



## KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

**Complaints No. 174/2021, 187/2021, 188/2021, 189/2021,  
190/2021 & 191/2021**

**Dated 14<sup>th</sup> December, 2022**

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

### Complainants

1. Jiju Raj, : Complaint No.174/2021  
Villa No.3, Phase II,  
Lords Valley, Kumaranalloor P.O,  
Kottayam.  
(Represented by Grace Anto, Villa No.44,  
Skyline Palm, Spring villas, Vadavathoor P.O,  
Kottayam -686010,)
2. S.Murukesh Thevar, : Complaint No. 187/2021  
Villa No.5, Phase II,  
Lords Valley, Kumaranalloor P.O,  
Kottayam.
3. T.T Sasidharan, : Complaint No.188/2021  
Villa No.3, Phase III,  
Lords Valley, Kumaranalloor P.O,  
Kottayam.
4. Jilly Philip, : Complaint No: 189/2021  
Villa No.10, Phase II,  
Lords Valley,  
Kumaranalloor P.O, Kottayam.

5. Baiju Maliakkal, : Complaint No:190/2021  
Villa No.5, Phase IV,  
Lords Valley,  
Kumaranalloor P.O, Kottayam.
6. Sukesh Chandra, : Complaint No: 191/2021  
Villa No.7, Phase III,  
Lords Valley,  
Kumaranalloor P.O, Kottayam.

### **Respondents**

1. N.T Paul Built-tech Pvt Ltd.,  
Rep: by its Managing Director Joy Paul  
Athirambuzha, Kottayam.
2. Joy Paul,  
Managing Director,  
N.T Paul Built-tech Pvt Ltd.,  
Residing at Nadackal house,  
Padinjattum Bhagom Kara,  
Athirambuzha P.O, Kottayam.

The Counsel for the Complainants Adv. Philson Mathews and Counsel for the Respondent Adv. Thomas. P. Makil attended the virtual hearing today.

### **ORDER**

1. As the above 6 Complaints are related to the same project developed by the Respondent/Promoter, the cause of action and the reliefs sought in all the Complaints are one and the

same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No:174/2021 is taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The Complainants are the allottees of the project named 'NTP Lords Valley', located at Kottayam district, developed by the Respondents. The said project is registered before the Authority under section 3 of the Real Estate (Regulation & Development) Act, 2016 vide Reg. No. KRERA /PRJ /KTM/ 048/2022. The case of the Complainant is as follows: - Based on the advertisements and brochure with attractive layout and features put forward by the Respondents the Complainant purchased a villa in the above project. The offer includes compound walls / fencing in concrete / UPVC surround the layout and a vast range of common facilities like play area, clubhouse with amenities listed in the brochure, CCTV for security, rainwater harvesting, generator backup, landscaped lawn, waste management system, boat house with a boat etc. The Complainant got executed a sale deed as No.2915/2011 of SRO Kottayam with respect to the property earmarked by the builder as plot No.3 type A, Phase II. On 06/03/2014, an agreement was executed between the Complainant and the Respondents for the construction of the villa. The Respondents agreed to build type A villa having 2282 sq.ft plinth area and 171 sq.ft. additional area on a cost of Rs.65,19,800/-. The

Respondents promised that they will complete the construction within 18 months. The Complainants had cleared the payment according to the schedule and more but the completion of the construction prolonged for more than 5 years. The Respondents are liable for the delay and also, they have grabbed more than 1 Crore rupees from the Complainant on various heads. It is true that the Respondents have handed over the villa, but with so many serious construction defects which the Complainant could identify only after occupying the Villa. The Complainant made repeated demands and requests to the Respondents to rectify the said defects, but the same was neglected by the Respondents. Since the Complainant were in urgent need of a residence, the Complainant himself had repaired the building by investing much more money. It was further submitted that, according to the Respondents, the Villa No.3 of phase II is type A villa and at the time of agreement, the Respondents highlighted that in the master plan there is a garden in front of Villa No.3 which is the most attractive place. They also made believe that the font portion is free from any construction and thus river view is also there. After construction of the villa, the Respondents themselves changed the master plan and put a concrete building in front of the villa which is now used as the electrical room whereas in the master plan the place of electrical room is elsewhere. Now the Respondents are again trying to construct new villas there deviating from the original plan. The materials used in constructing villa No.3 are substandard and the doors are made of low-quality

