



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 54/2022

Dated 10th May, 2024.

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

Complainants

1. M Jayaprakash,
S/o Sreedharan Nair,
Bindu Nivas,
Kannampariyaram,
Mankara PO,
Palakkad- 678 613.
2. Bindu Jayaprakash,
W/o Jayaprakash,
Bindu Nivas,
Kannampariyaram,
Mankara PO,
Palakkad- 678 613.

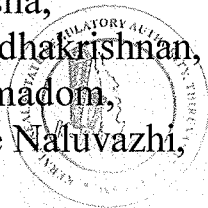
Respondents

1. M/s. Santhimadom Builders and Developers,
Regd Office at South Naluvazhy, North Paravur,
Ernakulam District.
Corporate Office at Santhimadom Health Resort Complex,
Puthenpally, Guruvayoor,
Iringapuram, Thrissur, Kerala -680 130.,
represented by its chairman,



Dr. V.N. Radhakrishnan,
Santhimadom, North Paravur, Ernakulam.

2. Dr. V.N Radhakrishnan,
S/o V.C. Narayanan,
Chairman, Santhimadom,
Thekkenaluvazhi,
North Paravur PO,
Ernakulam,
Kerala -683 513
3. Ragesh Manu,
S/o Radhakrishnan,
Partner, Santhimadom,
Thekke Naluvazhi,
North Paravoor,
Ernakulam – 683 513.
4. Rajesh,
Son-in-law of Radhakrishnan,
Partner and CEO.
Kangath House,
NSS College Road,
Ariyakode, Nenmara,
Palakkad.
5. Ramani Radhakrishnan,
W/o Radhakrishnan,
Santhimadom,
Thekke Naluvazhi,
North Paravoor,
Ernakulam – 683 513.
6. Manjusha,
D/o Radhakrishnan,
Santhimadom,
Thekke Naluvazhi,



North Paravoor,
Ernakulam – 683 513.

7. Renjisha,
D/o Radhakrishnan,
Santhimadom,
Thekke Naluvazhi,
North Paravoor,
Ernakulam – 683 513.

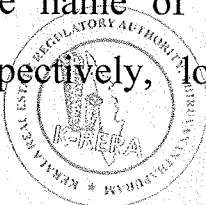
8. Reshma,
D/o Radhakrishnan,
Santhimadom,
Thekke Naluvazhi,
North Paravoor,
Ernakulam – 683 513.

[R1,2,3 &5 By Adv. Suhas Balachandran]

The above Complaint came up for final hearing on 01.11.2023 for which the Complainant No. 1 was present and the Respondents were absent.

ORDER

1. The facts of the complaint are as follows: - The Complainants are husband and wife who were attracted by the advertisements of the promoter / Respondents and booked two villas in the year 2010 at two villa projects of the Respondents/promoters one in Kottappady and the other in Munimada in the name of the 1st Complainant and the 2nd Complainant respectively, located at Guruvayur in Thrissur



district. The 1st Respondent is the real estate builder and developer. The 2nd Respondent is its Chairman and Respondents 3 to 8 are Trust members, who are responsible for the affairs of the 1st Respondent. The Respondents also induced the Complainants by making them believed that the villas would be rented out to the tourists and devotees who visit Guruvayoor Temple and thereby the Complainants can earn more than Rs. 40,000/- per month as rent. An advance amount of Rs. 1,00,000/- was paid on 25.08.2010 to the Respondents while booking the villas for which receipt was issued. Thereafter the complainants left to their place of work at Gurgaon, Delhi. On 09.10.2010 the Chief Executive Officer of Santhimadam, the 4th Respondent the son-in-law of the 2nd Respondent reached the house of the Complainants at Gurgaon and collected Rs. 40,00,000/- in cash for which a receipt dated 09.10.2010 was issued. Another Rs. 25,00,000/- by cheque was also paid. The 1st Complainant has also paid the entire cash for the 2nd Complainant who is his wife. Thus, the Complainants have paid a total sum of Rs. 66,00,000/- (Rupees Sixty-Six Lakh only) to the Respondents for the sale of land and construction of fully furnished three and two A/C bedrooms villas respectively with all amenities in the name of the Complainants.

2. Thereafter on 20.10.2010, a sale deed for an extent of 1.62 Ares in survey No. 99/7 of Iringanam Village was executed by the 2nd Respondent in favour of the 1st Complainant

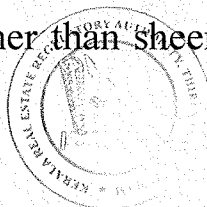


by sale deed No. 1878/2010 of Sub Registrar Office Kottappady and another sale deed for an extent of 1.21 Ares in survey No. 1046/2 of Kandanassery Village wherein there was a basement already constructed for a building project under permit No. 264/08 of Kandanassery Panchayath by a registered sale deed No. 2542/2010 on 01.11.2010 in favour of the 2nd Complainant where the proposed villas are to be constructed. The Respondents got a power of attorney from the Complainants in favour of the 3rd Respondent who is the son of the 2nd Respondent under the guise of authority to represent for and on behalf of the Complainants for submitting applications for the building permits and other connected requirements. Even though the sale deeds were executed for the landed properties in favour of Complainants 1 and 2, the villas were not completed by the Respondents as promised even after receiving the entire amount for the sale of property and the construction of villas. The complainants had visited several times the Respondent's office and requested to complete the villas as promised and agreed. At the time of booking villas, the Respondents have also executed rental agreements in favour of the 1st and 2nd complainants promising to pay Rs. 5000/- per day as rent for the first villa and Rs. 3000/- for the second villa. The Respondents had promised to complete the construction and hand over possession of the villas on or before September 2011. The Promoter/ Respondents have not fulfilled their obligations as per the agreements till the filing of the complaints. The Complainants



came back from Delhi and had been demanding completion and handing over of possession of villas. The complainants several times demanded to refund of the amount paid for the construction of the villas, but the promoters refused to pay back the amount. Even though two sale deeds were executed in favour of complaints, the land is lying as wastelands. The Complainants are willing to re-convey the properties to the Respondents at the present market rate at their cost provided the sale consideration and the amount received for construction should be paid back with interest. An application was filed before the Adjudicating officer as CCP No 121/2020 claiming return of amount under section 18 of the Act, 2016 and as the jurisdictional power is with this Authority, the above application was withdrawn with liberty to file fresh Complaint before this Authority, thus the Complaint filed with this Authority. The relief sought are for direction to the Respondents to return a sum of Rs. 66 lakhs with 18% interest. The Complainants have produced copies of agreements for sale of plot/villa/apartment, sale deeds, rental agreements and payment receipts.

3. The 1st Respondent, represented by the 2nd Respondent for and on behalf of the 3rd and 5th Respondents on 21.07.2022 submitted a written objection and it was submitted that the Complaint is not maintainable either in law or on facts, the same is nothing other than sheer abuse of the process of law the

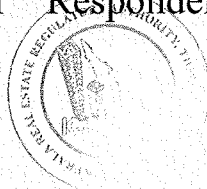


Complainant is not entitled to any reliefs as prayed for and the Complaint itself is only liable to be dismissed. The Complainant has approached this Authority with unclean hands by wilfully suppressing true and material facts. The entire allegation raised in the Complaint are factually incorrect and the same are suited in order to support his false case. The Complaint itself does not stand within the ambit and scope of this Authority and the allegations therein are against the statutory mandates within the scope of the Real Estate (Regulation and Development) Act, 2016. The averments therein are contrary to the intentions of the Act and the Complaint has been preferred upon an experimental basis by manipulating the facts. The entire allegations levelled in the Complaint are denied except that those which are specifically admitted hereunder. The entire para 4, describing the alleged facts of the case, in the Complaint are denied and the allegations therein are wrong and contrary to facts. Moreover, the Complaint is bad for misjoinder of parties and unnecessary persons are made party to this case who all are not at all connected with the allegations in the Complaint. There is no strength in the allegation by the Complainant that villas were not constructed by the Respondents herein, the same is absolutely false and wrong. The properties were executed and transferred to the Complainants and a villa as promised were also constructed and handed over to the Complainants who were monitoring the entire stage of the construction process and there is no merit in the contentions raised

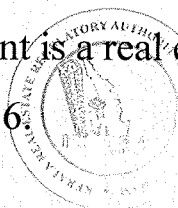


now vide this petition and the same is made with ulterior motives. The Complainants are in possession and enjoyment of the same. The accompanying documents produced by the Complainant herewith are not to be relied upon and the Complainant herein has absolutely no cause of action to institute this Complaint and the same is instituted upon malicious intentions and the Complaint is not at all entitled to any reliefs as prayed for. Exclusive possession and the title of the property and the building are with the Complainants itself and the entire contrary allegations as stated by the Complainants are false and wrong. The properties and structure were handed over as early as on 2013 itself. Furthermore, it is also submitted that the Respondent herein is confined now bed ridden who is compelled to answer to absolutely false and baseless allegations. By reserving their right to file further statement, if necessary, the Respondents requested to dismiss the Complaint with cost as well as compensatory cost to the Respondent herein.

4. When the above complaint came up for initial hearing before this Authority, it was noticed that the project in question is not registered as per Section 3 of the Real Estate (Regulation & Development) Act 2016 [herein after referred to as 'the Act, 2016'], and hence after the first hearing, the Authority decided to initiate Suo-moto proceedings in this regard and issued show cause notice vide No. K-RERA/T1-S/365/2022 dated 22.02.2022, to the 1st Respondent/Promoter directing to show



cause with sufficient explanation as to why the above said project developed by them has not been registered so far before this Authority, as mandated under Section 3 of the Real Estate (Regulation and Development) Act, 2016 and directed them to appear for a hearing on 21.07.2022 with respect to the registrability of the project in question. On the said date of hearing, it was found that the said show Cause notice issued to the Respondents/Promoters were returned unserved, but a Counter statement was sent by the Respondents/Promoter on 21.07.2022 which was found as vague and insufficient. Hence the Respondents were directed to submit detailed counter statement along with all the supporting documents to decide the question of registrability of the project and to attend on 10.10.2022 for hearing along with that of the complaint. All these processes were done by this Authority mainly for deciding the maintainability of the above complaint but no detailed counter statement or documents were forthcoming from the Respondents in spite of the above direction. Hence after the hearing on 10.10.2022, an interim order was passed again directing the Respondents to submit explanation with sufficient documentary evidence as to why the project involved shall not be registered under section 3 of the Act, 2016, within 15 days. The Complainants were also directed to file replication, if any, with supporting documents to prove that the project involved in the Complaint is a real estate project registrable under Section 3 of the Act, 2016.

