-2023, to register the project within one month from the date of order along with a penalty of Rs.5,00,000/-. Even after the said order imposing penalty, the Respondents have not taken any action to register the project and hence it was decided to initiate criminal prosecution steps as warranted under section 59(2) of the Act, 2016, for which a hearing was scheduled on 18.08.2023. The Chairman and the Managing Director of the Respondent/Promoter Company attended the said hearing and submitted that they could not register the project due to some financial constraints and undertaken that he shall register the project within one month. Accordingly, an order dated 11-09-2023

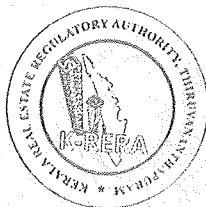


was passed again granting one-month time to register the project from the date of receipt of the said order with clear stipulation that in case of failure to comply with the same, prosecution steps under Section 59(2) of the Act, 2016 would be initiated against them without further notice. But the Respondents/promoters again ignored the directions of the Authority. Consequently, as per order dated 13.03.2024 invoking section 59(2) of the Act, 2016 and Section 80(1) of the Act, 2016, this Authority had authorized one of its officers to file the criminal Complaint against the Respondents/promoters before the Judicial First-Class Magistrate Court II Nedumangad, for continuously violating the orders of the Authority to register the project as provided under Section 3 of the Act 2016. The said criminal proceedings against the Respondents/Promoters herein are in progress now.

4. When the above complaint came up for hearing on 12.06.2023, the Respondent No. 3 who appeared directly before the Authority submitted that the Complainants are obstructing them from doing the pending works. He had orally undertaken before the Authority that he shall complete the pending works subject to condition that the Complainants should not obstruct him from doing pending works and payment of due amount should be made by the Complainants on completion and handing over of the villa. The 1<sup>st</sup> Complainant and his Counsel present for the hearing had agreed to it and undertaken orally before the Authority that



they shall not obstruct the construction work to be done by the Respondents. As such an interim order was passed as per the request of both parties to that effect on 12-06-2023, directing the Respondents *“to complete the construction of the villa of the Complainants within two months as per the terms and specifications in the agreements executed between the Complainants and Respondents/Promoters and the Complainants were also directed thereby not to obstruct the Respondents from completing the construction and to pay the amount due to the Respondents before taking over the villa after completing the works.”* Considering the request of the Complainants, two technical officers of this Authority were also directed to inspect the project site after giving due notices to both the parties and to submit a report regarding the status of works. Then two technical officers of the Authority, Deputy Director (Technical) and Consultant (Technical) had inspected the project site and submitted report on 10.08.2023 as per which there are 26 villas in the project and only few villas are completed, construction of certain villas is in progress and the construction of the villa of the Complainants is not yet completed. The photographs showing the general view of the site and Complainants’ villa are enclosed with the said report. During the next hearing on 20.10.2023, the Counsel for the Complainants submitted that the Respondents had failed to comply with the order dated 12-06-2023, to complete the construction of villa and they were liable to be penalised for



violation of the orders of this Authority. The Representative of the Respondents/promoters present for the hearing on that day submitted that they have resumed the construction works, but another allottee of the project filed a Civil Suit in the Munsiff's Court against the Complainants herein with respect to some other matter in which an attachment of the villa in question is expected and hence they could not complete the works of the project. However, the Authority expressed its serious disregard towards such a recalcitrant attitude of the Respondents and found the justification as neither tenable nor acceptable. On that day the Complainants filed the amended complaint and found that the 1st relief sought was for a direction to complete and hand over the villa which was found already allowed and direction was given through interim order dated 12.06.2023 as mentioned above. The representative of the Respondents submitted that they have already started the works to complete the villa and requested for further time. Hence an order was passed on 30.10.2023 directing the Respondents to continue the works and complete the villa construction before 30.11.2023 without fail and granting time to file counter statement if any, to the amended Complaint and with respect to the relief sought on interest for delay by the Complainants.

5. Thereafter, on 26.02.2024 Complainants filed two petitions I.A. No. 14/2024 claiming interest for delay and I.A. No.15/2024



requesting to take punitive action against the Respondents for violation of orders of the Authority dated 12.06.2023 and 30.10.2023. The Complainants submitted that they paid Rs. 63,93,000/- as consideration on various dates and claimed interest of Rs. 53,35,691/- alleging that the Respondents had failed to provide villa even after 9 years of receiving the advance amount against a committed period of 18 months from 18.11.2014, as per agreement. But the Complainants have not produced copies of payment receipts or bank statement in proof of their payments. The details of interest claim are as follows, according to the Complainants.