wood which are dilapidated within three years and locks, handles and clinches are rusted and broken at some places and due to structural defects and that of concreting water is dripping down through the entire walls during every rains. Subsequently, the Complainant himself repaired the leakage in the building by investing, more than one lakh rupees. The Respondents offered branded standard items for electrification, plumbing and sanitation but the Complainant was constrained to invest more than two lakhs to replace and repair the sanitary fittings and interiors of the toilets. The painting works, electrical works, interior work of the kitchen and store rooms, etc. are also very poor, the cupboards and other fittings are already damaged even without much usage and the tiles used are substandard and unbranded. The present state of 'Lords Valley' is pathetic without having the basic and essential common facilities even after 8 years since the project started in the year 2013, for this construction. The common facilities like play area, Landscaped lawn, clubhouse, basketball court, waste management system, generator backup etc. are not seen anywhere in the area. Based on the plan and brochure published by the Respondents, the Complainant have decided to purchase the plot and get into an agreement with the Respondents for the villa. It was shown that, the project site was assigned to accommodate 41 residential villas and its amenities. Despite non-completion of the project even after 8 years and not providing the basic amenities to the villas that are already handed over, the Respondents are trying to convert the areas

that are reserved for common amenities as plots for new villas and to sell out the smaller areas to numerous other parties for their accommodations by sharing the common amenities with prospective buyers. The new construction is also a gross violation of the agreement and sharing the already proposed facilities to others causes serious inconvenience. Hence the Respondents are to be prohibited from further construction and from any deviation from the original project plan. Hence the above Complaints are filed. The reliefs sought by the Complainants are to (1) Direct the Respondents to complete the project within a stipulated time (2) Direct the Respondents to prohibit strangers from using the passages within the project and also prohibit commercial usages of the plots in the project. (3) Direct the Respondents to repair the structural defects of Villas and replace the substandard materials including locks, doors, sanitary fittings, electrical fittings and floor tiles (4) Direct the Respondents not to change the initial project plan without the consent of the parties (5) Direct the Respondents to provide waste management system, drinking water distribution system, undisturbed power supply system, children's play area and to provide proper and functional security system with CCTV Surveillance (6) Direct the Respondents to form association of residents as agreed with proper byelaws and registration. Copies of construction agreements, sale deeds and brochure are the documents produced from the part of the Complainants.

3. The Respondents have filed counter statement stating that the above Complaints are not maintainable before the Authority and further stated that it is a settled position that brochures do not constitute a legal offer or contract and Brochures are only indicative since the images used therein are only artistic impressions. In this context, the last page of the brochure of this project makes it clear that the brochure does not constitute a legal offer. It is true that there was an understanding that the construction would be completed within 18 months from the date of execution of the agreement, provided the Complainants uninterruptedly pay the installments as per the payment schedule agreed upon in the agreement. In clause 4 of the construction agreement, it has been specifically stated that any delay in handing over the villa resulting from delayed payments by the Client shall not be reckoned for arriving at the time agreed upon for handing over the villa. It is an undisputed fact that the Complainant had not complied with the payment schedule and there was considerable delay on his part in making the payments, consequentially resulting in handing over the project. The e-mail correspondence between the 1<sup>st</sup> Respondent and the Complainant would prove such a contributory factor on the part of the Complainant. The copies of the said emails are produced. The willful failure on the part of the Complainant to disclose such facts would reveal his contumacious conduct. As per clause 6 of the agreement dated 06/03/2014, the delay on account of extra work shall not be reckoned as fault on the part of the builder for

accordingly being unable to handover the project within the agreed time limit of 18 months. The Complainant had compelled the 1st Respondent to alter/modify/customize the works which also contributed in not finishing the works on time. There has been chronic default of payments by the Complainant in gross variance with the payment schedule agreed upon in the construction agreement. A notice of suspension of works dated 04/07/2015 via email was served on the Complainant on account of default in payment. It is a matter of common knowledge that delayed payments affect the cash flow of the project which would affect the momentum of work. The interior works of the villa were sublet at the Complainants sole discretion to an external agency operating under the name and style 'Aries International Interiors LLC'. This delay attributed by the indulgence of such external agency is reflected in the occupancy certificate issued by the municipality. The allegation that the Respondents have grabbed more than 1 Crore from the Complainant under various heads is absolutely false and defamatory, hence denied. The Respondents has not tendered any evidence along with the Complaint to substantiate such allegation. The Complainant has already availed a concession of nearly two lakhs citing villa rectification, where the agreed rate of Rs.4000/- per sq.ft. (for the additional area of 171 sq.ft) as signed in the construction agreement was finally settled for Rs.2848/ sq.ft. as evident from the statement of accounts and the Complainant even personally thanked the Respondents via email dated 16/02/2017, for