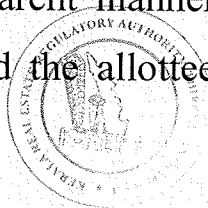


5. Then the 1st Respondent company, represented by the 2nd Respondent and on behalf of the 3rd and 5th Respondents on 13.12.2022, filed an additional statement in which it was submitted as follows: The Respondents or their entity do not come within the definition of the 'promoter' as per the Act 2016 and the issues raised herein do not fall within the sweep of this Authority and prior to the commencement of the Act, the project alleged in the Complaint was completed and the same was transferred in favour of the Complainants, vide Sale Deeds No. 1878/2010 and 2542/2010. The Complainants had taken possession of the property and the building which was completed and handed over in 2013 itself. The Complainants are having the possession certificate and to the knowledge of the Respondents the Complainants have obtained necessary completion certificates. The entire revenue and land records are in the name of the Complainants themselves, who had approached this Authority with unclean hands. The alleged project is not at all an ongoing project and due to the said reasons, this Respondents are not obliged to register the project under Section 3 of the Act. The Complainants had previously filed frivolous Complaints against the Respondents which did not fructify and this Complaint has been preferred only as an experimental measure. Moreover, the Respondents 4,6,7 and 8 arrayed are unnecessary parties who never had any affairs with the 1st Respondent. The answering

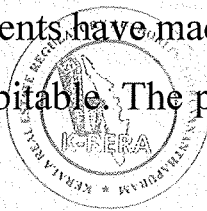


Respondents are the only trust members. The Complaint itself does not stand within the ambit and scope of this Authority and the allegations therein are against the statutory mandates within the scope of the Act 2016. Further, the Respondent is now bed ridden who is compelled to answer to false and baseless allegations. By reserving their right to file further statement, if necessary, the Respondents requested to dismiss the Complaint with compensatory cost to them. No documents have been produced by the Respondents.


6. The Complainants, on 15.12.2022, filed rejoinder, denying the allegations raised in the statement filed by the Respondents, as follows: All the averments contained in the said statement are devoid of merit and without any legal basis and the Complainants have not suppressed any material facts but stated the correct and actual affairs pertaining to the transaction on the basis of the contract entered into with the Respondents. The supporting documents are produced along with the Complaint which substantiates the true state of affairs. The statement in paragraph No. 2 and 3 of the written objections is not legally sustainable, as the very purpose and object of the enactment of the Act, 2016 is to regulate the real estate sector and to protect the interest of consumers by providing an adjudicatory mechanism in an efficient and transparent manner for redressing the dispute between the builder and the allottee. The Respondents have not denied the



agreement and the monetary transaction they have entered with the Complainants and admitted that they are promoters of real estate project as contemplated under the RERA Act 2016 and the Complainants are allottees under them by virtue of the agreement. The Complaint is perfectly maintainable before the Real Estate Authority for adjudication. The statement in paragraph 4 of the written objection is vague. A general denial of averments is not sufficient and it is against the very foundation of pleadings. The Respondents have not replied to the facts pleaded in paragraph No. 4 of the Complaint and has not specifically denied any of the particulars contained therein. So also, they have not stated as to who all are unnecessary parties and how misjoinder will apply. The Respondents themselves admitted that they are the partners of the 1st Respondent firm in the Consumer Case instituted against them by other allottees. The Respondents have suppressed the fact of Stop Memo issued by the Guruvayoor Municipality, Kandanassery and Pookode Panchayaths. The Respondents have also given an undertaking before the Taluk Legal Service Committee, Chavakad to complete the construction and hand over possession which they never carried out. Therefore, their allegation of completing the building and handing over possession is false. The allegation in paragraphs 5 & 6 of the written objection is not correct and denied. After receiving the full amount for the sale and construction of the building, the Respondents have made only some skeleton structure which is not made habitable. The possession has not been handed

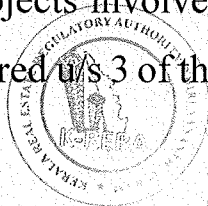


over as per the terms of the contract. The Respondents have no document to show with regard to the completion of the building and handing over possession to the Complainants. Apart from mere execution of a sale deed and obtaining a Power of Attorney in their favour for carrying out construction, nothing whatsoever was carried out by the Respondents. All throughout the Respondents were in possession of the property. The allegations in para 7 and 8 are false and denied. The Complainants have no malicious intention but instituted the Complaint for realizing the loss sustained by them out of the deceptive practice and breach of contract committed by the Respondents. As stated supra, apart from mere execution of the sale deed, no possession of the property of the building was ever handed over to the Complainants. The intention of the Respondents is to circumvent the proceedings by misleading the Authority. They have also instituted a civil case before the Munsiff's Court, Chavakkad in spite of the bar under Section 79 of the RERA Act. The project undertaken by the Respondents is an ongoing project and they have not complied the direction issued by this Authority in the Show-cause notice dated 22-02-2022. Therefore, the Respondents are liable to be penalized u/s 59 of the Act for non-compliance of registration u/s 3 of the Real Estate (Regulation and Development) Act, 2016. The act of the Respondents will also amount to violation of the order No. 102/K-RERA/T3/2019 Dt. 09-11-2022 issued by this Authority.



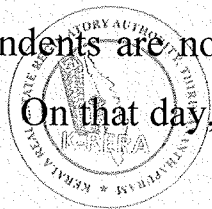
Therefore, the written objection filed by the Respondents be dismissed and the Complaint be allowed.

7. In compliance of the directions from this Authority to submit more evidence to decide the issue of maintainability, the Complainants submitted another additional statement dated 31.07.2023 along with copy of latest order dated 31.05.2023 from Sub Court, Chavakkad in O.S. 605/2013 filed by some other allottees, in which it was found that the Respondents have failed to complete the construction as agreed to the allottees and hence they are liable to return the amount to the plaintiffs/allottees. The Complainants submitted further that the Respondents made advertisements through medias about the project at Mammiyoor, Kottapadi and Munimada as Santhimadom Resorts under the name of Santhimadom Builders and Developers. The copy of the advertisement and the model of the buildings proposed to be constructed under different names are also produced in which the Respondents have admitted that they are a Real Estate Group and the land is developed as a project for construction of building by dividing it into plots. The Complainants reiterated that non-submission of explanation by the Respondents with sufficient documentary evidence to prove their contention, despite several directions given in this regard by this Authority would also indicates that the projects involved in the Complaint are the ones required to be registered u/s 3 of the Act. It was specifically alleged



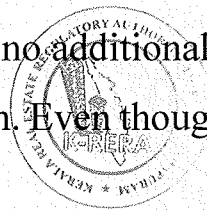
by the Complainants that they decided to purchase villa in the project by investing their hard-earned savings amounting to Rs. 66 lakhs during the year 2010 solely on the basis of the promises given by the Respondents through attractive brochures and other advertisements, with respect to several common amenities but the Respondents have not completed the villa and not handed over possession of the villa or common amenities. The relief sought for by the Complainants is for direction to the Respondents to return the sum of Rs. 66 lakhs paid by them along with 18% interest.

8. As the Respondents raised the issue of maintainability of the Complaint, the case was posted for hearing on maintainability on 15.12.2022. After hearing on that day, prima facie it was observed that real estate projects are not yet completed and there was not even a proper agreement for sale entered into by the Respondents with the Complainants/allottees. As requested by the Complainant, the case was posted for a physical hearing on 27.02.2023 which was rescheduled to 10.03.2023. On that day, the Complainant No. 1 and his counsel and counsel for the Respondents appeared and heard both of them in detail on the issue of maintainability. The Counsel for the Respondents submitted that Respondents No. 4, 6, 7, and 8 are unnecessary parties to the complaint. But no documents have been produced showing that these Respondents are not responsible to the activities of the 1st Respondent. On that day, it was informed by the Authority to the

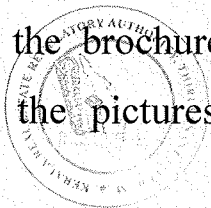


counsel concerned that the additional statement filed by the Respondents was also not satisfactory or a full-fledged one in respect of their contentions as to violation of Section 3 of the Act, 2016 and none of their contentions were supported by any documents. After hearing, the Authority passed interim order dated 13.03.2023, in which the Respondents were directed again to file additional statement in detail with supporting documents and the Complainant was also directed to file sufficient details and documents in support of the Complaint to establish that project is an ongoing real estate project comes under the Act 2016. Notices were also issued to the Secretary, Guruvayoor Municipality and the Secretary, Kandanasseri Grama panchayath of Trissur district, since the project involved with respect to the 1st Complainant is in Guruvayoor Municipality and that to the 2nd Complainant is in Kandanasseri Grama panchayath, with direction to appear before the Authority with detailed report about these projects with supporting documents such as permits/sanctions/completion certificates issued by them. Both parties to the complaint were also directed to attend in person directly on 22.05.2023.

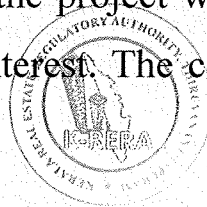
9. When it came up for hearing on 22.05.2023, it was noticed seriously that no action has been taken by the Respondents to comply with the above direction of this Authority, given as the part of the inquiry and no additional statement or documents have been submitted by them. Even though several directions have been



given to the Respondents to produce sufficient documents in proof of their contentions that “the complaint is not maintainable and the projects in question do not come under the purview of the Act 2016”, the Respondent have shown complete negligence in this regard. At the same time, the Complainants have filed one more detailed rejoinder/statement along with a bulk of documents including brochure of the projects in question and copy of Synopsis of Writ Petition filed by the Respondents before the Hon’ble High Court of Kerala between Santhimadom Builders Vs Commercial Tax Officer & Ors. The Complainants also produced copies of 1) order in a Writ Petition between Santhimadom Builders Vs Rural Superintendent of Police and Ors., 2) Coloured Booklet/Brochure Advertisements, 3) Coloured Picture of the Present Status of the project, 4) Enquiry Report 1529/2011-C submitted by G Somesekhar, Superintendent of Police, to Hon’ble Justice G Sasidharan, Upa-Lokayukta, and 5) Statement submitted to Economic Offences Wing, Crime Branch by the Respondents. In the said statement, the complainants reiterated their earlier contentions and submitted further as follows: “The project was announced and marketed by the builder from 2008 through carefully created brochures, pamphlets and videos using celebrities offered state of the art living facilities and a township with impeccable designing and stylish planning. The Complainants were lured by the brochure issued by the Respondents which conceptualized the pictures of the conceived project. The



construction works started in the year 2010 and relying on the assurances and promises given by the builder that the property is completely free from encumbrance and the project shall be completed within 11 months from the date of agreement, Complainants purchased two villas one in Kottapady and the other in Munimada in the said project. The Complainant purchased the villas after selling all the belongings so as to have a place of abode near Guruvayoor temple to lead a pious life during last stage of life. As per the agreement terms, the builder shall complete the whole project with all the amenities and facilities within 11 months' time period shown in the agreement and if it is violated by the Respondent, he shall return the amount received from the Complainants with interest. Completion of a 'Real Estate Project' is not merely the completion of building/s or execution of sale deeds or receipt of Development Certificate/Occupancy Certificate from the local authority but completion of the whole project with all the common amenities and facilities as committed to the allottees by the Promoter. They produced copy of WP(C) No. 22564 of 2022 filed before the Honourable High Court of Kerala by a Group of 40 allottees of Munimada project for non-issuance of possession certificate for individual villas purchased from the Respondents. The Complainants allege that despite fulfilment of all the terms and conditions from their part, the Respondents neither completed the project within the time limit nor refunded the amount with interest. The construction started in the year of



