



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No.1,4,5,8 & 33/2023

Dated 19th December, 2023

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

Complainants

1. K.M Elizabeth Complaint No. 1/2023
14/960-A, Kuzhivelil House,
Nazerath, Mattancherry P.O
Mattancherry Town, Ramshwaram Village
Kochi Taluk, Ernakulam
2. Philip Cherian Complaint No. 4/2023
Karayathu House, Zilla Court Ward,
Thathampally (P.O), Mullackal Village
Alappuzha District Pin. 688 013
3. Annamma Suresh Complaint No. 5/2023
Kaithayil House, Puthenchantha
Vakathanam P.O
Kottayam.
4. Thomas Mathew Complaint No. 8/2023
H-26, Kasthurba Nagar,
Kadavanthara P.O,
Elamkulam Village, Kanayannoor Taluk,
Ernakulam District – 682020



5. K.K Salim
 Koyaliparambil House
 Thrikkakara Municipality
 Apartment No. 8 D, Minoa Heritage
 Palachuvad, Thrikkakara P.O
 Ernakulam- 21
 (Adv. Ike Mani & Syriac Simon)

Complaint No. 33/2023

Respondents

1. M/s Orion Holiday Resorts Limited
 Registered office: HIG-9, Panampilly Nagar
 Kochi, Ernakulam – 682036
2. P.P Pradeep kumar
 Director, M/s Orion Holiday Resorts Ltd.,
 Poovapadath House, Wagamon P.O,
 Peermade Taluk, Idukki District
 Pin 685503
 (Adv. K Santhosh Kumar)

The above Complaint came up for hearing on 10.10.2023.
 The Counsel for Complainants and Respondent himself
 appeared.

ORDER

As the above Complaints are related to the same
 project developed by the same Promoters, the cause of action and
 the reliefs sought for in all the Complaints are one and the same,
 these Complaints are clubbed and taken up together for joint
 hearing and passing a common order, under Regulation 6 (6) of
 Kerala Real Estate Regulatory Authority (General) Regulations,
 2020.



2. The Complaints are with respect to a villa project named "Orion County" at Vagamon. Complainants are allottees and the Respondents are the Builder/Promoters.

3. The case of the Complainants is that they had heard the villa project through the wide advertisements in local and national dailies. The Complainant purchased the land from the mother of the 2nd Respondent and executed an agreement with the Respondents to the development of the land and also to the construction of the uniform pattern building with all amenities offered by the Company. But the Respondents constructed the buildings in different size and plan and the Complainants realize that the Respondents might have changed their master plan as simply as a housing colony. As per the clause 6 of the above stated agreement there was a provision for formation of an association of villa owners named "Orion Planters Club". As per the provisions in the agreement the planters club is created for the purpose of fulfilling the objectives laid in the agreement. Respondents executed agreement between the Complainants on 19.04.2016 in Complaint No. 1/2023. In Complaint No. 4/2023 the date of execution of agreement is 28.06.2014, in Complaint No. 5/2023 the date of execution of agreement is 14.06.2008 and in Complaint No. 8/2023 the date of execution of agreement is 02.07.2012. The buildings in the plaint schedule property were constructed in various dates and almost 40 villas were constructed. The 1st Respondent didn't form any club as stated in



the purchase agreement and sale deeds as Orion planters club. On 16/01/2021 some of the villa owners convened a meeting to discuss the issues concerning the villa owners and take up the entire matters to the Respondents and caused to raise the issues by the help of an advocate. It is stated by the Complainants that most of the property owners are NRI's and Respondents were attempting to take undue advantages by non-compliance of conditions for providing infrastructure facilities and by non-payment of the rent of the villas. The Complainants also stated that the Respondent builder runs the on-going project and advertising through Facebook and other social medias for the promotion of his business offering investment opportunity in Villa project at Vagamon. It is stated by the Complainants that the 1st Respondent firm and 2nd Respondent builder did not register under Section 3(1) of the Kerala Real Estate (Regulation and Development) Act, 2016 (**herein after referred as Act, 2016**).

4. The relief sought by the Complainants are as follows: -

Pass an order directing the Respondents to comply with the conditions in the agreement and sale deed such as Potable water, telephone connections and 6-8 meters width road facilities having tarred portion of 4 meters width starting from Cochin-Thekkady highway with foot path on both sides with avenue trees planted with garden benches and foot path.