the final adjustment. The Respondents attended all possible rectification works even after the said settlement and even after the expiry of maintenance period, as a goodwill gesture from the side of the Respondents. The allegation that the Complainant repaired the building by investing more money is not true and hence denied. The Complainant had invested money for the interior works and furnishing villa by engaging an agency in Dubai and not for the repairs as mentioned in his Complaint. The Complainant was well aware of the location of the villa and the topography of the land at the time when he had entered into the agreement with the 1<sup>st</sup> Respondent. It is a matter of common knowledge and logic that in this villa project, except the front row villas, the rest of the villas would inevitably have other units in their front. As per clause 18 of the construction agreement, the 1<sup>st</sup> Respondent has reserved its right to change, modify, vary, relocate the construction aspects and amenities at 'Lords Valley' and revised layout was published and made available in the company website. Therefore, the Complainant cannot now plead that he was unaware of any such layout and handing over acknowledgement was signed by the Complainant long ago without any comments / reservation, at a time when the said electrical installation room was already erected there. The Respondents have always unflinchingly ensured that only materials and goods of superior quality are used in the construction of the villas. Accordingly, the same standard was also maintained while constructing the subject villa of the Complainant. Anyhow

the Respondents are ready to replace any locks / door handles free of cost as a gesture of goodwill. The door frames and shutters are made of solid wood and the front door frame is made of teak. Therefore, the allegation that those are made of low-quality wood is false and hence denied.

4. It was further submitted that as far as leakage of water is concerned, the same was due to the improper laying of the balcony tiles, by an external agency who was entrusted with the said work, since this open terrace tiling work was not in builders' scope of works and was awarded by the Complainant to a third party. Due to the wrong slopping provided by the external agency, there was water accumulation by the side of the wall causing dampness inside the structure. Later even though the Complainant himself attempted to rectify this issue by replacing and re-lying the tiles, the Respondents did the waterproofing free of cost for him, as a gesture of goodwill. The Respondents have never compromised on the quality of the materials, fixtures and fittings used in the construction and completion of the villa including those used for electrification, plumbing and sanitation. The interior works of the villa do not fall within the scope of works of the Respondents. Accordingly, such works including the interior works of the kitchen and store room as well as the cupboards and fittings were all done by the aforementioned agency. Therefore, any defect with regard to such works cannot be fastened on to the Respondents. The

Respondents can produce material invoices to prove the superior brand used in the subject villa. The essential amenities like the water treatment plant, internal roads, OH tank, children's play area, round the clock security, garbage bins, site generator and landscaping are functional. Efforts are in place to complete the club house in a time bound manner. The contention of the Complainant that the common areas are sold as plot is not true and is simply based on hearsay. 10% recreational area, which is, mandatory, will be provided in the project. As per clause 18 of the construction agreement, the Respondents reserve the right to change, modify, vary, relocate the construction aspects and amenities in the project without compromising on the 10% mandatory requirement as per the relevant rules for plot subdivision. Copies of brochure, construction agreement and copies of email communications are produced from the part of the Respondents.

5. The counsel for the above Complainants filed a common objection/replication to the said counter statements filed by the Respondents in which it is submitted that the project was started in the year 2010 and some of the allottees had booked their plots / villas nearly 10 years back, trusting the commitment of the builder that the entire project will be completed by 2014, prior to the outbreak of the pandemic of Covid. But till date only few of the allottees have got possession of their villas, without proper availability of basic utilities required to make the villas tenable for