2009-10 and most of the Complainants executed their agreements in the same year. The completion of the project protracted for years together in breach of the agreed period and finally the skeleton structure of villas/apartments completed for name's sake, with accessories of low quality. The interior works of the villas have not been completed and handed over so far. The copy of Statements of facts by the 2nd Respondent before the District Registrar, Palakkad also produced in which it was admitted that they have not handed over the villas to the Complainants which is contrary to the admission made before this Authority that the Properties and structure were handed over as early as on 2013 itself. The work in the project has been not completed and after 2019 no work has been carried out by the Respondent and there is no move to complete them in entirety. They produced copy of statement made to the Taluk Legal Service Authority dated 08-12-2018 stating that the villas will be completed. copy of objection submitted by the Respondents before the JFCM Court Chavakkad in Crl. M.P 1227/2022 is also produced in which it was stated that the project under reference is incomplete and ongoing. The inconsistent and misleading statements of the Respondents can be noticed in every documents submitted to various Courts, RERA and the Government Departments, alleging that no payment has been made for the constructions/ INR 20 Lakhs only paid/ Fabricated a receipt of INR 40 Lakhs/ INR 44 Lakhs to be paid by the petitioner etc. and Villas were already handed over as early as in 2013/ Villas

have not been handed over/ Respondents have been carried out the construction of the Villas for an amount of INR 25 Lakhs and INR 41 Lakhs etc. More over in the civil case No. O.S .24/2022 filed against the Complainant in the Munsiff Court, Chavakkad by the Respondents on 04.01.2022 stating that the Respondents had already carried out the Construction of Villas and there is an excess of works fixed for an amount of Rs. 3,00,000/- and cause of action arose on 25-08-2010 and 24-08-2021. Produced copy of the said plaint in OS 24/2022 filed by the 1st Respondent against the Complainant against them. The copies of letter from the Secretary Kandanasseri Grama Panchayat to the Inspector of Police, Guruvayur vide No. A3/4808/18 dated 16-11-2018 produced which state that no permission was granted for the construction of building in the name of the Villa owner. It was submitted by the complainants that the pending works are related to plastering, tile work, electrical fittings/connection, water connection, furnishing, air-conditioning and septic tanks etc. No completion certificates obtained; no electricity connection or building number obtained so far. The copy of order of Hon'ble High Court of Kerala dated 07.12.2022 is also produced. When the Complainant approached the JFCM Court Chavakkad, the Complainant came to know of the violations committed by the Respondent in the project. The building is constructed on "Nilam" and as per Kerala Conservation of Paddy Land Wet Land Act 2008, there is a specific bar on building construction. Produced copy of Show cause notice/Stop

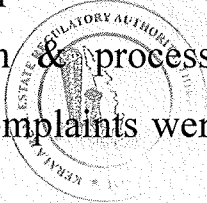


Memo issued by the Secretary Pookode Grama Panchayat & Guruvayur Municipality since 2008 and Respondent's reply to the notice. The said constructions at Kottapady are in clear violation of Rule 30(2) of 27(a) of the KMBR Rule. As per the provision of KMBR, building permit should not be issued before obtaining the lay-out sanction from the concerned authorities. Produced copy of Show-cause Notice issued by the Secretary Pookode Grama Panchayat & District Town Planner Trissur. The then Secretary of Pookode Grama Panchayath had unauthorizedly issued building permit for the construction of 111 villas of Kottapady site. The Secretary of the Kandanassery Grama Panchayath had issued building permits for the construction of 84 villas at the Munimada site. The Grama Panchayath Secretary had issued building permit before issuing the development permit and obtaining lay out approval from the District Town Planner Trissur or Chief Town Planner Thiruvananthapuram. Produced copies of notices issued by the Chief Town Planner, Thiruvananthapuram to Secretary LSGD on 04-05-2009 & 24-03-2012. Even though the Panchayath Secretary issued building permit for only 84 buildings, Respondents had carried out the construction of 220 villas. In fact, the builder obtained the permit by misrepresenting facts. Some of the villas are constructed within the restricted portion of the monument protected by the Archaeology Department. The prevailing rule is that no construction should be carried out within the area of 100 meters of the protected monument and sanction

should be obtained for the construction of any new building within the next 100-meter area. The Respondents had completely violated the rules and carried out the construction work. Produced copy of Notice F. No. 1/125/TSR/2004-M 2161 dated 24th Jul 2009 addressed to 1st Respondent by the GOI, Letter F. No. 1/125/TSR/2004-M 2718 dated 07th Sep 2009 to Superintendent of Police Trissur, No. F. No. 1/125/TSR/2004-M 2162 dated 24th Jul 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 3016 to 3018 dated 29th Sept 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 2690 dated 1st Sep 2009 to Director General Archaeological Survey of India, F. No. 1/125/TSR/2004-M 3069 dated 6th Sep 2009 to District Collector Trissur, F.No. 1/125/TSR/2004-M 3018 dated 1st Oct 2009 to the 1st Respondent. Some of the partly constructed villas in the project were collapsed, while the construction work was in progress in Munimada site, due to the lesser quality substandard building materials. The debris were removed overnight and due to this dangerous unauthorized construction procedure of the Respondents, the Panchayath authorities issued notice to stop the construction works at Munimada vide order dated 27-07-2010, as per Section 235 O & Section 235 X (1) of Kerala Panchayat Raj Act. The builder fraudulently obtained the permits from the Panchayath in the name of villa owners and the original owners never built any structure. Produced copies of letter from Guruvayur Municipality PKD/E1-

3302/2022 dated 23.02.2022 for Kottapady Project & letter from Kandanasseri Grama Panchayat No. 400672/GGR106/GPO/2023/1723/1 dated 08-03-2023 for Munimada Project, and letter No. 400672/GGR112/GPO/2022/5834/1 dated 17-01-2023 for Munimada Project. Any unauthorized construction by any agency within the prohibited area of a Centrally Protected Monument may invite action as per the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and subsequent AMASR Amendment and Validation Act, 2010. The Archaeology Department had issued letter to the District Collector vide 1/125/TSR/2004-M-2213 dated 29.07.2009 & 06-09-2009, Secretary, Kandanassery Grama Panchayath on 24.07.2009 & 01.10.2009 and District Superintendent of Police Trissur on 07-09-2009 terming this construction as unauthorized and all unauthorized constructions are liable for demolition. The project in question was supposed to be completed in the year 2011 and the Complainant purchased the villas believing the words of the Respondent that the project with all the amenities shall be completed and handed over at the earliest. The Respondent/builder has not even obtained any approval required for constructions and the project has not been handed over so far and the documents related to the project have not been handed over to the allottees till date. Produced copy of reply from Guruvayur Municipality, vide letter No. PKD/E1-3302/22 dated 23-02-2022, reply from Director

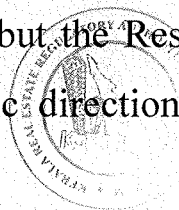
Panchayat vide letter No. PAN/2015/2022-C1(DP) dated 20-07-2022 & Secretary Kandanasseri Grama Panchayath vide SC1-4819/2022 dated 16-12-2022 stating that all constructions were illegal and not regularized. The Respondents themselves admitted that they are the partners of the 1st Respondent firm in the consumer case instituted against them by other allottees. Produced copy of Kerala State Consumer Dispute Redressal Judgements vide no. C.C. No. 28/2012 & C.C No. 44/2012. The Respondents have suppressed the fact of Stop Memo issued by Guruvayoor Municipality, Kandanassery and Pookode Panchayath. The Respondents have also given an undertaking before the Taluk Legal Service Committee, Chavakad that he will complete the construction of the project and hand over possession. Therefore, their claim of completing the building and handing over possession is false. The project is not completed and it has not obtained any Occupancy Certificate till date. Hence the said project requires mandatory registration under Section 3 of the Act. The Respondents have no document to show the completion of the building and handing over possession to the Complainants. Apart from mere execution of a sale deed and obtaining a Power of Attorney in their favour for carrying out construction, nothing whatsoever was carried out by the Respondents. All throughout the Respondents were in possession of the property. With regard to the delay in completion & processes gone through for getting approvals, several complaints were filed against Respondents by



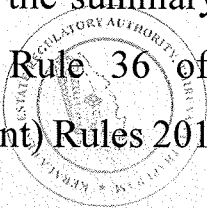
the allottees of the projects before various forum/authorities and are at different stages. Copy of order dated 6.12.2017 in Tr.P.(Crl)No. 57 of 2016 and List of criminal cases pending at JFMC Court Chavacaud & Consumer Case pending at Kerala State Consumer Disputes Redressal Forum against the Respondents are produced. On the date of commencement of the Act, the Respondent Promoter had not obtained occupancy certificate for the phase in which the Complainant had booked the Villas and hence it ought to have been registered with K-RERA. The Respondent/ Promoter had violated the provisions of the Act and hence the rights of the Complainants under the Act cannot go away on account of non-registration of the said phase in which the Complainant had booked his villas. Therefore, the Complainant is an allottee as defined under Section 2(d) of the Act. Respondents failed to perform their part of the contract and violated its terms and conditions by failing to perform their part of the contract and violated its terms and conditions by failing to complete the construction of the Villas and hand over possession to the Complainants within the specified period in the agreement and made lawful enrichment by receiving the amount on promise of construction and sale of villa. The Respondents acted fraudulently and cheated the complainants by which they suffered monetary loss and undergone mental agony. A 15 days' show cause notice K-RERA/T1-S/365/2022 dt. 22. 02.2022 was issued by the Authority to Respondents directing them to reply with sufficient

explanation as to why the above said project has not been registered before the authority, failing which the Authority would be constrained to initiate necessary actions as per penal provisions of Act 2016 as deemed fit. Whereas, the Respondent deliberately failed to reply to the Authority with documents such as Development Permit, Building Permit and details such as Land Area, number of Plots/Units proposed, Brochure/Prospectus and with related documents if any even after passing 15 months and the Builder/Promoter contravened the orders/directions of the Authority repeatedly. The builder also turned a blind eye to the direction of the Authority in the previous physical hearing that the Respondents shall file an additional statement if any, in detail with supporting documents before the next posting date after serving copy to the Complainants within 15 days. The Hon'ble Supreme Court of India in its judgement dated 11.11. 2021, in the case of Newtech Promoters and Developers Private Limited vs State of UP and others set a precedent with respect to applicability of Real Estate Regulation and Development Act, 2016 as a retroactive act on 'ongoing projects. Therefore, it is prayed to dismiss the written objection filed by the Respondents and allow the Complaint.