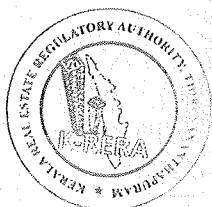
Sl No	Date	Amount
1	28.03.2015	3,00,000
2	01.09.2015	8,60,000
3	24.11.2015	7,00,000
4	12.01.2016	7,00,000
5	16.02.2016	7,00,000
6	16.03.2016	7,00,000
7	24.03.2017	1,00,000
8	01.09.2017	2,50,000
9	05.05.2018	1,00,000
10	19.09.2018	2,00,000
11	19.09.2018	50,000
12	01. 01.2019	50,000
13	24. 05.2019	1,00,000



14	13.08.2019	2,00,000
15	14.02.2020	1,00,000
16	01.12.2020	33,0000
17	09.02.2021	1,00,000
TOTAL		<b>63,93,000</b>
Interest		<b>53,35,691</b>

6. When the Complaint came up for hearing on 20.03.2024, the Respondents were absent and the Authority noticed that the Respondents have failed to comply with the above directions and have not filed counter statement to the amended Complaint or to the Petitions filed by the Complainants. Ex-parte notice was issued to the Respondents on 13.05.2024 with respect to the hearing scheduled on 29.05.2024. When the Complaint came up for hearing on 29.05.2024, the Respondents No 3 appeared and submitted that there is chance for settlement and requested for short further time. Hence, fifteen days' time was granted to report settlement, if any, between parties.

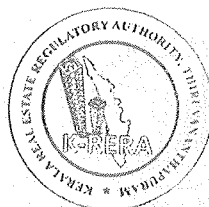
7. When the Complaint came up for hearing on 19.06.2024, it was noticed that no settlement was arrived at so far. The representative of the Respondents again submitted that they are ready for a settlement but the Counsel for the Complainants strongly objected and submitted that they are not ready to settle the matter. The Authority on the same day decided to call for



explanation from the Respondents/promoters as to why penalty cannot be imposed as per section 63 of the Act, 2016 on them for violation of order passed by this Authority dated 12.06.2023 and 30.10.2023 and their explanation called vide interim order dated 19.06.2024 in Complaint No. 175/2022 and the Respondents/Promoters were directed to appear in person for the next hearing which was scheduled on 08.08.2024 with sufficient explanation in this regard.

8. On 08.08.2024, the Respondent No. 3 appeared in person and raised arguments that he could not complete the work as the Complainants had defaulted payments and Complainants themselves obstructed the works many times. But he admitted that he has no proof related to these contentions. The Respondent No. 3 further submitted that the villa in question has been attached by the Civil Court in connection with a suit filed by another villa owner for non-payment of rent by the Complainants.

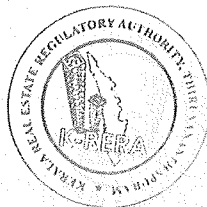
9. Heard both parties in detail on 10.10.2024. The Counsel for the Complainants argued that the total consideration agreed was Rs. 71,76,000/- including cost of 4.5 cents of land and a 3-bed room villa with construction cost of Rs. 42,51,000/- The Complainants paid Rs. 63,93,000/- According to the Complainants, they were provided with an alternate accommodation in one of villas in the project by the



Respondents/Promoters, they instigated the said villa owner to file a suit against the Complainants for recovery of rent in the capacity of the owner of that villa. An attachment was allowed by the Munsiff Court Nedumangad in O.S. No. 331/2023 attaching the property in question against the rent due. The Complainants produced copies of order in I.A. 1/2023 filed in OS 331/2023 before the Munsiff Court, Nedumangad and the status report of the said Suit as per which the same is pending.

10. After hearing the parties on either side and perusing the pleadings and documents with respect to the claim of the Complainants for interest for delay, the following points are being considered and decided herewith:

- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the villa to the Complainants, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) Whether the Complainants herein are entitled to get interest for delay in completion and handing over possession of the villa as provided under Section 18(1) of the Act, 2016 or not?
- 3) What order as to costs?