residential purpose. The builder has not yet provided proper facilities for drinking water supply, disposal of solid and liquid waste, safety and security of the residents in the residential area. Most of the allottees have already made 100% of the payments against the deal year back and to get a residential unit which is tenable for accommodation. From the documents submitted at the portal of the authorities, it may be noted that the development permit issued by Kumaranalloor panchayat on 30/10/2010 clearly stipulate that 'This permit is issued only for residential purpose plot division'. The latest plot plan sanctioned for the project also clearly indicate that it is a 'site plan of plot subdivision for residential use at Kottayam Municipality'. But in the project site, 3 plots of land (11B, 12B & 13B) under the above permit is allotted to a commercial establishment 'Rainforest Resort' which is adjacent to the proposed plot of the project. In addition, a huge commercial building is already constructed in one of the plots (Plot 11B) which is said to be intended for a Restaurant / Hotel under the management of the above resort. This is a blatant violation of the above mentioned 'development Permit' and cheating of the allottees of the project. The builder has given permission to the management of the resort to use the internal roads as access ways to the employees and customers of the resort. But the earlier submission of the Respondents is that the access to the resort is another road, and they did not give any permission to the resort management to use internal road as access to the resort. But later they have changed the position

and states that different measures taken by Respondents to ensure safety and security of the residence from the employees and customers of the resort passing through the project internal roads. Drinking water facility in the project is a very serious concern for the residents of the project especially those who are already living in villas of the project as there is no proper source of water identified. Raw water is being pumped from the nearby river into a well in the project and is being supplied to the tenants without proper purification. During monsoon, the rain water also flows into the above well and the water is being distributed to tenants. It is not clear whether the tapping of water from river is being done with any permission from respective authorities or not. Respondent is repeatedly promising about providing the drinking water connection from Kerala Water Authority, but no action is seen and they did not provide any documents related to the same in the portal. The non-availability of proper disposable facility for solid and liquid waste from the premises is another concern, the sanctioned layout shows a location for incinerator near plot 11B, but at present this plot is physically a part of the plots 11B, 12B and 13B which is the part of resort.

6. The 2<sup>nd</sup> Respondent had filed a common counter affidavit against the above objection filed by the counsel for the Complainants and denied all the contentions in the objection and submitted that construction agreement with the Complainants were entered into on different dates from 2013 to 2019. True copies of

construction agreements were produced. All the six complainants except complainant in Complaint No.191/2021, got possession of their villas long before the Covid-19 pandemic. In the case of Complainant in Complaint No.191/2021, the agreement was entered in the month of January 2019 and the villa was handed over in May 2021 despite payment defaults from the side of Complainant. All the essential facilities like water supply, waste management, power, treated drinking water, round the clock security, generator for common areas, CCTV Surveillance, which got delayed due to Covid -19 pandemic lockdown. The club house facility will be completed by next year. The date of completion of villa of Complainant in Complaint No.189/2021 is August 2017, villas of Complainants in Complaint Nos.187/2021 & 190/2021 is December 2014, villa of Complaint in Complaint No.174/2021 is June 2019, villa of Complainant in Complaint No.188/2021 is September 2019 and villa of Complainant in Complaint No.191/2021 is May 2021. The sanction for the new “rainforest” building was issued by the Municipality under ‘special residential- A2’ occupancy category and not as a commercial entity. As per the terms and conditions of the agreement which the Complainants have entered into, it is explicitly stated that the internal roads are a means of ingress to and egress from the villas and the premises, and no villa owner has exclusive right over the internal roads. The security guards at the main gate of this gated community can restrict any unwanted entry in the project. With regard to the water for the project, there is

second well located within the project premises by the side of the river, where the water is tapped from this well and not directly from the river as stated by the Complainants. In addition, a third well is dug within the premises to supplement more water and a water treatment plant is already there for water purification purpose. As regards the KWA connection, the Complainants have to directly approach the water authority for obtaining water connection and with regard to waste management, the Respondents have already arranged for the services of a waste management agency for the removal of waste on a daily basis and this arrangement is working flawlessly even now. The promised date of completion was 31/07/2023, but due to the circumstances and events entirely beyond the control of the Respondents it was delayed and the Respondents undertaken that the club house will become functional by 31/07/2023.