5. The Respondents filed reply on 10.05.2023 to the show cause notice as directed by this Authority, it was stated as follows:- The said project is not a mere villa project and the 1st Respondent visualized and conceptualized it as an ecofriendly zone with farms and farmhouses, in lush green tea gardens owned by different property owners and located adjacent to the Farm Resort, developed and owned by the 1st Respondent, and with an idea of living with nature, collective farming with ecological friendliness and to create an atmosphere of tranquility and to promote Farm Tourism under the control of the Society. The 1st Respondent offered to sell only land from the aforesaid property owners adjacent to the resort to prospective buyers and after purchase of land the buyers can construct farm houses in the farm with a common elevation and colour code as per the scheme and the owner can use the farm house as permanent residence and can lease out the farm house to 111 qss' holiday seekers through the 1st Respondent through the controlled Farm Tourism activity, with the approval of the Society, 'The Planters Club'. It was submitted that due to a blanket ban on construction enforced by the Government of Kerala in Vagamon Village, the 1st Respondent could not complete the pending works till 2010. However, the promised infrastructure, the connection road, the arterial pipelines and the lake, the primary water source were completed in the year 2011. The fringe corollary works like connection pipeline from the arterial pipeline to the plot and access to the plot



from the service road etc, are usually completed after execution of individual agreements with buyers and usually such works are completed after the conveyance of the land by execution of sale deed. It was submitted by the Respondents that the said project is a completed project and cannot be considered as an ongoing project and not required to be registered.

6. The 2nd Respondent filed the written statement on 10.05.2023, it was stated as follows: - The Respondent company agreed to construct the building on contract basis and develop the land in a uniform pattern is false and misleading. The road was constructed with all the features and potable water connection was also provided as per the agreement. All the above infrastructure developments were completed in the year 2011 and the 1st Respondent has facilitated the installation of electricity connection from the Kerala State Electricity Board as promised as per the agreement in 2016 on construction of the farm house by the Complainant. It was submitted by the Respondents that the construction of Farm House was not made mandatory and 30-35 Farm Houses constructed by the farm owners were included in the Farm Tourism activity of the 1st Respondent as the approved agency appointed by the society and the 1st Respondent had been paying the rental share to the property owners since 2011. Clause 6 of the agreement mentions about facilitation of electricity connection and not for formation of 'Orion Planters Club'. It was stated by the Respondents that the society is functioning and the



maintenance of the common infrastructure and the management of the over-all affairs of the Orion County is carried out by the Society. According to the written statement, a meeting was convened for the discussion and decided to waive the rental arrears pertaining to the lockdown period and also allowed the 1st Respondent to defer the payment of rental arrears till the time the financials of the resort touch at least break even. However the Complainants herein along with the other Complainants who have filed cases before this Authority, have declined to accept the aforesaid decision of the meeting and insisted the 1st Respondent to pay the rentals even for the lockdown period and the rental arrears without deferment, which was politely declined by the 1st Respondent and thus the Complainants turned hostile towards the Respondents. In Complaint No. 1/2023, all the offered infrastructure as per the agreement dated 19.04.2016 have been completed in the year 2011 and the Complainant is using the infrastructure facilities for the last 6 years. In Complaint No. 4/2023, all the offered infrastructures as per the agreement dated 28.06.2014 have been completed in the year 2011 and the Complainant is using the infrastructure facilities for the last 9 years. In Complaint No. 5/2023, all the offered infrastructures as per the agreement dated 14.06.2008 have been completed in phases in exclusivity with the Complainant before 2011 and the Complainant is using the infrastructure facilities for the last 12 years. In Complaint No. 8/2023, all the offered infrastructures as



per the agreement dated 02.07.2011 have been completed in the year 2011 and the Complainant is using the infrastructure facilities for the last 10 years. In Complaint No. 33/2023, all the offered infrastructure as per the agreement dated 31.07.2006 have been completed in phases in exclusivity with the Complainant between the years 2005 to 2011 and the Complainant is using the infrastructure facilities for the past 12 years.

7. The objection filed by the Complainants on 03.08.2023 against the reply filed by the Respondents to the show cause issued by the Authority under the interim order dated 13.03.2023, it was stated as follows: - It is true that a common road was provided through the property, but the amenity offered as foot path on both sides with avenue trees planted with garden benches, private amenity attached with construction offered was not provided till now. It was stated by the Complainant that the admitted constructions were done only by 2008 and hence Non registration of the Respondent with RERA is against the mandatory provision for registration under Sec.3(2) is attracted. Therefore, argument of the Respondent that Orion County is a completed project before RERA act was promulgated is false. According the Complainants, the Respondents were wilfully lagging the formation of any association or so-called Planters club with the malafide intention to keep the property under their clutches and finally an attempt was made by the Respondents to form a society registered under the Travancore Cochin Literary



ad scientific societies Act, with Chairmanship by 2nd Respondent and relative and staff of the 2nd Respondent as other office bearers.