11. Points No. 1, 2 & 3: The documents produced by the Complainants are marked as Exhibits A1 to A4. The documents from the side of the Respondents are marked as Exhibits B1 to B3. The copy of inspection report dated 10.08.2023 of the technical officers of the Authority with enclosures are marked as Exhibit X1. The copy of agreement for sale of land dated 12.02.2015 entered in to between the Complainants and the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent produced is marked as Exhibit A1 as per which the Respondents/promoters agreed to sell plot No. H having 4.5 cents in survey No. 734/18-1-2-8 in Karakulam village for construction of villas comprising 3 bed rooms with built up area of 1794.33 sq ft in the Hill Crest for a total construction cost including cost of land Rs. 71,76,000/- with all common area and common facilities to the Complainants and agreed that there will not be any escalation in the construction cost during the period of the agreement. The total cost for construction of villa excluding the land is Rs. 42,51,000/- The copy of agreement for construction of villa dated 12.02.2015 entered in to between the Complainants and the 1<sup>st</sup> Respondent represented by the 2<sup>nd</sup> Respondent produced is marked Exhibit A2 as per which the total consideration cost agreed including land is Rs. 65,00,000/- and construction cost of villa alone is Rs. 35,75,000/- According to the payment schedule/plan, on booking Rs.1,00,000/- on agreement Rs 3,00,000/- on land registration 35%, on completion of foundation 15%, on completion of ground



floor slab 15%, on completion of first floor slab 10%, and on completion of villa 10%. The Complainants undertakes to pay for share of charges for the upkeep and maintenance of common facilities and shall pay a sum of Rs. 30,000/- as association deposit along with last instalment of payments and shall pay monthly instalments for the up keep, maintenance and repair of common facilities and common areas specified in clause 16 of the agreement as fixed by the association of villa owners or owners of independent villas. As per agreement the Respondent shall construct the villa together with all facilities and try the utmost possible to finish the work within 18 months from the date of the building plan approval from the local authorities and possession will be handed over within 60 days after completion of villa provided entire amount due to the Respondent shall be paid by the Complainants. The copies of payment receipts in proof of the payments made by the Complainants to the Respondents were not produced by the Complainants. However, the Respondents/promoters have produced the copy of account details showing the details of amount received by them from the Complainants. The copy of order dated 27.02.2024 in I.A. 1/2023 in OS 331/2023 before the Munsiff Court Nedumangad produced is marked as Exhibit A3 as per which an attachment was allowed by the Munsiff Court Nedumangad on 27.02.2024 with respect to the property/villa in question against the rent due. The copy of status report of OS/0300271/2024 produced by the Complainants



as obtained from the website of the Munsiff Court is marked as Exhibit A4 as per which the Suit is still pending before the said court.

12. The copy of e-mail communication dated 01.10.2018 from the 1<sup>st</sup> Complainant to the Respondent and its reply is produced and marked as Exhibit B1 as per which the 1<sup>st</sup> Complainants had requested the 1<sup>st</sup> Respondent/promoter “to stop all the works immediately until I ask you to reverse. thank you”. In reply to the email, the 1<sup>st</sup> Respondent replied that “as per final plan (refer to your mail on 17<sup>th</sup> June 2015), there is no wardrobe. We arrived this plan after many revisions, considering the area concern we could not provide you such a space, knowing all these facts there is no point in raising such things again and again.” The copy of accounts statement in respect of the Complainants Sujin Jose & Jolly Sujin is produced and marked as Exhibit B2. As per the said account statement, the details of payments received by the Respondents is as follows:

Sl No	Date	Amount	Stage wise due amount
1	18.11.2014	1,00,000	
2	28.03.2015	3,00,000	
3	28.05.2015	11,50,000	11,25,000
4	01.09.2015	8,60,000	
5	24.11.2015	7,00,000	



6	12.01.2016	7,00,000	
7	16.02.2016	7,00,000	
8	16.03.2016	7,00,000	6,40,000
9	24.03.2017	1,00,000	
10	01.09.2017	2,50,000	
11	05.05.2018	1,00,000	
12	19.09.2018	2,00,000	
13	24.05.2019	1,00,000	
14	13. 08.2019	2,00,000	
15	27. 02.2020	1,00,000	
16	09.02.2021	1,00,000	
TOTAL		<b>63,60,000</b>	
Total amount to be received as cost of villa		<b>6,93.896</b>	
Amount received for electricity and water on 19.09.2018		<b>50,000</b>	
Amount received for electricity and water on 01.01.2019		<b>50,000</b>	
Amount received for electricity and water on 01.12.2020		<b>33,000</b>	