7. We heard both parties along with their counsels in detail through hearings conducted on several dates. During the hearing on 01/12/2021 itself, the 2<sup>nd</sup> Respondent admitted the delay occurred in completing the common amenities in the project as promised to the allottees and also the allegation of the Complainants with regard to construction of a Resort inside the project and usage of internal roads by the visitors and employees of the said Resort and he assured to solve the grievances/issues raised by the Complainants/allottees. On the same day the Respondents were

directed to submit an additional counter affidavit in this regard along with copies of Development permit & approved plan. In compliance of said direction, on 18/01/2022, the 2<sup>nd</sup> Respondent filed an affidavit of undertaking in which it was stated as follows: The 1<sup>st</sup> Respondent has magnanimously made all possible endeavors to rectify / fix all the issues raised by the Complainants, despite elapse of the defect liability period, in compliance with the directions of the Authority. The CCTV security camera which was damaged as a result of heavy rainfall and thunderstorm, is being rectified and replaced along with additional cameras to enhance the surveillance, within 4 months. The boat house equipped with a speed boat shall also be made functional within a short period the and retaining wall along with the club house, comprising of amenities including swimming and such other facilities shall be completed within a period of 18 months. With respect to the malfunctioning of the water treatment plant, it has been reinstated after full and complete maintenance and that it is perfectly functional now. With regard to waste management, an agency has already been engaged to clear and dispose of all the organic and inorganic household waste and food remains of all the villas in the gated community, on a daily basis. The formation of association shall be commenced on receiving the draft from the allottees after incorporating comments / inputs if any, and with regard to the issue of parking of cars in internal roads of the villa project by the visitors accessing the adjoining facility, the Respondents have issued strict



instructions to the facility management to forbid the visitors from doing so and to provide space for visitor's cars within the premises of the facility and to foster this, the Respondents have placed 'NO PARKING' signals at various points in the villa project to avoid this issue in future. The Respondents also undertaken that additional security guards shall be engaged during functions or special occasions to avoid any guests unknowingly trespassing to the other phases of the villa project, thereby unintentionally trouble to the residents.

8. The Complainants have filed objection to the above affidavit of undertaking filed by the 2<sup>nd</sup> Respondent and submitted that the project has started in the year 2010 and some of the allottees had booked their plots/ villas nearly 10 years back trusting the commitment of the builder that the entire project will be completed by 2014, prior to the outbreak of the COVID-19 Pandemic. Most of the allottees have already made 100% of the payments years back and yet to get a residential unit which is tenable for accommodation. The builder has given permission to the management of the resort to use the internal roads as access ways to the employees and customers of the Resort and thereby cheated the allottees who have purchased the residence in the project with all, the common facilities offered by builder which has promised as a safe and secure gated community thereby denying the privilege of the residents for a peaceful living in the project even after paying a premium price for the same. Drinking water facility is a serious

concern for the residents of the project especially those who are already living in the villas of the project as there is no proper source of water identified. Non availability of proper disposable facility for solid and liquid waste from the premises is another concern, the sectioned layout shows a location for incinerator near plot 11B but at present, this plot is physically a part of the plots 11B,12B & 13B, which is now a part of the resort.

9. After initial hearings, as we noticed that the Association of allottees was not yet formed and no action has been taken by the Respondents as provided under Section 11(4)(e) of the Act 2016, an interim order dated 23/02/2022 was given directing the Respondents “(1) to convene a meeting of all the allottees with 15 days prior notice to the allottees and to conduct a meeting in the premises of the project, and enable to form association and to arrange for its registration as provided under section 11(4)(e) of the Real Estate (Regulation & Development) Act, 2016 within 45 days from the date of receipt of the order and (2) After formation of association, to hand over the management of the common amenities of the project by the Respondent to the association”. Based on the above interim order dated 23/02/2022, the Complainant in Complaint No.190/2021 for and on behalf of all other Complainants has filed an affidavit dated 09/03/2022 stating that since the project is not registered with the Authority, the Complainant as well as other allottees are unable to find out the persons who has occupied

the villas, persons who got the allotment for villas. Unless the total number and details of the allottees are not published, they are not able to form association. The draft bye laws circulated by the builder is not acceptable to the residents and it is to be amended and finalized only after an open discussion with the residents to rectify the defects so as to protect their rights. The 2<sup>nd</sup> Respondent had submitted counter affidavit dated 20/04/2022 against the above affidavit filed by the Complainants, stating that the 1<sup>st</sup> Respondent company has taken all necessary steps to comply with the directions passed by the Authority, vide order dated 23/02/2022. It was further submitted that the Respondent company has completed all the procedures in relation to the registration of the project and made all arrangements to convene a meeting on 18/03/2022 and gave advance intimation via email dated 04/03/2022 to all villa owners regarding the general body meeting towards the formation of association and appended the draft bye-law together with the mail and the complete list of the villa owners was sent to each member of the community on 11/03/2022 via email as an attached document. Despite exhaustive efforts from the side of the Respondents to convene the meeting, the cooperation from the side of the allottees were absolutely naught, which is in fact is a clear violation of section 19(9) of the Act.