8. The objection filed by the Complainants on 03.08.2023 for the site inspection report filed by the expert technical team of RERA filed on 26.06.2023, it was stated as follows: - it is evident from the photographs taken by the technical expert commission of RERA that dozens of villas are under construction. According to the Complainants, it was reported that no owners of such properties were present at the spot and without the presence of the plot owners technical team reported that the constructions were carried out by the plot owners themselves as stated by the Respondents present at the spot. According to the objection, another plot owner who has been present at the time of visit of the experts has specifically informed the matter that the construction of his house on going in the property is done by the Respondent himself also was not seen reported by the experts. The attempts of the Respondents for obstructing the Road access starting from Cochin- Thekkady Road having 6-meter width with 4-meter tarred portion covenanted in the title deeds of the Complainants by a bilateral agreement can't in any way allowed and the unilateral breach of contract by the Respondents amounts cutting or obstruction of amenities, which attracts the provisions of the RERA Act.



9. The argument notes filed on 25.10.2023 by the Complainants, it was stated as follows: - the contention of the Complainants is that as the Act 2016 came into force as per the notification in the Extraordinary Gazette of India Part II Sec 1 dated 26.03.2016, and hence the contention that Respondents are not subject of the Act 2016 is false since they have admitted the fact that they were continued their project even in 2017. The case of the Complaints was that the Respondent has not complied their part of the agreement in providing the agreed amenities and even making attempt to obstruct the accessory roads. The Respondent after conclusion of sale of plots has mortgaged the property including properties of 1,2 and 4 and the property of common water supply pond and common roads with Kerala Finance Corporation for about 3 crores and at present the loan become overdue and recovery steps were initiated by KFC. It was stated by the Complainant that the Respondent did not obtain any completion certificate from any of the Authority. The Respondents project is ongoing one and after 2017 so many plots were sold by the Respondents. According to the Complainants, at the time of visit of expert team of RERA the Respondents temporarily constructed some benches with some country bushes and that were not noted by the experts seriously even pointed out by the Complainants.

10. The additional argument note filed by the Respondents on 07.11.2023, it was stated as follows: - The conveyance of land



under the sale deeds produced along with the argument note by the Complainants are resale of land by property owners who purchased land in 'Orion County' and hence land sale in 'Orion County' cannot be considered as an ongoing land sale. Therefore, the contention of the Complainants that, the conveyance of land under the aforesaid sale deeds is a valid proof that 'Orion County' is an ongoing project cannot be admitted. It was stated by the Respondents that the construction agreement produced by the Complainants is a mere works contract and works contract does not come under the purview of the RERA Act, Rules and Regulations. The Respondents were unable to produce any completion certificate due to the non-applicability of the Building Rules at the time of inception of the impugned plot sales in 2005. It was stated by the Respondents that by virtue of the sale the purchaser became the member of 'Orion Planters Club' a body of property owners in the said 'Orion County' and the mandatory membership provided in the sale deeds itself is crystal clear proof that, an Association of the plot owners in 'Orion County' was in existence and the maintenance of the infrastructure in Orion County is done by 'the Planters Club'.

11. I.A No. 110/2023 was filed on 27.05.2023 to review the order closing hearing on maintainability and posting case for orders on issue of maintainability of the case. This I.A was premature as the Authority had decided to depute two officers to visit the project site to get more details on the project to ascertain



the registrability of the project. Hence the I.A was not considered by the Authority. I.A 111/2023 was filed by the Complainants to appoint a Commissioner for local inspection and to report the ongoing project of the Respondents and initiate appropriate action for violation of Section 3 of the Act, 2016. Since the inspection was already carried out by the Officers of the Authority and the report was submitted on 26.06.2023 this I.A was also not considered.

12. The Counsel for the Complainants and the Respondent appeared on 10.10.2023 and based on the arguments and the documents available with the Authority the first question that needs to be answered is whether the project is registerable under Section 3 of the Act, 2016.