The Respondents have also claimed an interest of Rs. 2,21,950/- for the delay in payments from the complainants, at the following rates, as per their counter statement:



Amount	Interest from 29.05.2015 to 12.01.2016	Interest from 29.05.2015 16.02.2016
Rs 11,25,000	Rs. 78,750	Rs. 34,000
Amount	Interest from 17.03.2016 to 24.03.2016	Interest from 24.03.2017 to 01.09.2017
Rs. 6,40,000	Rs. 76,800	Rs. 32,400
Total interest to be received		Rs. 2, 21,950/-
Grand total of amount to be received		Rs. 9,15,846/-

13. The copy of Building permit dated 30.09.2015 with approved plan is marked as Exhibit B3. As per direction of this Authority in the hearing on 12.06.2023, two technical officers of the Authority visited the site and submitted report dated 10.08.2023, the same is marked as Exhibit X1. According to the said report, the construction of the villa of the Complainants is not yet completed. The promised date of completion of the villa as per the agreement is 18 months from the date of plan approval and the possession will be handed over within 60 days after completion of villa provided entire amount due to the Respondents shall be paid by the Complainants. The plan approval of the villa was on 30.09.2015. Hence the promised date of completion of the villa was on 31.03.2017 and the promised handing over was on 31.05.2017 ie, 60 days after completion. Out of the total amount



paid, the following amounts have been paid before the promised date of handing over.

Sl No	Date	Amount Rs.
1	18.11.2014	1,00,000
2	28.03.2015	3,00,000
3	28.05.2015	11,50,000
4	01.09.2015	8,60,000
5	24.11.2015	7,00,000
6	12.01.2016	7,00,000
7	16.02.2016	7,00,000
8	16.03.2016	7,00,000
9	24.03.2017	1,00,000
	<b>Total</b>	<b>53,10,000</b>

Out of the total amount paid, the following amounts have been paid after the promised date of handing over on 31.05.2017.

Sl No	Date	Amount Rs
1	01.09.2017	2,50,000
2	05.05.2018	1,00,000
3	19.09.2018	2,00,000
4	24.05.2019	1,00,000
5	13. 08.2019	2,00,000
6	27. 02.2020	1,00,000
7	09.02.2021	1,00,000
	<b>Total</b>	<b>10,50,000</b>



14. As per Exhibit B1, the 1<sup>st</sup> Complainant had requested the 1<sup>st</sup> Respondent/promoter on 01.10.2018 to stop all the works immediately until he ask him to reverse. In reply to the email, the 1<sup>st</sup> Respondent replied that, “as per final plan, there was no wardrobe and they arrived at this plan after many revisions, considering the area concern they could not provide them such a space and knowing all these facts there is no point in raising such things again and again.” The above communication reveals that the Complainants herein had pressed for a change of plan and even asked to stop the work. Anyhow it was noticed that the said communication to stop the work was given only after the promised date of completion given by the Respondents/Promoters as per Exbt. A2 agreement.

15. As per the Exhibit B2 accounts statement produced by the Respondents, the Complainants made payment of Rs. 53,10,000/- before the promised date of completion and Rs.10,50,000/- after the promised date of completion and an amount of Rs 6,93,896/- is due to the Respondents. It has been noticed that the Complainants have not produced any documents showing the payments made by them, despite several directions given at the time of hearing. According to the Respondents, as per Exhibit A2 agreement, at the time of land registration the Complainants/allottees had to pay Rs. 22,75,000/- but paid only Rs. 11,50,000/- According to the Respondents, despite such an amount of Rs. 11,25,000/- was due, the Respondents started