10. As the Complainants alleged that the Respondents in spite of the directions of the Authority, failed to

convene the meeting and settle the issues amicably, during the hearing on 05/07/2022, the Authority deputed two of its officers to inspect the project site and to submit a detailed report. Then, two of the officers of the Authority inspected the project site on 22/08/2022 and submitted a report along with photographs showing the present status of the project and submitted that there are 41 plots and almost all the villas are completed and handed over to the allottees. But the Association of allottees is not seen formed. The development permit issued from the local body on 30/10/2010 is only for residential purpose which was valid up to 29/10/2011 and the revised development permit was obtained by increasing area of land on 07/05/2018 for residential plot division. A resort in the name of 'Rain Forest' is constructed by combining three rear side plots (11B,12B & 13B) within the same layout for which a separate building permit is seen obtained from the local body for a 'Special residential building' having an area of 2181.75 sq. m. As per Kerala Municipal Building Rules the resort building comes under the category of Group A2- Lodging Houses & Special Residential. In the inspection report, the officers pointed out the following points. (1) The main entrance of the resort is through the main internal access road of the project and have common entrance gate which has an overall width of 5m. The resort seemed to be functional and according to the allottees, providing access to the resort through the internal road of the project, create severe traffic problems during the marriage functions and other functions in the

resort and the vehicles coming to the resort through the internal roads of the project affects free movement and privacy and security of the residents. (2) The retaining wall construction of electrical room is not completed. The generator set for common area lighting, pumps etc. is not installed. (3) The construction of club house & club amenities as mentioned in the brochure are not started. (4) Some common amenities promised in the brochure like landscaped lawn areas for outdoor play, mini basketball court, surveillance system with CCTV, and common rainwater harvesting are also not provided. (5) A new well is constructed in the club house property near the Meenachil river to cater the water demand of the residents. But water from the well is not seen sufficient for the residents. The resort is also using the same well for their water demand. The Allottees informed that the quality of the water is also poor. (6) No incinerator for waste disposal is installed. Only 4 bins are used to dump the waste. (7) The solid waste from the resort is dumped in the area earmarked for incinerator which makes health problems for the residents of the nearby Villas. (8) The Children's play area is not fully functional. (9) 4 Nos of PVC water tank each 1000 liters capacity additionally provided for the resort in the existing RCC water tank which may affect the structural stability of RCC tank provided for the residents. (10) Damages were seen in many villas such as peeling of paints, cracks in walls, dampness in wall, defective doors, damaged flooring etc.

11. The Respondents have filed objection to the above site inspection report and submitted that the Respondents /Promoters was not given the opportunity to respond / clarify the allegations raised by the Complainants and the report is unilateral in rendering the views / narratives of the Complainants only. Thereafter, the Authority vide interim order dated 29/08/2022 directed the Respondents (1) to provide details of all allottees in the above project with their name, address, email id, phone number etc. to the Complainants and all other allottees and submit a copy of the same before the Authority within 15 days, (2) to convene a meeting of the allottees through a legally drafted notice with a notice period of minimum 15 days to enable the formation of an association under section 11(4)(e) of the Act, 2016 and to enclose a copy of this order to every allottee along with the notice and to convene a meeting within 30 days from the date of receipt of this order. It was also directed to make arrangements for virtual attendance of allottees who were not in a position to attend directly. The Complainants / Allottees are also directed to attend the meeting convened by the Respondents without fail. (3) The promoter was directed to submit a detailed affidavit clearly indicating the timeline for completing the common amenities offered to the allottees through the agreement for sale/construction executed with them, and the brochure produced before the Authority by the Complainants and to continue the works at project site.