10. When the matter came up for hearing on 22.05.2023, the Complainant and his Counsel and the Counsel for Respondents 1,2,3, and 5 attended but the Respondents were not appeared in person despite specific direction vide order dated 13.03.2023.



Even though, there was direction to file additional statement with supporting documents to prove the contentions of the Respondents with regard to maintainability of the complaint, they did not comply with the direction or submit any detailed statement or documents. During the hearing, the Complainant No. 1 repeatedly alleged that no permit was obtained by the Respondents/Promoters for construction of the houses/villas at Munimada and Kottappady. In these circumstances, this Authority passed interim order dated 22.05.2023 again directing the Respondents to produce permit, approved plan and occupancy certificate/completion Certificate if any, received from the local body with respect to both the projects in Munimada and Kottappady before the next posting date on 31.07.2023 and all other documents related to these projects. On that day, it was also decided to depute two officers of this Authority to conduct site inspection in both the project sites, to visit the local authorities concerned, verify the files and to submit a detailed report verifying whether it is a registerable real estate project comes under the purview of Act or not, before the next posting date, after giving notices to both parties. Notices were sent to all the Respondents again directing them to appear in person before the Authority finally on 31.07.2023. All these were done by the Authority as a part of the summary procedure for inquiry, as contemplated under the Rule 36 of the Kerala Real Estate (Regulation & Development) Rules 2018[hereinafter referred to as



‘the Rules 2018’], to decide the issue of maintainability of the complaint raised by the Respondents/Promoters herein.

11. As per the direction of this Authority, two technical officers of this Authority conducted site inspections of both the projects in question & visited the local authorities concerned on 30.06.2023 and submitted a report dated 31.07.2023 which is marked as **Exbt. X1**. The Photographs showing the present status of the project site and buildings were also enclosed with the said report. As per the site inspection report dated 31.07.2023, in kottappady, the villa project was developed in 2 phases. In the 1st phase 87 villas are seen completed and received occupancy for the villas and owners’ association was formed in 2012 itself. At present 40 villas are occupied by 3 owners and 37 tenants in the 1st phase of the project. Apart from villas, 3-storied buildings were also seen at the site. But in the 2nd phase of the project, though 19 villas were proposed to be constructed, most of the villas are seen incomplete. On verification of the files available at Guruvayoor Municipality related to Santhimadom villas at Kottappady, following facts are observed: There are a total of 113 buildings, of which 107 are villas and 6 other occupancy buildings. Building numbers were issued for 84 villas. Remaining 21 buildings are partially completed. Out of 6 other occupancy buildings, 2 three-storied buildings were assigned with the building numbers. The Pookode Grama Panchayat, which was merged in Guruvayoor

Municipality later in 2010, gave permissions for the construction of these buildings and assigned building numbers. No development permit was obtained by the Promoters. Photographs showing the status of the project site and buildings are enclosed. With respect to Villa at Munimada, the construction works of 200 villas are seen at various stages and it could be seen that the project is incomplete in all respects. The photographs in respect of this project at Munimada also are enclosed with the said Report.

12. For the hearing conducted on 31.07.2023, the Complainant No. 1 appeared directly and the Counsel for the Respondents and the Secretary of the Kandanassery Grama Panchayath attended online. The Counsel for the Respondents informed that the interim order dated 22.05.2023 passed by this Authority has been challenged by them before the Hon'ble High Court of Kerala and the proceedings with reference to the Interim Order dated 22.05.2023 have been stayed for three weeks by the Hon'ble High Court of Kerala on 31.07.2023 in the Writ Petition WP (C) No. 24764/2023. Thereafter, we received the final judgement of the Hon'ble High Court dated 07.09.2023 in which it was seen observed that "the question of maintainability of the Complaint No 54/2022 ought to have been considered by this Authority at the first instance and only thereupon could it have issued an order like dated 22.05.2023" and hence the order dated 22.05.2023 was set aside with direction to this Authority 'to first

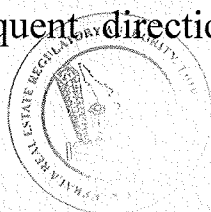
consider the contention of the petitioner against the maintainability of the Complaint No. 54/2022 after affording a necessary opportunity of being heard to both sides'. The Hon'ble High Court further made it clear that depending upon the decision to be taken by K-RERA as afore, the Authority will have full liberty to initiate and pursue any action as is statutorily permitted including to seek personal appearance of the petitioners, as may be warranted.

13. Accordingly, in compliance of abovesaid direction of the Hon'ble High Court of Kerala, this Authority issued notices to both the parties and called upon them for the hearing scheduled on 18.09.2023. When the matter came up on that day, none of the parties appeared/attended the hearing and hence the case was adjourned to 03.10.2023. On the said day, only the Complainant No. 1 appeared for himself and on behalf of the Complainant No. 2, his wife. But the Respondents have not appeared despite serving notice on them and the Counsel appeared earlier for them communicated through e-mail that he has relinquished Vakalath. In these circumstances, we decided to give final opportunity of being heard and interim order dated 03.10.2023 was issued, directing the Respondents to produce all documents related to the project including permits, approved plan and occupancy/completion certificate, if any, received from the local body, for the projects at Munimada and Kottapady to decide the maintainability of the Complaint/registrability of the projects

before the next hearing date on 01.11.2023. It was also specified that in case of further failure on the part of the Respondents to appear for the hearing on the next posting date as directed, the matter will be decided ex-parte. In the next hearing held on 01.11.2023, again the Respondents neglected the order of this Authority and they were not even represented by anybody or not a single document was produced in compliance of the specific direction, vide interim order dated 03.10.2023 mentioned above. In pursuance of the order of the Hon'ble High Court dated 07.11.2023, the Authority has given ample time to the Respondents to appear and submit documents in proof of their contentions as to maintainability and also to defend the contentions of the complainants with respect to the relief claimed in the complaint. But the Respondents/Promoters have neither attended nor engaged a Counsel in any of the hearings scheduled on 03.10.2023 and 01.11.2023. Rule 36 (2) (i) of the Rules 2018 specifies that "*if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*" In the above circumstances, this Authority, in exercise of the powers conferred by Section 37 of the Act 2016 r/w Rule 36(i) of the Rules 2018, issued an ex-parte order dated 19.01.2024, with finding on the basis of the available documents placed on record by the Complainants and the Exbt. X1 Report of inspection conducted by

this Authority that the projects in question come under the ambit of the Act 2016 and hence the above complaint is maintainable before this Authority. In the said order dated 19.01.2024, the Respondents No. 1 & 2 were directed to register the projects in question located at Munimada and Kottapady before this Authority as per Section 3 of the Act 2016 within 15 days from the date of receipt of the said order and specified that in case of further failure to comply with the said direction, the penal provisions under Section 59(1) of the Act 2016 shall be initiated. But the Respondents/Promoters have not taken any single step to obtain registration of the said projects till date.

14. The above complaint was received on 11.02.2022 and as it was noticed that said projects referred in the Complaint were not yet registered under Section 3 of the Act 2016, Show Cause Notices were issued to the Respondents/Promoters on 22.02.2022 seeking their explanation in this regard, as per the usual practice followed by this Authority to verify and confirm whether the projects in question come under the Act 2016 and whether the complaint is maintainable before this Authority. Though the said notices were returned unserved, on the very next hearing date on 19.05.2022, and subsequent hearings conducted on 21.07.2022, 10.10.2022, 15.12.2022, 10.03.2023, 22.05.2023, 31.07.2023 the Respondents No. 1,2,3 & 5 appeared through their counsel. Despite our frequent directions to submit detailed and clear

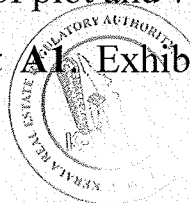


statement along with documents in proof of their contentions, nothing was done from their part on the aforementioned dates of hearings. Instead of co-operating with the inquiry process of this Authority, they approached the Hon'ble High Court of Kerala against the interim order dated 22.05.2023 directing them to appear in person and produce documents concerned such as permits, approved plan and Occupancy/completion Certificates obtained from the local authorities so as to decide the question of maintainability raised by them. During the hearings conducted on all the above dates, this Authority was trying to collect as much evidence as possible from both the parties as well as the local authorities concerned to adjudicate the matter of maintainability of the Complaint. But the Respondents/Promoters who simply raised the issue of maintainability through a vague reply statement have not submitted any single piece of evidence to corroborate their contention that the Projects do not come under the Act 2016. Rather than co-operating with the inquiry process having conducted by this Authority, the Respondents/Promoters opted to evade the show cause notices and the interim orders passed by this Authority and to challenge one of such orders simply requiring them to be present in person and produce documents concerned. From the order dated 07.09.2023 of the Hon'ble High Court of Kerala, it is apparent that the Respondents have critically misguided the Hon'ble High court by making false contentions the issue of maintainability was not considered by this Authority and

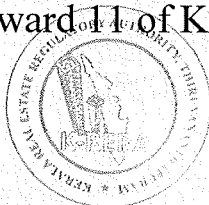


their personal presence was sought without hearing them, etc. In fact, after having passed several directions which were neglected/violated continuously by the Respondents, this Authority passed the said impugned order directing them to appear in person and produce certain documents to decide the issue of maintainability of the complaint and registrability of the projects in question. However, the big volume of documents placed on record by the Complainants herein would reveal that the Respondents/Promoters are habitual recalcitrant people who have been enriched unjustly, keep on playing such tricks and tactics to refract the judicial process by misleading even the higher courts. Anyhow, the Respondents were set ex-parte as mentioned above, and we have decided to pass ex-parte order on the above complaint in which the Complainants seek refund of the amount paid by them to the Respondents towards consideration for purchasing two villas, in the real estate projects developed by the Respondents at Kottapady and Munimada, in the names of Complainants No. 1 and Complainant No.2 respectively.