13. Documents produced by the Complainants are marked as **Exhibits A1 to A12**. The copy of the sale deed No. 1196/2016 of SRO Peermade dated 30.04.2016 is produced and marked as **Exhibit A1(a)**. This document is executed by the 2nd Respondent in favour of the Complainant transferring an extent of 2.03 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 2536/2014 of SRO Peermade dated 19.09.2014 is produced and marked as **Exhibit A1(b)**. This document is executed by the 2nd Respondent in favour of the Complainant transferring an extent of 2.03 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 2257/2008 of SRO Peermade dated 23.06.2008 is produced and marked as



Exhibit A1(c). This document is executed by the mother of 2nd Respondent in favour of the Complainant transferring an extent of 6.07 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 2588/2012 of SRO Peermade dated 04.07.2012 is produced and marked as **Exhibit A1(d).** This document is executed by the 2nd Respondent in favour of the Complainant transferring an extent of 2.03 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 1490/2009 of SRO Peermade dated 06.04.2009 is produced and marked as **Exhibit A1(e).** This document is executed by the mother of 2nd Respondent in favour of the Complainant transferring an extent of 4.04 Ares of land in Peermade Taluk, Vagamon Village. True copy of the building tax receipt No. 6062211001035 dated 26.10.2021 is produced and marked as **Exhibit A2(a).** As per the building tax receipt issued by the Elappara Grama Panchayat, the total amount due by the Complainant is Rs. 888/-. True copy of the building tax receipt No. 6062211001043 dated 26.10.2021 is produced and marked as **Exhibit A2(b).** As per the building tax receipt issued by the Elappara Grama Panchayat, the total amount due by the Complainant is Rs. 395/-. True copy of the building tax receipt No. 6062211000954 dated 15.09.2021 is produced and marked as **Exhibit A2(c).** As per the building tax receipt issued by the Elappara Grama Panchayat, the total amount due by the Complainant is Rs. 934/-. True copy of the building tax receipt



No. 6062211000897 dated 29.08.2021 is produced and marked as **Exhibit A2(d)**. As per the building tax receipt issued by the Elappara Grama Panchayat, the total amount due by the Complainant is Rs. 454/-. True copy of the building tax receipt No. 6062211001056 dated 27.10.2021 is produced and marked as **Exhibit A2(e)**. As per the building tax receipt issued by the Elappara Grama Panchayat, the total amount due by the Complainant is Rs. 557/-. True copy of land tax receipt dated 14.08.2019 is produced and marked as **Exhibit A3(a)**. As per the land tax receipt, the amount due by the Complainant from 2019-2020 is Rs. 15/-. True copy of land tax receipt dated 22.09.2020 is produced and marked as **Exhibit A3(b)**. As per the land tax receipt, the amount due by the Complainant from 2020-2021 is Rs. 15/-. True copy of land tax receipt dated 01.12.2021 is produced and marked as **Exhibit A3(c)**. As per the land tax receipt, the amount due by the Complainant from 2021-2022 is Rs. 18/-. True copy of land tax receipt dated 03.09.2021 is produced and marked as **Exhibit A3(d)**. As per the land tax receipt, the amount due by the Complainant from 2021-2022 is Rs. 15/-. True copy of land tax receipt dated 09.12.2021 is produced and marked as **Exhibit A3(e)**. As per the land tax receipt, the amount due by the Complainant from 2021-2022 is Rs. 25/-. The copy of agreement for sale dated 19-04-2016 executed between the 1st Respondent represented by its director, the 2nd Respondent and the Complainant is produced and marked



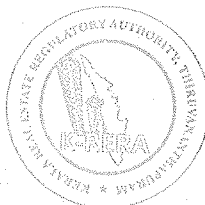
as **Exhibit A4(a)**. As per this agreement, the Respondent agreed to sell the Plot No. P-18 to the Complainant for a total consideration of Rs. 13,50,000/- for 5 cents of land. The Respondent shall construct and provide 6 to 8 meters wide road from the Cochin-Thekkady Highway (proposed) to the said plot No. P-18 and this connection road shall be tarred in 4 meters width and with foot path on both sides of the said road and the Respondent shall plant Avenue trees and construct garden benches along the foot path. The Complainant shall have the right of perpetual usage of the said road and shall be handed over with absolute ownership to the Orion Planters Club, the Society of the property owners of the Orion County. The Respondent shall provide potable water and facilitate to install Electricity and Telephone connections s individual house connection to the said plot. The Respondent shall produce separate non-encumbrance certificate on or before 30 days from the date of execution of this agreement and hand over the copies of all basic documents pertaining to the said properties on or before the said period. The copy of agreement for sale dated 28-06-2014 executed between the 1st Respondent represented by its director, the 2nd Respondent and the Complainant is produced and marked as **Exhibit A4(b)**. As per this agreement, the Respondent agreed to sell the Plot No. P-24 to the Complainant for a total consideration of Rs. 12,50,000/- for 5 cents of land. The Respondent shall construct and provide 6 to 8 meters wide road from the Cochin-Thekkady