construction and completed the foundation of the villa. The Respondents alleged that on 01.09.2015, the Complainants had to pay Rs. 9,75,000/- but paid only Rs. 8,60,000/- and on 24.11.2015, they had managed to complete the ground floor roof slab of the villa though the Complainants paid only Rs. 7,00,000/- instead of paying Rs. 9,75,000/- According to the Respondents, the amount due till the ground floor stage was Rs. 15,15,000/-. According to the Respondents, even though the Complainants have not made the payments as per Schedule they managed to complete the entire structure of the building before 10.01.2016. But it has been observed that the Respondents could not produce any documents/notices sent to the Complainants pointing out the defaults in payments. As per Clause 9.3 (ii) in the prescribed format of agreement for sale in Annexure A, Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018 stipulates that *“(ii) in case of default by Allottee under the condition listed above continues for a period beyond consecutive months after notice from the Promoter in this Regard, the Promoter shall cancel the allotment of the apartment/plot in favour of the Allottee and refund the amount of money paid to him by the Allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated”*. Even though, Exhibits A1 and A2 agreements were executed before the commencement of the Act, 2016 in other formats, the Respondents/promoters are duty bound to follow the format prescribed under the Kerala Real Estate



(Regulation and Development) Rules, 2018 in the case of a project comes under the purview of the Act, 2016. Having considered the practical difficulty only this Authority has not insisted the promoters of such 'ongoing projects' to cancel the existing agreements and execute fresh agreements in the 'Annexure A' format. Hence, the provisions of the agreement format prescribed under the Kerala Real Estate (Regulation and Development) Rules, 2018 are applicable to all the projects come under the provisions of the Act, 2016.

16. The Respondents/promoters herein have not even issued any notice to the allottee with respect to the alleged delay in payment of instalments as per the Scheduled plan of payment in the agreement. Instead of cancelling the allotment of the apartment/plot in favour of the Allottee and refunding the amount of money paid to him by the Allottee by deducting the booking amount and the interest liabilities, the Respondents/promoter admittedly "*started construction and managed to complete the entire structure of the building by 10-01-2016*". This Authority has seriously noted the submission from the part of the Complainants that the 2<sup>nd</sup> Respondent had given a written assurance to the Police that they have arranged alternative residence in another villa in their project to the Complainants and the rent for the said villa will be taken care of by the Respondents till the villa is completed and no money would be asked for the same. But from Exhibits A3 produced by the Complainants, it can be found that a suit is being



filed against the Complainants by the owner of the villa which was arranged as alternative accommodation for the Complainants by the Respondent/promoters and the Villa in question booked by the complainants got attached by the Civil Court. If the actions of the Respondents/Promoters even led to the attachment of the villa of the Complainants, it was highly unethical from the part of the Respondents/promoters and in fact it was the duty of the Respondents/promoters to pay rent for the said alternate accommodation arranged by them because all these difficulties were happened due to non-fulfilment of promises by the Respondents/promoters. The evidence before this Authority reveals that the Respondents/promoter, despite being fully aware of their contractual obligations and the financial implications for the Complainants/allottees, chose to pursue a course of action that has pushed the Complainants/allottees into dire straits. Instead of taking remedial measures to address the genuine grievances of the Complainants/allottees, the promoter's actions have exacerbated their difficulties, forcing to shoulder additional financial burdens in consequence of the civil case mentioned above. In this connection, Section 18(3) of the Act 2016 specifies that *"If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."*



17. Here, the promised date for handing over of possession of villa with common amenities was 31.05.2017. The Authority has taken in to account the fact that the Complainants, who trusted on the promises made by the Respondents, had invested their hard-earned money amounting to a total of Rs. 63,60,000/- out of which Rs. 53,10,000/- was paid before 31-05-2017, the date of promise itself. Here, the Complainants claim interest for delay in completion and handing over of villa as per Section 18(1) of the Act, 2016. 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,-*  
*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall 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 an allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the*



*possession, at such rate as may be prescribed.” 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. With respect to the right of allottees to get interest for delay, the Hon’ble Supreme Court also made certain observation in the judgement of Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., which are as follows: “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.”*

18. As per the terms of Exhibit A2 agreement, the Respondents should have handed over possession of the villa on 31.05.2017 to the Complainants. Admittedly the Complainants were not handed over with the possession of the villa so far by the Respondents, despite multiple directions given by this Authority. Instead of completing the works and handing over the villa even after the intervention of this Authority, the Respondents/Promoters chose to claim interest for the delay made by the Complainants



earlier in making payments to them. The 3<sup>rd</sup> Respondent appeared in one of the final hearings to submit that the villa of the Complainants is going to be attached by the Civil Court. It is pertinent to note that the conduct of the promoters herein demonstrates not merely a simple breach of contract, but reflects a pattern of actions that has systematically undermined the legitimate expectations of the complainants/allottees. The promoters, rather than fulfilling their solemn commitments as enumerated in the agreement, has through their actions and omissions, compounded the vulnerabilities of these allottees who had placed their trust and financial resources in the project.