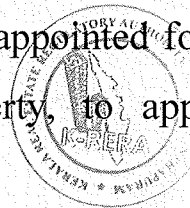
15. The documents produced by the Complainants are marked as **Exhibit A1 to A36** and the site inspection report by the Officers of this Authority is marked as **Exhibit X1**. The Respondents have not produced any documents. The copy of agreement for sale of plot and villa/Apartment dated 25.08.2010 is marked as **Exhibit A1**. Exhibit A1 agreement is entered in to



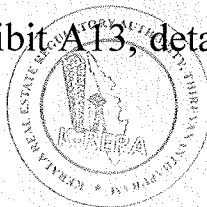
between the 1st Respondent represented by the 2nd Respondent its chairman and the 1st Complainant on 25.08. 2010. It was specified therein that the performance of the agreement shall be for 11(eleven) months and a token advance of Rs. 1,00,000/- was received by the Respondent and the Respondent agreed to develop the land and construct apartment also to execute sale deed in favour of the Complainant or his nominees. The copy of rental agreement dated 1.11.2010 executed by the 1st Complainant in favour of 2nd party therein which is another entity M/s Santhimadom Health Resort & Research Institute, represented by the 2nd Respondent is marked as **Exhibit A2**. In Ext. A2 it was stated that the 1st Complainant is the absolute owner of 4 cents of land in survey No. 99/7 of Iringapuram village ward 5 of Guruvayoor Municipality as per sale deed No 1878/1/2010 and the 2nd party made arrangement for getting permit or license or approval or renewal of serviced villas owned by the 1st Complainant and entrusted the 2nd party for making necessary arrangement for running serviced villas and the 2nd party undertaken to pay 90% of the rent amount of every month R. 5000/-. The copy of rental agreement dated 1.11.2010 executed by the 2nd Complainant in favour of 2nd party therein which is another entity M/s Santhimadom Health Resort & Research Institute, represented by the 2nd Respondent is marked as **Exhibit A3**. In Ext. A3 it was stated that the 2nd Complainant is the absolute owner of 3 cents of land in survey No. 1046/2 of Kandanassery village ward 11 of Kandanassery Panchayath as per



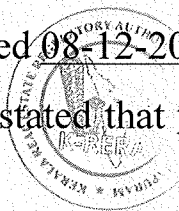
sale deed No 2543/1/2010 of Kunnamkulam SRO and the 2nd party made arrangement for getting permit or licence or approval or renewal of serviced villas owned by the 1st Complainant and entrusted the 2nd party for making necessary arrangement for running serviced villas and the 2nd party undertaken to pay 90% of the rent amount of every month Rs. 3000/- The copy of payment receipt of Rs. 1,00,000/- dated 25.08.2010 issued by the 1st Respondent is marked as **Exhibit A4**. The copy of payment receipt of Rs. 40,00,000/- dated 09.10.2010 issued by the 1st Respondent is marked as **Exhibit A5**. The copy of bank statement showing payment of Rs. 25,00,000/- by the Complainant through cheque is marked as **Exhibit A6**. The copy of sale deed dated 20.10.2010 executed by the 2nd Respondent in favour of the 1st Complainant is marked as **Exhibit A7**. As per Ext. A7, an extent of 1.62 Ares of land was transferred to the 1st Complainant and there is no mention about any building or villa in the said land. The copy of sale deed dated 01.11.2010 executed by one Raghurajan and the 2nd Respondent in favour of the 2nd Complainant is marked as **Exhibit A8**. As per Ext. A8, an extent of 1.21Ares of land was transferred to the 2nd Complainant and there is no mention about any building or villa in the said land. The copy of power of attorney dated 03.02.2011 executed by the 1st Complainant in favour of the 3rd Respondent, S/o 2nd Respondent is marked as **Exhibit A9**. As per Ext A9, POA was appointed for purposes which includes, cause mutation of property, to appear before panchayath, KSEB,



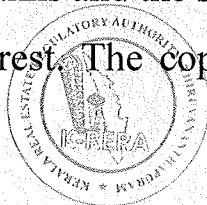
telephone exchange to sign and submit application etc, to execute construction agreement etc. with building contractors for constructing villa as per plan approved. The copy of power of attorney dated 03.02.2011 executed by the 2nd Complainant in favour of the 3rd Respondent, S/o 2nd Respondent is marked as **Exhibit A10**. As per Ext A10, POA, was appointed for purposes which includes, cause mutation of property, to appear before panchayath, KSEB, telephone exchange to sign and submit application etc, to execute construction agreement etc. with building contractors for constructing villa as per plan approved. The copy of Synopsis in a memorandum of Writ Petition filed by the Respondents before the Hon'ble High Court of Kerala between Santhimadom Builders Vs Commercial Tax Officer & Ors is marked as **Exhibit A11**. In Exhibit A11, the 1st Respondent declares that the 1st Respondent is a developer cum builder engaged in the construction of villas and flats for sale to prospective customers. The copy of order in a Writ Petition No 15811/2010 between Santhimadom Builders Vs Rural Superintendent of Police and Ors is marked as **Exhibit A12**. In Ext A12, it was recorded that the 1st respondent is a Trust to carry out construction work at Munimada, as per the plan approved by the Kadanassery Grama Panchayath and is engaged in construction of villas. The copy of Coloured Booklet/Brochure Advertisements, Coloured Picture of the Present Status of the project are marked as **Exhibit A13**. In Exhibit A13, details of various projects of the 1st



Respondent had been advertised. The copy of Enquiry Report 1529/2011-C dated 07.01.2013 submitted by G Somesekhar, Superintendent of Police to Hon'ble Justice G Sasidharan, Upa Lok Ayukta is marked as **Exhibit A14**. The copy of Statement submitted by the 2nd Respondent to Economic Offences Wing, Crime Branch is marked as **Exhibit A15**. In Exhibit A15, the 2nd Respondent stated that the 1st Respondent Trust purchases land and then constructing villas in 5 projects including that of the Complainants and the practice is that after registering the land in the name of the customers, they are constructing the villas. In Exhibit A15 it has further stated that he had entered agreements with the Complainants and registered sale deeds in their names and construction completed in respect of their villas. The copy of order in WP(C) No. 22564 of 2022 before the Hon'ble High Court of Kerala by a Group of 40 Munimada allottees for non-issue of possession certificate for individual villas purchased from the Respondents is marked as **Exhibit A16**. The copy of Statements of facts submitted by the 1st Respondent dated 23.11.2022 to the District Registrar, Palakkad is marked as **Exhibit A17**. In this Exhibit, the 1st Respondent has stated that the Complainants had purchased two villas from the 1st Respondent Trust and they have not handed over the villas to the Complainants. The copy of statement made by the 2nd Respondent before the Taluk Legal Service Authority dated 08-12-2018 is marked as **Exhibit A18**. In the statement, it was stated that the Villas will be completed and



for completion, the money required will be obtained through selling the property beyond the project. The copy of objection filed by the Respondents before the JFCM Court Chavacaud in CrI. M.P 1227/2022 is marked as **Exhibit A19**. The copy of letter from the Secretary Kandanasseri Grama Panchayat to the Inspector of Police, Guruvayur Police Station vide No. A3/4808/18 dated 16-11-2018 is marked as **Exhibit A20**. In this Exhibit it was replied by the Secretary Kandanasseri Grama Panchayat that no permission was granted for the construction of building in the name of the 2nd Complainant. The copy of the Plaint in O.S. 24/2022 dated 04.01.2022 filed by the 1st Respondent against the Complainants in the Munsiff Court, Chavacaud is marked as **Exhibit A21**. In this Exhibit it was stated that he had carried out construction of villa to the 1st Respondent for an amount of Rs. 25 lakhs and the 2nd Respondent for an amount of Rs. 41 lakhs and executed construction agreement and executed two sale deeds and the Complainants had not paid any amount for construction of villa and have paid land value only and the reduced value shown as per the sale deeds are due to the interest of the Complainants. Accordingly, land value had been settled between parties and the dispute is with respect to the value of the construction of villa. According to the Respondent he had already carried out construction and there is an excess works of construction of the villa is fixed for Rs. 3 lakhs and the suit are for realization of these 3 lakhs with 12% interest. The copy of order of Hon'ble High



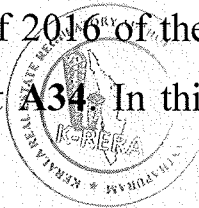
Court of Kerala dated 07.12.2022 produced is marked as **Exhibit A22** which was filed by the 2nd Respondent to quash charge sheet in CC 1870/2013 on the files of the JFCM Court Chavakkad with allegations that the Respondents alleged to have cheated and failed to provide electric connection or water connection to the house constructed by the Respondents, even though electric and water connection were provided and the Hon'ble High Court ordered that the case is not fit for exercising jurisdiction under section 482 of the CrPC. The copy of order of District Magistrate dated 12.01.2014 is marked as **Exhibit A23** as per which it was directed to provide water and electricity connection to the allottees of the project. The copy of Show cause notice/Stop Memo issued by the Secretary Pookode Grama Panchayath & Guruvayur Municipality dated 18.10.2010 to the Respondents is marked as **Exhibit A24** in which it has been stated that the buildings were constructed without obtaining permission from Chief Town Planner or development permit or lay out approval and the project in 7 Acres of land is done violating the provisions as per Kerala Conservation of Paddy and Wet Land Act, etc. The copy of show Notice issued by the Secretary, Pookode Grama Panchayat is marked as **Exhibit A25** in which it has been stated that the construction was without obtaining the permission from the Chief Town Planner and without development permit and layout approval. The Copy of letter issued by the District Town Planner, Trissur dated 08.04.2009 is marked as **Exhibit A26**, as per the same, the permission was rejected. The



copy of letter from the Chief Town Planner dated 04.05.2009 and 24.03.2012 produced are marked as **Exhibit A27 series**. In these letters, it has been stated that the construction is in violation of various KPBR Rules 2011 and without permission. The copies of letter F. No. 1/125/TSR/2004-M 2161 dated 24th Jul 2009 addressed to M/s Santhimadom by the GOI, Letter F. No. 1/125/TSR/2004-M 2718 dated 07th Sep 2009 to Superintendent of Police Trissur, No. F. No. 1/125/TSR/2004-M 2162 dated 24th Jul 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 3016 to 3018 dated 29th Sept 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 2690 dated 1st Sep 2009 to Director General Archaeological Survey of India, F.No. 1/125/TSR/2004-M 3069 dated 6th Sep 2009 to District Collector Trissur, F.No. 1/125/TSR/2004-M 3018 dated 1.10.2009 to M/s M/s Santhimadom are marked as **Exhibit A28 series**. As per these letters, it has been stated that the construction is in the prohibited/ Regulated area and directed to stop construction, and such constructions are liable for demolition. The copy of letter from Guruvayur Municipality PKD/E1-3302/2022 dated 23.02.2022 for Kottapady Project produced is marked as **Exhibit A29** as per which a list of 128 building details is enclosed and it has been stated that since lay out approval was not obtained before sub-dividing the plot, it has to be deemed as unauthorized construction. It is also stated that the Vigilance and Anti-corruption Bero has obtained files for their enquiry. The copy