Highway (proposed) to the said plot No. P-18 and this connection road shall be tarred in 4 meters width and with foot path on both sides of the said road and the Respondent shall plant Avenue trees and construct garden benches along the foot path. The Complainant shall have the right of perpetual usage of the said road and shall be handed over with absolute ownership to the Orion Planters Club, the Society of the property owners of the Orion County. The Respondent shall provide potable water and facilitate to install Electricity and Telephone connections s individual house connection to the said plot. The Respondent shall produce separate non-encumbrance certificate on or before 30 days from the date of execution of this agreement and hand over the copies of all basic documents pertaining to the said properties on or before the said period. The copy of agreement for sale dated 14-06-2008 executed between the 1st Respondent represented by its director, the 2nd Respondent and the Complainant is produced and marked as **Exhibit A4(c)**. As per this agreement, the Respondent agreed to sell the Plot No. B-20 to the Complainant for a total sale consideration of Rs. 72,000/- per cent of land. The Respondent shall construct and provide 6 to 8 meters wide road from the Cochin-Thekkady Highway (proposed) to the said plot No. B-20 and this connection road shall be tarred in 4 meters width and with foot path on both sides of the said road and the Respondent shall plant Avenue trees and construct garden benches along the foot path. The Complainant



shall have the right of perpetual usage of the said road and shall be handed over with absolute ownership to the Orion Planters Club, the Society of the property owners of the Orion County. The Respondent shall provide potable water and facilitate to install Electricity and Telephone connections s individual house connection to the said plot. The Respondent shall produce separate non-encumbrance certificate on or before 30 days from the date of execution of this agreement and hand over the copies of all basic documents pertaining to the said properties on or before the said period. The copy of agreement for sale dated 02-07-2012 executed between the 1st Respondent represented by its director, the 2nd Respondent and the Complainant is produced and marked as **Exhibit A4(d)**. As per this agreement, the Respondent agreed to sell the Plot No. P-9 to the Complainant for a total sale consideration of Rs. 7,50,000/- for 5 cents of land. The Respondent shall construct and provide 6 to 8 meters wide road from the Cochin-Thekkady Highway (proposed) to the said plot No. B-20 and this connection road shall be tarred in 4 meters width and with foot path on both sides of the said road and the Respondent shall plant Avenue trees and construct garden benches along the foot path. The Complainant shall have the right of perpetual usage of the said road and shall be handed over with absolute ownership to the Orion Planters Club, the Society of the property owners of the Orion County. The Respondent shall provide potable water and facilitate to install Electricity and



Telephone connections s individual house connection to the said plot. The Respondent shall produce separate non-encumbrance certificate on or before 30 days from the date of execution of this agreement and hand over the copies of all basic documents pertaining to the said properties on or before the said period. The copy of the photographs of the present-day construction ongoing in the Orion County is produced and marked as **Exhibit A5**. The copy of construction agreement dated 07.09.2016 executed between the 1st Respondent represented by its director, the 2nd Respondent and the 1st Complainant is produced and marked as **Exhibit A6**. As per Exhibit A6, the Respondent undertake to construct the villa of 650 Sq.ft for the agreed consideration of Rs. 1,540 Sq. Ft including a contract fee of 10% and excluding taxes, levis and other charges for the Complainant. The Complainant agreed to pay the total cost of Rs. 10,00,000/- in the following manner:- Rs. 4,00,000 as advance, Rs. 2,00,000/- on completion of basement, Rs. 2,00,000/- on completion of roof slab, Rs. 1,80,000 on completion of plastering and Rs. 20,000/- on handing over. The 1st Respondent agreed to complete the construction of the building and hand over possession to the Complainant within 12 months from the date of obtaining final building permit and handing over possession of the constructions to the Complainant within 30 days after completion. The copy of the sale deed No. 1879/2017 dated 14.07.2017 is produced and marked as **Exhibit A7**. This document is executed by the mother of 2nd Respondent



represented by the power of attorney, 2nd Respondent in favour of One Mr. Ismail M A and Mrs. Shaniya Ismail transferring an extent of 2.43 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 3321/2019 dated 23.12.2019 is produced and marked as **Exhibit A8**. This document is executed by M/s P P Plantation Company Ltd represented by its Director, 2nd Respondent in favour of One Mr. Benny K A and Mrs. Liya Yohannan transferring an extent of 2.025 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 1742/2020 dated 29.09.2020 is produced and marked as **Exhibit A9**. This document is executed by M/s P P Plantation Company Ltd represented by its Director, 2nd Respondent in favour of One Mr. Ganesh R and Mrs. Rajeswari R transferring an extent of 2.025 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 3681/2021 dated 07.12.2021 is produced and marked as **Exhibit A10**. This document is executed by M/s O P Homes Private Ltd represented by its Director, 2nd Respondent in favour of One Mr. Anil Kumar Gopalan, Mr. Nithin Krishnan, Mr. Siby Joseph Mundackal and Mr. Shaji Puthenparampil Chacko transferring an extent of 4.05 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed No. 1004/2023 dated 20.03.2023 is produced and marked as **Exhibit A11**. This document is executed by M/s P P Plantation Company Private Ltd represented by its Director, 2nd Respondent in favour of One Mrs. Susan Mangsh Cherian