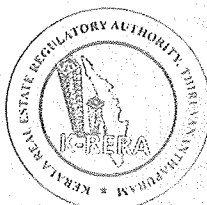
19. As the Respondents could not hand over possession as per the terms of the agreement, the Complainants are eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. Proviso to section 18(1) provides that “*where the allottee does not intend to withdraw 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 will not be out of place to mention here, certain remarkable observations made in this regard by the Hon’ble Supreme Court of India in its Judgement dated 11/11/2021 of *M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others* as follows: “*If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the*



*Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.*

20. In view of the above facts and findings, it has been established beyond doubt that the Respondents/Promoters had miserably failed to complete the project as promised, even though the amount of Rs. 53,10,000/- was paid on or before 31-05-2017, as per the terms of agreement. As the Complainants are found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the Complainants as per the proviso to Section 18(1) of the Act, 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainants.

21. As mentioned above, the Respondents/promoters have audaciously raised counter claims for interest on delayed payments and such claims from the Respondents/promoters herein operating illegally are not just untenable but morally repugnant and it represents an attempt to profit from their own illegal actions. The principle that "one who seeks equity must do equity" squarely applies against the Respondents/promoters herein this case. This Authority cannot allow the machinery of justice to be used as an



instrument of oppression against the allottees who have already suffered from the promoter's defaults. Hence, the claim of the Respondents for interest is categorically rejected.

22. As provided under the Proviso to Section 18(1) of the Act, 2016, read with Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018, the allottee is entitled to get interest for delay from the promised date of completion and handing over, till the date of actual handing over. To be more precise, a) for the amount paid before the promised date of completion, an allottee in such a case is eligible to get interest from the promised date of completion till the date of actual handing over and b) for the amount paid after the promised date of completion, he is eligible to get interest from the date of each payment till the date of actual handing over. It is seen that the Complainants had paid Rs. **53,10,000/-** before the agreed date of completion on 31-05-2017 and Rs. **10,50,000/-** was paid after the date of promise. As per the provisions under Section 18(1) of the Act, 2016, an allottee is entitled to get interest from the promised date of completion and handing over, till the date of actual handing over in such cases. Here, the Complainants are entitled for interest from 31-05-2017 to the date of actual handing over, as provided under the Proviso to Section 18(1) of the Act, 2016, at the rate prescribed under Rule 18 (1) of the Kerala Real Estate (Regulation and Development) Rules, 2018. The said Rule prescribes the annual rate of interest payable by the promoter to the allottee as SBI's Benchmark Prime Lending



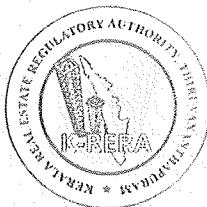
Rate plus 2%, to be computed as simple interest. The present SBI's BPLR is 15.15% per annum. The Complainants claimed interest at the rate of  $14.95+2\%=16.95\%$ .

23. As mentioned initially, there is blatant violation of Section 3 by the Respondents/Promoters herein and it being a criminal offense under Section 59(2) of the Act, this Authority has initiated prosecution proceedings against them. The Act prescribes imprisonment up to three years or fine which may extend up to ten percent of the estimated cost of the real estate project, or both, for such violations. Against this background of criminal non-compliance, the promoter's impudent attempt to claim interest from allottees for alleged payment delays is not just legally untenable but reflects a disturbing pattern of attempting to profit from their own illegal actions. This Authority would also observe that the Respondents/promoter's failure to register despite multiple directions shows wilful defiance of the law, the entire collection of payments done by the Respondents/Promoters after the date of commencement of the Act 2016 without prior registration is illegal under Section 3 of the Act 2016, the promoter has no legal standing to enforce payment schedules for an unregistered project and hence the Promoters shall not collect or demand further amount from allottees until the registration as per Section 3 of the Act 2016 is completed. The promoter is hereby put on notice that continuation of any collection activities without registration will invite additional criminal proceedings. This Authority also



reserves the right to direct refund of all collections made in violation of Section 3, with interest.