12. During the hearing on 27/10/2022 the counsel for the Complainants submitted that meeting was convened as per the interim order dated 29/08/2022 and association was formed. In compliance of the direction, the 2<sup>nd</sup> Respondent had filed an affidavit dated 27/10/2022 stating that the common amenities offered by the promoter have been specifically enlisted as 2 categories namely 'Site Amenities' and 'Club Amenities', in the brochure issued by the promoter. Out of the amenities / facilities enlisted in the 'Site amenities' majority of the amenities have been completed except the mini basketball court. The mini basketball court is a facility attached to the club house which is pending sanction with the Kottayam Municipality. The procedure for consideration of the application is under way and they are awaiting the site inspection from the Municipal Authorities. Hence the amenities enlisted under 'Club Amenities' can be commenced and completed as soon as they receive the Municipal sanction for the club house and undertaken that they will complete the club house and the appurtenant club amenities by the **end of July 2023**.

13. Heard both parties in detail and examined all the documents produced from each of them. The documents produced from the part of the Complainants are marked as Exbts.A1 to A10 and the documents produced from the part of the Respondents are marked as Exbts.B1 to B5 and site inspection report is marked as Exbt.X1. The Project in question is registered under Section 3 of the

Act 2016 in compliance of the direction of this Authority and the registration is valid up to 31.07.2023. When the above complaints came up for final hearing this day, the learned /counsel for the Respondents submitted that the registration of Association of allottees has been completed. After hearing both parties in detail and examining the documents produced, we are convinced of the delay occurred in completion of works in the project as offered to the Complainants/ allottees as well as the failure from the part of the Respondents in complying with the promises given by them to the Complainants. Nevertheless, the Respondents/Promoters have admitted the delay occurred in the completion of the project and the 2<sup>nd</sup> Respondent / Promoter has undertaken through the Exbt.B5 sworn Affidavit that he will complete the whole project with all the amenities and facilities as offered / promised to the Complainants along with all the mandatory sanctions and approvals, on or before 31/07/2023 and it was agreed by the Complainants also. Anyhow, it is found necessary to make it clear that the statements of the Respondent/Promoter such as “it is a settled position that a brochure does not constitute a legal offer or contract as mentioned in the brochure itself”, a brochure shall not be construed as a legal document and the agreements will be the only binding document from the legal perspective” etc. are completely wrong and unsustainable in the light of Section 12 of the Act 2016 which specifies that *“Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus,*



or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.” In this regard, we have to refer Rule 10(2) of the Kerala Real Estate (Regulation & Development) Rules 2018[hereinafter referred to as the “Rules 2018”] which stipulates that “any application letter, allotment letter, agreement or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale shall not be construed to limit the rights and interests of the allottee under the agreement for sale”. The term ‘Prospectus’ is defined in Section 2(zl) of the Act 2016 as “any document described or issued as a prospectus or any notice, circular or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes.” Hence, as far as the allottees of a real estate project within the purview of the Act 2016 are concerned, the offers given by the Promoters through brochures/prospectus/notices/circulars or any other documents and advertisements are legal offers which squarely come under the purview of the aforementioned provision embodied under Section 12 of the Act 2016. Moreover, the one-sided clauses of the agreement, as quoted by the Respondent/promoter have no significance and as the project in question being a registered project

under section 3 of the Act 2016, should be guided by the clauses of the agreement format in Annexure A to the Rules 2018. The Hon'ble Supreme Court in its judgment dated 02.04. 2019, in an appeal against the decision of the National Consumer Commission, Pioneer Urban Land & Infrastructure Limited v. Govindan Raghavan (C.A. No. 12238 of 2018), held that *the incorporation of one-sided clauses in an Agreement constitutes the unfair trade practices within the meaning of Section 2(r) of the Consumer Protection Act, 1986, and such clauses cannot bind a party.*

14. With respect to the grievance of the Complainants related to the Resort constructed by the Respondent/Promoter inside the project property, giving free access to the public through the internal roads in the project, the learned counsel appearing for the Complainants submitted that 3 plots having No.11B, 12B & 13B of the project site has been allotted to a commercial establishment named "Rainforest Resort" by the Respondent/Promoter, and a huge commercial building has already been constructed in plot No. 11B, intended for a restaurant/hotel under the management of the said Resort. The learned counsel for the Complainants argued that it is an explicit violation of the promise/offer given by the Respondent for a gated community by which he cheated the allottees who paid premium prices and purchased residence with the expectation of peaceful living with all the common facilities. In reply, the learned counsel appearing for