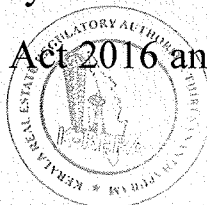


of letter from Kandanasseri Grama Panchayat No. 400672/GGR106/GPO/2023/1723/1 dated 08-03-2023 for Munimada Project is marked as **Exhibit A30**. As per this Exhibit, the details of 84 building permits that have been cancelled as per the instructions from the Government is enclosed. The copy of letter No. 400672/GGR112/GPO/2022/5834/1 dated 17-01-2023 for Munimada Project is marked as **Exhibit A31**. As per this Exhibit it has been stated that building permit has not been issued to the 2nd Complainant in the area coming under Central Archaeological Department in Munimada in Kandanaserry panchayath. The copy of letter from the Director of Panchayath vide letter No. PAN/2015/2022-C1(DP) dated 20-07-2022 & Secretary Kandanasseri Grama Panchayat vide SC1-4819/2022 dated 16-12-2022 are marked as **Exhibit A32 series**. The Respondents themselves admitted that they are the partners of the 1st Respondent firm in the consumer case instituted against them by other allottees. The copy of order of Kerala State Consumer Dispute Redressal Judgements in C.C. No. 28/2012 & C.C No. 44/2012 dated 31.01.2015 are marked as **Exhibits A33 series**, in which it was found that the construction of villas is incomplete due to deficiency of service on the part of the Respondents and therefore directed to refund the amounts paid by the Petitioners in the said Consumer cases. The copy of order dated 6.12.2017 in Tr.P.(Crl)No. 57 of 2016 of the Hon'ble High Court of Kerala is marked as **Exhibit A34**. In this order, there is observation with



respect to the criminal cases pending against the 2nd Respondent and hundreds of peoples were cheated and crores rupees were squeezed by making false offer of providing flats and villas in the name of Santhimadom within the vicinity of Guruvayoor Temple. The copy of order dated 31.05.2023 of the Sub Court Chavakkad in O.S. NO. 605/2013 is marked as **Exhibit A35**. As per this order, there is finding that the construction work is not complete in the project, there is also finding that Respondent No 5-7 also members of the Trust and all of them are jointly and severally liable for the transaction made by the trust and 'the Respondents without having any permission for construction of building has duped the plaintiffs/allottees by entering in to agreements. The copies of advertisements of various projects of the Respondents are marked as **Exhibit A36 series**.

16. Even if the Respondents had failed to appear before this Authority and contest the case as detailed above and consequently an order dated 19.01.2024 was issued with finding that the projects in question come under the purview of the Act 2016 and the complaint is maintainable, we deem it appropriate to give detailed clarification herewith, while passing this final order of the complaint, on the contentions raised by the Respondents through the said vague statements which are as follows : The Respondents or their entity do not come within the definition of the 'promoter' as per the Act 2016 and the issues raised herein do



not fall within the sweep of this Authority and prior to the commencement of the Act, the project alleged in the Complaint was completed and the same was transferred in favour of the Complainants, vide Sale Deeds No. 1878/2010 and 2542/2010, the Complainants had taken possession of the property and the building which was completed and handed over in 2013 itself and the alleged project is not at all an ongoing project and due to the said reasons, they are not obliged to register the project under Section 3 of the Act.

17. According to Section 2(zn) of the Act 2016, the ***"real estate project"*** means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.” Hence it is clear that the development of land into plots for sale with common areas and easement rights and appurtenances belonging thereto will come under the definition of the term “real estate project”. Section 3 (1) of the Act 2016 stipulates that “No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in

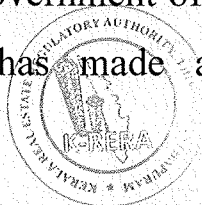


any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:". The provisions under Section 3 of the Act 2016 came into force on 01.05.2017. Section 3 deals with prior registration of real estate project with the Real Estate Regulatory Authority. Sub section (1) of Section 3 interdicts the promoters from advertising, marketing, booking, selling, offering for sale or inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority. Going by the mandate of the 1st proviso, projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, are bound to apply for registration. It is worthwhile to mention here that Section 3, the key provision of the Act 2016 and the subsequent provisions thereon deal with only the 'real estate projects' but not with any individual units/villas/plots in the project. So, what is relevant in this context is completion of the whole project as promised to the allottees and not the completion of any individual villa or flat or unit in the project. As indicated in pre-paras, in view of Section 3(1) of the

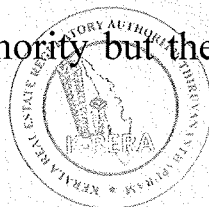


Act 2016, two tests are to be done for deciding the registrability of a real estate project viz; 1) Was it an ongoing/incomplete project as on 01.05.2017, the date of commencement of the Act 2016? and 2) Had it obtained any completion certificate from the local authority before 01.05.2017?

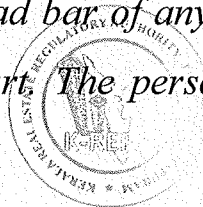
18. Here, when the Respondents herein had taken a contention that they had completed the project before the commencement of the Act 2016, they could not produce any document/certificate obtained from the local authority, showing completion of the projects in question, as claimed by them. Furthermore, they could not produce any document showing completion and handing over of even the individual villas said/claimed to have been completed and handed over to the Complainants. On perusal of the documents placed before us by the Complainants, it could be seen that the Respondents/Promoters have not even applied for any Development Permit before the said development of land into plots as required in the Building Rules. The Kerala Municipality Building Rules 1999 came into force with effect from 01.10.1999 and as per Rule 5 of it, every person other than the Government who intends to develop or redevelop any parcel of land shall apply to the Secretary in the prescribed format along with plans and documents to prove ownership of land. Moreover, Government of Kerala, vide gazette notification dated 06.06.2007, has made applicable the provisions of Kerala



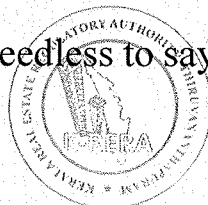
Municipality Building Rules 1999 to all the panchayaths in Kerala with effect from 06.06.2007. According to Rule 5(1) of the Kerala Panchayath Building Rules 1999, *“Every person other than a Central or State Government Department who intends to: - (a) develop or redevelop any parcel of land by subdividing into plots shall apply in writing to the Secretary in the form in Appendix A3”* and as per Rule 6(17) of the said Rules 1999, *“The Secretary shall, after considering the application, plans and drawings and other documents, issue development permit in the form in Appendix B1 .”* The Rule 20(2) specifies that *“The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix F1 along with a copy of the plans duly signed by the Secretary, not later than 15 days from the date of receipt of the completion certificate.”* Here in this case, the Respondents have not even procured any development permit for the said development in compliance of Rule 5 of the Kerala Panchayath Building Rules 1999 and the “Development Certificate” showing completion of the development according to Rule 20(2) of the Kerala Panchayath Building Rules 1999. On perusal of the documents placed on record as mentioned above, it is clear that the Respondents/Promoters were bound to obtain Development Permit from the local Authority but they have not applied for the same



even on later stage by regularizing the land development including common areas. The Complainant No. 1, husband of the Complainant No. 2, appeared in person directly in all the hearings of this case, submitted that being legally illiterate persons who were outside Kerala for a long time, were not aware of the provisions of laws such as obtaining a development permit for the plot development or executing agreements for sale inserting the clauses with respect to the promises from the Promoters. Similarly, the Respondents/promoters also ought to have executed proper agreements for sale with the complainant/allottees. It is unfortunate that no proper agreements have been executed in accordance with the law by the Respondents/Promoters with complainants/allottees specifying the important terms and conditions and details of villas to be constructed, amenities and facilities mentioned in the advertisement, Brochures etc. Anyhow, the Respondents/Promoters, after having committed such violations of laws cannot urge for any benefit out of it. In this context, it is relevant to quote the maxim "*nullus commodum capere potest de injuria sua propria*" which means "*no man can take advantage of his own wrong.*" In Devendra Kumar vs State of Uttaranchal & Ors.: 2013 (3) KLT (Suppl) 62 (SC): (2013) 9 SCC 363: AIR 2013 SC 3325, it was held by the Hon'ble Apex Court that "*a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court.*" The persons violating the law cannot be

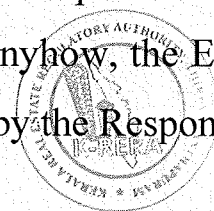


permitted to urge that their offence cannot be subjected to inquiry, trial or investigation.” Without honouring the promises given to the allottees after the lapse of a huge period of time, the Respondents/promoters are trying to escape from all the obligations even now, by contending that they had completed the project and handed over the villas to the Complainants much earlier and the Projects do not come under the Act 2016. It is to be pointed out that the provisions concerned with registration of such projects came into force in the Country on 1.05.2017, the Rules were published by the State on 14.06.2018, this Authority has been established vide G.O. dated 05.10.2019 and it was formally launched on 01.01.2020. Anyhow, the Respondents herein could not produce any single document to prove that the projects in question were completed before the commencement of the Act 2016 and hence it can be concluded undoubtedly that the projects in question are ongoing real estate projects comes under the purview of the Act, 2016. Furthermore, it has been seriously noted that the Respondents/Promoters herein have committed multi-fold violations of the laws prevailing in the State, by not obtaining mandatory permissions from the local authorities before the development, not registering the projects as per section 3 of the Act 2016, by not executing proper Agreements for sale and register them as provided under the law and also by not completing and handing over the villas after receiving huge amount of money from the Complainants. Needless to say, the complainants who invested

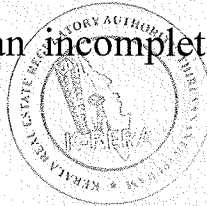


their hard-earned savings in trust of the words and promises of the Promoters shall not be left in lurch or denied of the protection bestowed upon them by the Act 2016.