24. I.A. No. 15/2024 is filed by the Complainants, seeking intervention of this Authority as per Section 63 of the Act, 2016 by imposing penalty for failure to comply with orders of the Authority dated 12.06.2023 and 30.10.2023 by the Respondents/promoters. Section 63 of the Act 2016 is extracted as below: *“If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority”*. This Authority, vide interim order dated 19.06.2024 called for explanation of the Respondents/promoters for violation of orders passed by this Authority dated 12.06.2023 and 30.10.2023 and the Respondents/Promoters were also directed to appear in person for the next hearing which was scheduled on 08.08.2024 with sufficient explanation in this regard. Though the Respondent No. 3/promoter appeared, he could not furnish sufficient explanation or submit any evidence in justification of non-compliance of the orders of this Authority and hence we found that the Respondents/promoters have intentionally neglected the directions of this Authority to complete the construction. Hence the Authority has decided to impose penalty on the Respondents/Promoters, as provided under Section 63 of the Act,



2016. It is found from Exhibit A2 agreement produced by the Complainants that the total built up area of the building is 1648 Sq ft and the rate per Sq ft is Rs. 3944/- and total construction cost including 4.5 cents of land is Rs. 65,00,000/- for a villa comprised in survey number 734/18-1-2-8 of Karakulam village. The construction cost alone is Rs. 35,75,000/- As per the site inspection report X1, there are 26 villas in the real estate project Hill Crest. Thus, the total cost of the project is estimated as (65,00,000 x 26) Rs. 16.9 Crores.

25. In view of the above facts and findings, by invoking Section 34(f) & (g) and Section 37 of the Real Estate (Regulation & Development) Act, 2016, this Authority hereby directs as follows:

1) The Respondents shall pay to the Complainants, simple interest @16.95% per annum for every month of delay from 31.05.2017 to the the actual date of handing over, on the amount of Rs. 53,10,000/- paid before the promised date of completion and on the amount of Rs 10,50,000/- paid after the promised date of completion, interest @16.95% per annum for every month of delay from the date of each payment till the date of actual handing over as shown in the payment schedule above.

2) If the 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 Complainants are at liberty to recover the aforesaid sum



from the Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

3) The Respondents/promoters shall remit a penalty of **Rs. 10,00,000/-** (Rupees Ten Lakhs Only) to the penalty account of this Authority for violating the orders passed by this Authority dated 12.06.2023 and 30.10.2023 **within 15 days** from the date of receipt of this order and they shall also remit an amount of **Rs. 5,000/- (Rupees Five Thousand Only) per day** from the date of receipt of this order till the date of completion and handing over the Villa booked by the complainants herein and once it is done, the Respondents/Promoters shall file an Affidavit of compliance before this Authority.

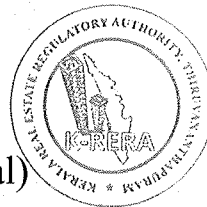
Both the parties shall bear their respective costs of these proceedings.

Sd/-  
Preetha P. Menon  
Member.

Sd/-  
P.H. Kurian  
Chairman

True Copy/Forwarded By/Order/

  
Secretary (Legal)



## **APPENDIX**

### **Exhibits on the side of the Petitioner/Complainants**

Exhibit A1: The copy of agreement for sale dated 12.02.2015.

Exhibit A2: The copy of agreement for construction dated  
12.02.2015.

Exhibit A3: The copy of order dated 27.02.2024 in IA 1/2023 in OS  
331/2023 before the Munsiff Court Nedumangad.

Exhibit A4: The copy of status report of OS/ 0300271/2024 before the  
Munsiff Court Nedumangad obtained from the website

### **Exhibits on the side of the Respondents**

Exhibit B1: The copy of e mail communication dated 01-10-2018  
from the 1<sup>st</sup> Complainants to the 1<sup>st</sup> Respondent and its  
reply from the Respondent.

Exhibit B2: The copy of accounts statement in respect of Sujin Jose &  
Jolly Sujin.

Exhibit B3: The copy of Building permit dated 30.09.2015 with  
approved plan.

### **Exhibits on the official side**

Exhibit X1: The copy of inspection report by the Technical Officers of  
the Authority dated 10.08.2023 with enclosures.