the Respondent/Promoter contended that they obtained "Special Residential -A2" permit from the local authority for the said Resort and the guests/employees/visitors of the Resort have equal rights as that of a guest of a villa in the project, by nature of its occupancy, i.e; "Lodging houses and special residential" and in any case, the security guards at the main gate of this gated community will restrict any unwanted entry into the project. The learned counsel for the Respondent also argued that prior to executing sale deed for the Resort they sold only 9 plots and 9 out of 41 plots represent 22% which means a greater majority of the plots (78%) were sold only later which is to be construed that most of the allottees were aware of such a Resort. Whatever be the nature of permit obtained for such a resort from the local authority does not matter but 'whether such an arrangement has been done with the knowledge/approval of the Complainants/ allottees or not' only matters in the eyes of law. During the hearing, the learned counsel for the Complainants submitted that the Development Permit issued by Kumaranalloor Panchayath on 30.10.2010 clearly stipulate that "This permit is issued only for residential purpose for plot division" and the latest plan sanctioned for the project also clearly indicate that it is a "site plan of plot sub division for residential use at Kottayam Municipality". The Respondent/Promoter shall not have any right to make any such construction or arrangement of his own without obtaining approval of the existing allottees, if he had offered them a residential villa project and a safe and secured gated community

living there. In any of the documents including the agreements executed with the Complainants, it is not seen disclosed by the Respondent/promoter that such a resort would be constructed inside the project and the internal roads would be opened for the customers and employees of the said resort. Hence, the Complainants/allottees are entitled to get compensation for the alleged damages sustained to them in this respect also.

15. With regard to the other reliefs sought by the Complainants regarding defects and quality of construction, this Authority cannot adjudicate them through these complaints but the Adjudicating officer of this Authority is vested with jurisdiction to adjudicate such complaints as provided under Section 71 of the Act 2016 which is re-affirmed by the Hon'ble Supreme Court of India in the judgement dated 11.11.2021 in M/s Newtech Promoters & Another Vs. State U P & another. Hence the Complainants herein are at liberty to approach the Adjudicating officer of this Authority with respect to such grievances and claim compensation under section 14(3) of the Act which specifies that *"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty*

*days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act”.*

16. In view of the above facts and findings and with the consent of both the parties and, invoking Section 34(f) & 37 of the Act, this Authority hereby issues directions as follows: -

1. The Respondent/Promoter shall complete the entire works of the project “NTP Lords Valley” with all the mandatory sanctions/approvals and common amenities/ facilities in accordance with the terms of the agreements executed with the Complainants / allottees and shall handover formally, the common areas and all the documents pertaining to the project including drawings, title deeds, sanctions and approvals, etc. obtained for the project to the association of allottees on **or before 31/07/2023**, failing which the Respondents No. 1& 2 shall be liable to pay penalty as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

2. This order is issued without prejudice to the right of the Complainants to submit claims for compensation before the Adjudicating Officer of the Authority in accordance

with the provisions of the Act and Rules, for any loss or damage sustained to them due to the default from the part of the Respondents.

Sd/-  
Smt. Preetha P Menon  
Member

Sd/-  
Sri. P H Kurian  
Chairman

/True Copy/Forwarded By/Order

Secretary (legal)

## Exhibits

### Exhibits marked from the Side of Complainants

- Ext.A1 series - Copies of construction agreements.
- Ext.A2- Copy of brochure.
- Ext.A3 - Copies of sale deed.
- Ext.A4- Copy of sale deed
- Ext.A5- Copy of Prospectus issued by the Respondents.
- Ext.A6- Copy of letter dated 13/03/2020 issued by the promoters.
- Ext.A7 series- Copy of letter dated 20/01/2021 and photographs.
- Exbt.A8 Series- Copy of E-mail communications.
- Exbt.A9- Copy of certificate of registration of allottees.
- Exbt.A10- Copy of Occupancy certificate.

### Exhibits marked from the Side of Respondents

- Ext.B1- Copy of Brochure.
  - Ext.B2 Series - Copies of construction agreement.
  - Ext.B3 Series - Copy of email communications.
  - Ext.B4- Copy of building permit.
  - Ext.B5- Copy of affidavit dated 27/10/2022 filed by the Respondents.
- 
- Ext.X1- Site inspection report filed by the Officers of the Authority.