19. In addition to the above, the documents placed before us by the Complainants also discloses that the contentions taken by the Respondents such as “their entity and the projects in question are outside the purview of the Act 2016 and they completed the projects before commencement of the Act 2016”, etc. are false and contrary to their own admissions before various authorities and judicial forums. Exhibit A1, the so called ‘agreement for sale’ executed with the Complainant No. 1 by the Respondent No. 2 as Chairman of Respondent No. 1 with respect to Kottapady project is so unclear without any details of the property or promises that have been announced by the Respondents through brochures and advertisements and moreover, the Respondents have not even attempted to execute any agreement for sale with the Complainant No.2 in respect of the villa located at Munimada with respect to which Exbt. A8 sale deed was executed by the 2nd Respondent along with one Raghurajan. Exhibit A31 shows that building permit has not been issued in the name of the 2nd Complainant in the said area coming under Central Archaeological Department in Munimada in Kandanaserry panchayath. Anyhow, the Exbts. 4,5 & 6, the proof of payments are not denied by the Respondents in their statements. The copies



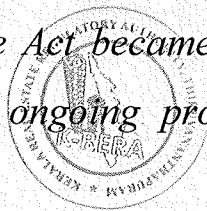
of brochures and advertisements, subsequent Rental agreements, sale deeds, payment receipts and subsequent admissions by the Respondents in various other Forums/ Courts through Exhibits 15 and 17 corroborate the case of the Complainants and reveal the fact that it was the practice of the Respondents under the guise of the 1st Respondent Trust, announcing such real estate projects through appealing advertisements and brochures, purchasing lands without conducting any legal scrutiny and obtaining mandatory permissions from the authorities concerned, dividing it into plots and transferring/registering the land in the name of the customers after grabbing amounts from them and starting construction without even executing proper agreements with these innocent home buyers. It is revealed from Exhibit A28 series documents that during 2009 itself, the Respondents had received communications from the Archaeological Survey of India that the constructions were done in the prohibited/ Regulated area and the Respondents were directed to stop constructions and also informed that such constructions are liable for demolition. But hiding these facts, the Respondents managed to execute Exbts. A1 to A3 agreements with the Complainants during 2010 and received the amount of consideration giving promise to complete the project within 11 months. As per Exhibit A18, on 08.12.2018, the 2nd Respondent has admitted before the Taluk Legal service Authority, Chavakkad that the project is an incomplete one and assured that he will



complete the construction which shows that the project was not completed as on 01.05.2017.

20. To examine whether it was an 'ongoing project' as on the date of commencement of the Act 2016 which comes under the purview of Section 3 of the Act 2016, it is worthwhile to refer some relevant parts of the judgement of the Hon'ble Apex Court in M/s. Newtech Promoters and Developers Pvt. Ltd v. State of U.P. & Ors. A three Judges Bench of the Hon'ble Apex Court in M/s. Newtech Promoters and Developers Pvt. Ltd v. State of U.P. & Ors. have made a detailed probe to various provisions of the Real Estate (Regulation and Development) Act, 2016 and the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 and considered the question whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India and paras 37, 41 & 54 are relevant to be extracted which read thus:

Para 37: *"Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its*



inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

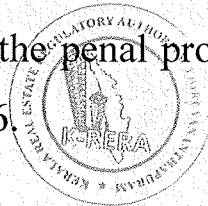
Para 41: The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

Para 54: From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same



time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

21. Hence, it is evident that the criteria to be considered in this context is not the completion of sale of plots/units in the project but completion of the project in its entirety as promised to the allottees and only after completing the project in all respects as promised to the allottees and handing over the common area to the Association of allottees, the Promoter can be left, absolving from his obligations. While placing reliance on the above documents marked, it can be rightly concluded that the Santhimadom projects at Munimada and Kottapady are ongoing real estate projects as per the provisions of the Act, 2016 and hence they are liable to be registrable under section 3 of the Act, 2016. As stated above, the Authority, vide order dated 19.01.2024, issued direction to the Respondents/Promoters ‘M/s Santhimadom Builders and Developers’ to register their project at Munimada and Kottappady as per Section 3 of the Act, 2016 within 15 days of receipt of the said order, failing which penalty under section 59(1) of the act, 2016 will be imposed without further notice. But the Respondents have not taken any steps so far to register the said projects under Section 3 of the Act, 2016, and hence the proceedings have been started to initiate the penal provisions as provided under Section 59 of the Act 2016.

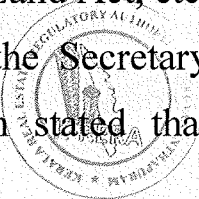


22. In the above complaint, the Complainants seek refund of amount from the Respondents who had failed to complete and hand over the villas as promised. Here, the Complainants are husband and wife. It can be seen from the documents before us that the 1st Respondent is a Trust involved in the business as Builders, Developers and Promoters in the real estate projects. The Respondents 2 is the Chairman and 3 -7 are members of the Trust. The 1st Respondent had entered in to Exbt. A1, agreement for land and construction of villa on 25.08.2010 with the 1st Complainant, in the project developed by the Respondents at Kottapady and consequently two separate rental agreements were executed with the Complainants on 1.11.2010 as Exhibits A2 and A3, to rent out the villas to be constructed at Kottapady and Munimada. As per the rental agreements the Respondents agreed to pay Rs. 5000/-and Rs 3000/-per month respectively as rent for the said villas. Later Exhibits A7 and A8, two separate sale deeds were executed in favour of the Complainants on 20.10.2010 and 01.11.2010. As per Exhibit A1 agreement, the time for performance of agreement was eleven months from 25.08.2010, as such the project had to be completed before 25.07.2011. Two separate Power of Attorneys were also executed by the 3rd Respondent with the Complainants on 03.02.2011 to facilitate the construction work. The Complainants had paid a total amount of Rs. 66 lakhs as revealed from Exhibits A4, A5, and A6. As per Exhibit A1 agreement, the promised date

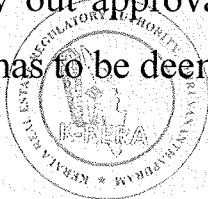


of completion and handing over was on 25.07.2011, but Exhibits 29, 30, 33, 35 and X1 reveals that the project remains still incomplete. The Respondents/Promoter has not produced any documents to show that they had completed the villas and handed over them to the complainants. Hence it has been established beyond doubt that the Respondents/Promoters have significantly failed to perform their part and honour the promises given to the Complainants who trusted them and invested their hard-earned savings and have been waiting for a long period in the dream of a roof over the head.

23. Be that as it may, it is to be necessarily to be pointed out certain serious anomalies done by the local authorities concerned in this case who issued permissions for constructions in restricted areas and kept silence on non-obtaining of Development Permit by the Respondents/Promoters before developing and dividing such large extents of land into plots in clear violation of Building Rules. **Exhibit A24**, copy of Show cause notice/Stop Memo issued by the Secretary Pookode Grama Panchayath & Guruvayur Municipality dated 18.10.2010 to the Respondents in which it has been stated that the buildings were constructed without obtaining permission from Chief Town Planner or development permit or lay out approval and the project in 7 Acres of land is done violating the provisions as per Kerala Conservation of Paddy and Wet Land Act, etc. and **Exhibit A25**, copy of show Notice issued by the Secretary, Pookode Grama Panchayat in which it has been stated that the construction was without



obtaining the permission from the Chief Town Planner and without development permit and layout approval. **Exhibit A26**, copy of letter issued by the District Town Planner, Trissur dated 08.04.2009 as per which the permission was seen rejected. **Exhibit A27 series** are copies of letters from the Chief Town Planner dated 04.05.2009 and 24.03.2012 in which it has been stated that the construction is in violation of various KPBR Rules 2011 and without permission and **Exhibit A28 series** are copies of letters F. No. 1/125/TSR/2004-M 2161 dated 24th Jul 2009 addressed to M/s Santhimadom by the GOI, Letter F. No. 1/125/TSR/2004-M 2718 dated 07th Sep 2009 to Superintendent of Police Trissur, No. F. No. 1/125/TSR/2004-M 2162 dated 24th Jul 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 3016 to 3018 dated 29th Sept 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 2690 dated 1st Sep 2009 to Director General Archaeological Survey of India, F.No. 1/125/TSR/2004-M 3069 dated 6th Sep 2009 to District Collector Trissur, F.No. 1/125/TSR/2004-M 3018 dated 1.10.2009 to M/s M/s Santhimadom in which it has been stated that the construction is in the prohibited/ Regulated area and directed to stop construction, and such constructions are liable for demolition. Exhibit A29 is the copy of letter from Guruvayur Municipality PKD/E1-3302/2022 dated 23.02.2022 for Kottapady Project as per which a list of 128 building details is enclosed and it has been stated that since lay out approval was not obtained before subdividing the plot, it has to be deemed as unauthorized construction



and the Vigilance and Anti-corruption Bero has taken files for enquiry. Exhibit A30 is the copy of letter from Kandanasseri Grama Panchayat No. 400672/GGR106/GPO/2023/1723/1 dated 08-03-2023 for Munimada Project as per which the details of 84 building permits that have been cancelled as per the instructions from the Government are enclosed. The documents reveals that the buildings were constructed on "Nilam" where there is a specific bar on building construction as per Kerala Conservation of Paddy Land Wet Land Act 2008 and the said constructions at Kottapady are in clear violation of Rule 30(2) of 27(a) of the KMBR Rule. The above documents corroborate the contentions of the Complainants that the then Secretary of Pookkode Grama Panchayath had unauthorizedly issued building permit for the construction of 111 villas of Kottapady site, the Secretary of the Kandanassery Grama Panchayath had issued building permits for the construction of 84 villas at the Munimada site and the Grama Panchayath Secretary had issued building permit before issuing the development permit and obtaining lay out approval from the District Town Planner Trissur or Chief Town Planner Thiruvananthapuram. The Complainants submit that even though the Panchayath Secretary issued building permit for only 84 buildings, Respondents had managed to carry out the construction of 220 villas and some of the villas are constructed within the restricted portion of the monument protected by the Archaeology Department.



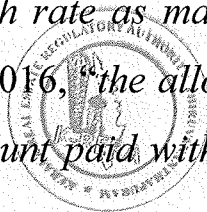
24. With respect to the unfortunate aberrant actions from the part of such Authorities concerned, the Hon'ble Apex Court made remarks in para 141 of its landmark judgements passed in Bikram Chatterjee vs. Union of India, which is reproduced herein below:

".....It goes to indicate how at large-scale middle-class home buyers have been defrauded of their hard-earned money, taken away by the affluents and the officials in connivance with each other. Law has to book all of them. We are hopeful that law will spread its tentacular octave to catch all culprits responsible for such kind of fraud causing deprivation to home buyers. It is shocking and surprising that so many projects have remained incomplete. Several lakhs of home buyers have been cheated. As if there is no machinery of law left to take care of such situation and no fear left with the promoters/builders that such acts are not perceivable in a civilised society. Accountability is must on the part of everybody, every institution and in every activity. We fail to understand the standard of observance of the duties by public authorities has gone so down that such frauds take place openly, blatantly, and whatever legal rights exist only on papers and people can be cheated on such wide scale openly, brazenly and with the knowledge of all concerned. There is duty enjoined under the RERA, there has to be a Central Advisory Council as well as the role of the State Government is not ousted in order to protect against such frauds. We direct the Central Government and the State Government to take appropriate steps



on the time-bound basis to do the needful, all other such 260 cases where the projects have remained incomplete and home buyers have been cheated in an aforesaid manner, it should be ensured that they are provided houses. The home buyers cannot be made to suffer when we are governed by law and have protective machinery. Question is of will power to extend the clutches of law to do the needful. We hope and trust that hope and expectation of home buyers are not going to be belied."