transferring an extent of 2.03 Ares of land in Peermade Taluk, Vagamon Village. The copy of the details of sale deeds issued by Sub Registrar, SRO Peermade is produced and marked as **Exhibit A12**. The above details shows the sale of property conducted by Respondents in the Orion County from 2013 to 2023.

14. Documents produced by the Respondents is marked as **Exhibits B1 to B6**. The copy of the sale deed dated 18.01.2005 is produced and marked as **Exhibit B1**. This document is executed by One Susan John represented by her agent, W C Cheriyan in favour of One Ampily Vijayan transferring an extent of 20.23 Ares of land in Peermade Taluk, Vagamon Village. The copy of the sale deed dated 17.11.2006 is produced and marked as **Exhibit B2**. This document is executed by One Saramma George represented by her agent, W C Cheriyan in favour of One Johnson Mathew transferring an extent of 4.86 Ares of land in Peermade Taluk, Vagamon Village. The copy of the aerial colour photograph dated 04.02.2014 taken from youtube is produced and marked as **Exhibit B3**. As per Exhibit B3, it is the photograph and link to view the video dated 04.02.2014. The copy of the latest KSEB bill in Complaint No. 1/2023 is produced and marked as **Exhibit B4(a)**. As per Exhibit B4(a), the total amount payable is Rs. 1805/-. The copy of the latest KSEB bill in Complaint No. 4/2023 is produced and marked as **Exhibit B4(b)**. As per Exhibit B4(b), the total amount payable is Rs. 814/-. The copy of the latest KSEB bill in Complaint No. 5/2023 is produced and marked as



Exhibit B4(c). As per Exhibit B4(c), the total amount payable is Rs. 5,044/-. The copy of the latest KSEB bill in Complaint No. 8/2023 is produced and marked as **Exhibit B4(d).** As per Exhibit B4(d), the total amount payable is Rs. 1196/-. The copy of the latest KSEB bill in Complaint No. 33/2023 is produced and marked as **Exhibit B4(e).** As per Exhibit B4(e), the total amount payable is Rs. 4/-. The copy of the building permit dated 17.12.2016 is produced and marked as **Exhibit B5.** As per Exhibit B5 permit issued by the Elappara Grama Panchayat, the total Ground Floor is 60.4M2. The copy of communication mail dated 20.11.2021 is produced and marked as **Exhibit B6(a).** As per Exhibit B6(a), the Complainant is not willing to execute further renewal of licence rental agreements and ask about the date for key handover. The copy of communication mail dated 03.09.2021 is produced and marked as **Exhibit B6(b).** As per Exhibit B6(b), the Complainant argued that he didn't get any rent and it is absolutely unacceptable and breach of trust. The copy of communication mail dated 28.10.2021 is produced and marked as **Exhibit B6(c).** As per Exhibit B6(c), the Complainant asked to settle his dues and handover the cottage to him. The copy of communication mail dated 07.11.2021 is produced and marked as **Exhibit B6(d).** As per Exhibit B6(d), the Complainant is suffered through a severe financial crisis and ask the Respondent to find a suitable buyer. The Respondent produced copy of I.A No.2/2022 in O.S No. 53/2022 before the Hon'ble Munsiff Court, Peermadu

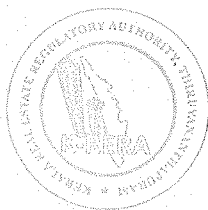


in which the Complainants were plaintiffs and the defendants were the Respondents. In the affidavit filed by the Complainants it is stated that the Complainants had a chance to hear about the villa project. 'Plaintiffs had a chance to hear about the villa project of the defendants at Vagamon under the name as "Orion County" under development by the first defendant "Orion holiday resorts". On approach it is learnt from the defendants that if a person purchases a land within the area of the master plan prepared by them, construction of the villa will be done by the defendants as a uniform pattern so as to make a uniform pattern proposed by the builder and they will help the purchaser for lending out to the tourists and the purchaser can also use it as a periodical destination for stay and enjoyment. In view of the above assurances the plaintiff's purchased the land from their owners and also executed an agreement with the defendants. The intention behind executing an agreement with the 1st defendant was for getting their help to develop the land and also for availing the conveniences offered by the company. As per clause 4 and 5 of the agreement with the Defendant Company, the defendant company agreed to construct the building on contract basis and develop the land in a uniform pattern along with other landowners who also had agreement with the defendant company. The company also agreed to develop it as a tourist destination place and so agreed to provide all amenities such as portable water, electricity, telephone connections and 6-8 meters width road



facilities having tarred portion of 4 meters width starting from Cochin – Thekkady highway with foot path on both sides with avenue trees planted with garden benches and foot path. But the defendants did not comply with their promise as per clause 4 and 5 of the agreement even after lapse of a decade.’

15. Documents produced from the official side is marked as **Exhibits X1 to X3**. The copy of Site Inspection Report submitted on 04-07-2023 by the Officers of this Authority is produced and marked as **Exhibit X1**. According to the site inspection report, the officials observed the following: - (i) the cottages have not definite boundary and certain constructions are going on (ii) The road to the Complainant’s property was tared in 4m width, country grass was provided on the both sides of the road, avenue trees were planted & garden benches were provided (iii) There is no direct access to the plots P9, P18 & P23 from this road (iv) The Complainants have put up “For Sale” advertisements boards in their cottages and (v) The cottages are maintained by M/s Orion Holiday Resorts Ltd. They let out these cottages & pay a monthly fee/remuneration to the owners of these cottages as per contract. The dates of the sale deeds executed were tabulated by this Authority and is marked as **Exhibit X2**. It is evident from the Exhibit X2 that all the four sale deeds were executed before 01.05.2017. The dates of the agreements for sale executed were tabulated by this Authority and is marked as **Exhibit X3**. It is



evident from the Exhibit X3 that the three agreements for sale were executed before 01.05.2017.

16. The Complainants have sought relief to direct the Respondents to comply with the conditions in the agreement and sale deed such as potable water, telephonic connections, 6-8 meters width road facility having tarred portion of 4meter width starting from Cochin-Thekkady Highway with footpath on both sides and avenue trees planted with garden benches. Respondent had submitted Exhibit B3 photograph along with the reply showing the roads in the lay out. From the photographs it is evident that the development was complete on 04.02.2014 much before the Act, 2016 was enforced. It is well settled in law that a person who sets the law in motion and seeks a relief before the court, must necessarily be in a position to prove his case. As per Section 102 of the Indian Evidence Act the burden of proof in a proceeding lies on that person who would fail if no evidence at all were given on either side. The Complainant had no document to prove that the amenities sought in the relief were not completed before 01.05.2017.

17. The Section 2 (zk) defines Real Estate project as the development of a building, or the development of land into plots or apartments for the purpose of selling whole or some of the said apartments or plots or buildings and includes the common areas the development works all improvements and structures thereon, and all easements, rights and upper tenancies belonging thereto.



18. Section 3(1) of the Act, 2016 states that, ‘no promoter shall advertise, market, book or sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.’

19. It is therefore clear that, registration under Section 3 is required for real estate project that have commenced after 01.05.2017 or are ongoing as on 01.05.2017. Rule 3(2) of the Kerala Real Estate (Regulation and Development) Rules 2018 states that in the case of ongoing projects on the commencement of the Section 3 of the Act and for which occupancy certificate has not been issued the promoter shall make an application in ‘Form A(1)’ to the Authority for registration of the said project. It can be concluded that for the purpose of considering the project as an ongoing project the occupancy certificate is the main consideration. Occupancy Certificate is defined under Section 2(zf) of the Act, 2016 as “Occupancy Certificate” means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.’



20. The project under reference can be considered only as plotted development and as far as the development of plots are concerned, the promoter has to obtain development permit under the Kerala Building Rules, and after completion of the development works obtain development certificate from the local body that had issued the development permit. In this case there was no development permit issued and the promoter claims that he had developed the property before the Kerala Panchayat Building Rules was introduced. There is no evidence to the contrary on record to prove that the development works were not completed before introduction of the Kerala Panchayat Building Rules in the state of Kerala. The documents produced by the Complainants were all executed before the introduction of the Act, 2016. There is no reference in the documents as to the existence of a development permit and the complainants had purchased the property knowing fully well that there was no development permit obtained by the sellers.

21. The subsequent documents executed and produced by the Complainants after 01.05.2017 are all executed by those who are not in the array of the Respondents. The fact that the 2nd Respondent acted on behalf of his mother or on behalf of a third party who is not in the array of the Respondents in the Complaint does not constitute sale of plot in the project under reference. Exhibit A6 Agreement was for construction of villa executed between one of the Complainants and the 1st Respondent



represented by the 2nd Respondent. It is to be noted that agreement for construction cannot be considered as falling within the jurisdiction of this Authority. On going through Exhibit X1 Site Inspection Report, it is evident that the plotted development has been completed and construction of cottages by the purchasers of the plot engaging contractors of their choice was completed or in progress.