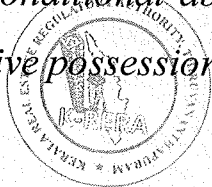
25. Section 18(1) of the Act 2016 stipulates that *"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand 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 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."* As per Section 19(4) of the Act 2016, *"the allottee shall be entitled to claim the refund of the amount paid with interest at such rate as may be*



prescribed, if the promoter fails to comply or is unable to give possession of the apartment, plot or building as the case may be, in accordance with the terms of the agreement for sale". 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. Moreover, Section 18(1) of the Act clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. In this case, the Complainant selected the second option, to withdraw from the project and to claim refund with interest since the Respondents/promoters have failed to complete or unable to give possession of the villas.

26. The Hon'ble Supreme Court in its landmark judgment dated 11.11.2021 in M/s Newtech Promoters & Developers Pvt. Ltd. vs State of U P & Ors., observed as follows:

"The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building

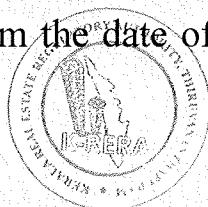


within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act". In these circumstances, the Complainants herein are entitled to withdraw from the project under Section 18(1) of the Act 2016, and claim the return of the amount paid to the Respondents along with interest from the date of receipt of payment by the promotor till refund to the Complainant with interest. With regard to the contention of misjoinder raised by the Respondents, Exbt. 35, the copy of order of the Sub Judge, Chavakkad dated 31.05.2023 found that "the defendants No. 5 to 7 are also members of the Trust and all of them are jointly and severally liable for the transaction made by the Trust. It is to be pointed out that even in the absence of a proper agreement for sale with promises and specific terms and conditions and the Respondents/Promoters are not ready to complete the villas with amenities and facilities offered to the Complainants/allottees as per the brochures, and advertisements, the Complainants/allottees shall have the right to get compensation as provided under the provisions of Section 12 of the Act 2016. According to Section 12 of the Act 2016 *"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 would refer the judgement of the Hon’ble Tamil Nadu Real Estate Appellate Tribunal dated 26.08.2020 in M/s Casa Grande Civil Engineering pvt. Ltd. Vs Govindaraj & another, a similar case where Brochures issued by the Promoter to the allottees showing several amenities in the project but no provision was inserted in the construction agreements with respect to these amenities to be provided in the project in which the Hon’ble Tribunal held that Section 12 of the Act 2016 is squarely applicable and the Promoter is liable to complete the amenities promised through brochures and advertisements.

27. The interest payable by the Respondents to the allottees is at State Bank of India’s Benchmark Prime Lending Rate plus 2% from the date of payment till the date of refund, to

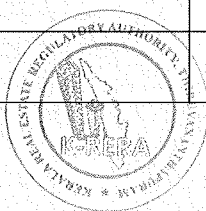


be computed as simple interest, as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBIPLR rate is 14.85%. Hence, the allowable interest rate is $14.85\% + 2\% = 16.85\%$. The relevant portions of Rule 18 of the said Rules is extracted below: *“(1) The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

28. As per Exhibit. A4, A5 and A6 the Respondents have received an amount of Rs.66,00,000/- from the Complainants. The details of the payment made to the respondents is scheduled below:

Payment Schedule

Date of Payment	Amount
25.08.2010	1,00,000/-
09.10.2010	40,00,000/-
18.10.2010	25,00,000/-
Total	66,00,000/-



29. Hence, the Complainants are entitled for refund of the amount of Rs. 66,00,000/- paid by them to the Respondents/Promoters, along with interest at the rate of 16.85% Percent per annum, as simple interest from the respective dates of payment till date of realization of amount as provided under Section 18(1) of the Act 2016 read with Rule 18 of the Rules 2018.

30. In view of the above facts and findings and invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016 we hereby direct as follows:

(1) The Respondents shall return the total amount of, **Rs.66,00,000/-** received by them, as scheduled above, **with simple interest @ 16.85% per annum**, to the Complainant, from the respective dates of payment, as shown in the schedule inserted in para 28 above, till the date of realization of amount.

(2) If the Respondents fail to pay the aforesaid sum with interest as directed above within a period of 60 days from the date of receipt of this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act, 2016 and the Rules thereunder.





(3) The Complainants shall transfer the respective lands/plots in their name into the name of the Respondents **within 15 days from the date of receipt of refund** as ordered above.

Sd/-
Preetha P. Menon
Member

Sd/-
P.H. Kurian
Chairman

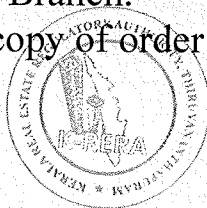
True Copy / Forwarded by / Order

 
Secretary (Legal)

Appendix

Exhibits marked from the Side of Complainant

- Exhibit A1: The copy of agreement for sale of plot and villa/Apartment dated 25.08.2010.
- Exhibit A2: The copy of rental agreement dated 1.11.2020 by the 1st Complainant.
- Exhibit A3: The copy of rental agreement dated 1.11.2020 by the 2nd Complainant.
- Exhibit A4: The copy of payment receipt of Rs. 1,00,000/- dated 25.08.2010.
- Exhibit A5: The copy of payment receipt of Rs. 40,00,000/- dated 09.10.2010.
- Exhibit A6: The copy of bank statement claiming payment of Rs. 25,00,000/-
- Exhibit A7: The copy of sale deed dated 20.10.2010 executed in favour of the 1st Complainant.
- Exhibit A8: The copy of sale deed dated 01.11.2010 executed in favour of the 2nd Complainant.
- Exhibit A9: The copy of power of attorney dated 03.02.2011 executed by the 1st Complainant.
- Exhibit A10: The copy of power of attorney dated 03.02.2011 executed by the 2nd Complainant.
- Exhibit A11: The copy of Synopsis in a memorandum of Writ Petition filed by the Respondents.
- Exhibit A12: The copy of order in a Writ Petition No 15811/2010.
- Exhibit A13: The copy of Coloured Booklet/Brochure Advertisements, Coloured Pictures of the project.
- Exhibit A14: The copy of Enquiry Report 1529/2011-C dated 07.01.2013 submitted by the Superintendent of Police, before the Hon'ble Lok Ayuktha.
- Exhibit A15: The copy of Statement submitted by the 2nd Respondent to the Economic Offences Wing, Crime Branch.
- Exhibit A16: The copy of order in WP(C) No. 22564 of 2022.



- Exhibit A17: The copy of Statements of facts submitted by the 1st Respondent dated 23.11.2022 to the District Registrar, Palakkad.
- Exhibit A18: The copy of statement made by the 2nd Respondent dated 08-12-2018 before the Taluk Legal Service Authority.
- Exhibit A19: The copy of objection filed by the Respondents before the JFCM Court Chavakkad in CrI. M.P 1227/2022.
- Exhibit A20: The copy of letter from the Secretary Kandanasseri Grama Panchayat to the Inspector of Police, Guruvayur Police Station, vide No. A3/4808/18 dated 16-11-2018.
- Exhibit A21: The copy of the petition OS 24/2022 filed by the 1st Respondent against the Complainant in the Munsiff Court, Chavakkad.
- Exhibit A22: The copy of order of Hon'ble High Court of Kerala dated 07.12.2022.
- Exhibit A23: The copy of order of District Magistrate dated 12.01.2014.
- Exhibit A24: The copy of Show cause notice/Stop Memo issued by the Secretary Pookode Grama Panchayat & Guruvayur Municipality dated 18.10.2010 to the Respondents.
- Exhibit A25: The copy of show Notice issued by the Secretary Pookode Grama Panchayat.
- Exhibit A26: The Copy of letter issued by the District Town Planner Trissur dated 08.04.2009.
- Exhibit A27series: The copy of letter from the Chief Town Planner dated 04.05.2009 and 24.03.2012.
- Exhibit A28 series: The copies of letter F. No. 1/125/TSR/2004-M 2161 dated 24th Jul 2009 addressed to M/s Santhimadom by the GOI, Letter F. No. 1/125/TSR/2004-M 2718 dated 07th Sep 2009 to Superintendent of Police Trissur, No. F. No. 1/125/TSR/2004-M 2162 dated 24th Jul 2009 to Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 3016 to 3018 dated 29th Sept 2009 to

Secretary Kandanassery Grama Panchayat Trissur, F.No. 1/125/TSR/2004-M 2690 dated 1st Sep 2009 to Director General Archaeological Survey of India, F.No. 1/125/TSR/2004-M 3069 dated 6th Sep 2009 to District Collector Trissur, F.No. 1/125/TSR/2004-M 3018 dated 1st Oct 2009 to M/s. Santhimadom Builders.

Exhibit A29: The copy of letter from Guruvayur Municipality PKD/E1-3302/2022 dated 23.02.2022.

Exhibit A30: The copy of letter from Kandanasseri Grama Panchayat No. 400672/GGR106/GPO/2023/1723/1 dated 08.03.2023.

Exhibit A31: The copy of letter No. Kandanasseri Grama Panchayat 400672/GGR112/GPO/2022/5834/1 dated 17.01.2023.

Exhibit A32 series: The copy of letter from the Director Panchayat vide letter No. PAN/2015/2022-C1(DP) dated 20-07-2022 & Secretary Kandanasseri Grama Panchayat vide SC1-4819/2022 dated 16-12-2022.

Exhibit A33 series: The copy of order of Kerala State Consumer Dispute Redressal Judgements vide no. C.C. No. 28/2012 & C.C No. 44/2012.

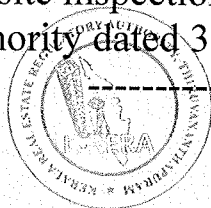
Exhibit A34: The copy of order dated 6th day of Dec 2017 in Tr.P.(CrI)No. 57 of 2016 of the Hon'ble High Court of Kerala.

Exhibit A35: The copy of order dated 31.05.2023 of the Sub Court Chavakkad in OS NO 605/2013.

Exhibit A36 series: The copies of advertisements of various projects of the Respondents.

Exhibits marked from the official side

Exhibit X1: The site inspection report by the officers of the Authority dated 31.07.2023.



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