22. Considering the above facts and circumstances of the case, the Authority is convinced that it was a plotted development that was completed before the introduction of the Act, 2016 and the project does not come under the Act, 2016. Hence the Complaint is dismissed as it does not fall within the jurisdiction of this Authority.

Sd/-
M.P Mathews
Member

Sd/-
P. H. Kurian
Chairman

True Copy/Forwarded By/Order



Secretary (Legal)

APPENDIX

Exhibits marked on the side of the Complainants

- Exhibit A1(a): The copy of the sale deed No. 1196/2016 of SRO Peermade dated 30.04.2016
- Exhibit A1(b): The copy of the sale deed No. 2536/2014 of SRO Peermade dated 19.09.2014
- Exhibit A1(c): The copy of the sale deed No. 2257/2008 of SRO Peermade dated 23.06.2008
- Exhibit A1(d): The copy of the sale deed No. 2588/2012 of SRO Peermade dated 04.07.2012
- Exhibit A1(e): The copy of the sale deed No. 1490/2009 of SRO Peermade dated 06.04.2009
- Exhibit A2(a): True copy of the building tax receipt No. 6062211001035 dated 26.10.2021
- Exhibit A2(b): True copy of the building tax receipt No. 6062211001043 dated 26.10.2021
- Exhibit A2(c): True copy of the building tax receipt No. 6062211000954 dated 15.09.2021
- Exhibit A2(d): True copy of the building tax receipt No. 6062211000897 dated 29.08.2021
- Exhibit A2(e): True copy of the building tax receipt No. 6062211001056 dated 27.10.2021
- Exhibit A3(a): True copy of land tax receipt dated 14.08.2019
- Exhibit A3(b): True copy of land tax receipt dated 22.09.2020
- Exhibit A3(c): True copy of land tax receipt dated 01.12.2021
- Exhibit A3(d): True copy of land tax receipt dated 03.09.2021
- Exhibit A3(e): True copy of land tax receipt dated 09.12.2021
- Exhibit A4(a): The copy of agreement for sale dated 19.04.2016
- Exhibit A4(b): The copy of agreement for sale dated 28.06.2014
- Exhibit A4(c): The copy of agreement for sale dated 14.06.2008
- Exhibit A4(d): The copy of agreement for sale dated 02.07.2012
- Exhibit A5: The copy of the photographs of the present-day construction
- Exhibit A6: The copy of construction agreement dated 07.09.2016



- Exhibit A7: The copy of the sale deed No. 1879/2017 dated 14.07.2017
- Exhibit A8: The copy of the sale deed No. 3321/2019 dated 23.12.2019
- Exhibit A9: The copy of the sale deed No. 1742/2020 dated 29.09.2020
- Exhibit A10: The copy of the sale deed No. 3681/2021 dated 07.12.2021
- Exhibit A11: The copy of sale deed deed No. 1004/2023 dated 20.03.2023
- Exhibit A12: The copy of the details of sale deeds issued by Sub Registrar, SRO, Peermade

Exhibits marked on the side of the Respondents

- Exhibit B1: The copy of the sale deed dated 18.01.2005
- Exhibit B2: The copy of the sale deed dated 17.11.2006
- Exhibit B3: The copy of the aerial photograph of the Youtube Video dated 04.02.2014
- Exhibit B4(a): The copy of the latest KSEB bill in Complaint No. 1/2023
- Exhibit B4(b): The copy of the latest KSEB bill in Complaint No. 4/2023
- Exhibit B4(c): The copy of the latest KSEB bill in Complaint No. 5/2023
- Exhibit B4(d): The copy of the latest KSEB bill in Complaint No. 8/2023
- Exhibit B4(e): The copy of the latest KSEB bill in Complaint No. 33/2023
- Exhibit B5: The copy of the building permit dated 17.12.2016
- Exhibit B6(a): The copy of communication mail dated 20.11.2021
- Exhibit B6(b): The copy of communication mail dated 03.09.2021
- Exhibit B6(c): The copy of communication mail dated 28.10.2021
- Exhibit B6(d): The copy of communication mail dated 07.11.2021

Exhibits marked on the Official Side

- Exhibit X1: The copy of Site Inspection Report submitted on 04.07.2023 by the Officers of the Authority



- Exhibit X2: The dates of the sale deeds executed were tabulated by the Authority
- Exhibit X3: The dates of the agreements for sale executed were tabulated by the Authority