



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Dated 16th November 2020

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

COMMON ORDER

IN

**ComplaintNos. 10/2020,11/2020,12/2020,13/2020,98/2020,99/2020
100/2020, 101/2020, 102/2020, 103/2020,104/2020
105/2020,106/2020,107/2020,108/2020,109/2020,
110/2020,111/2020,112/2020,114/2020&221/2020**

1. COMPLAINT NO: 10/2020

Complainant:

Sri. Chithra Prasad.D
Prasanthi Nilayam
Peroor TMC P.O, Kollam-691005

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

2. COMPLAINT NO: 11/2020

Complainant:

Sri. Rajeev Balakrishnan
Surabhi,TC 9/1942,
Asramam Lane, SMRA-114,
Sasthamangalam Post
Trivandrum-695 010

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

3. COMPLAINT NO: 12/2020

Complainant:

Sri. Mathew P. Sebastian
TC 27/283, Akash Lane,
Kunnukuzhy P.O, Trivandrum- 695 035

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

4. COMPLAINT NO: 13/2020

Complainant:

Sri. Amar Nishad,
Raihan Residency Nagar-60,
Kadappakkada,
Kollam- 691001

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

5. COMPLAINT NO: 98/2020

Complainant:

Sri. U.M Harikumar
B-S03-Dew Drops,
AlandiRoad,
Vishrantwadi, Pune-411 015
Maharastra

Respondent:

Mr. Arun Kumar,

Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

6. COMPLAINT NO: 99/2020

Complainant:

Sri. Sunil Charivukalayil Baby,
Elayidathu Charivukalayil,
Oonnukal P.O, Omalloor,
Pathanamthitta-689 647

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

7. COMPLAINT NO: 100/2020

Complainant:

Sri. Vinod Kumar J.S,
& Smt. Manju Vinod,
Prakrithi Apartment No.1041, MIR The Greens,
8th ST, Karakulam P.O, Thiruvananthapuram- 695564

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

8. COMPLAINT NO: 101/2020

Complainant:

Sri. V.J Sebastian
Flat 10C, Queensway Point, Kowdiar P.O,
Thiruvananthapuram- 695 003

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

9. COMPLAINT NO: 102/2020

Complainant:

Sri. Roy Zachariah
& Smt. Ruby Aley Zachariah,
Represented by Power of Attorney Holder
Smt. Lucy Zachariah,
Villa Number 45, Favourite Homes,
Pebble Gardens Villas, Njandoorkonam,
Trivandrum-695 587

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

10.COMPLAINT NO: 103/2020

Complainant:

Sri. Abdul Jaleel.H
TC 11/384, House No. 46, "Rahath",
Christ Nagar, Kowdiar P.O, Trivandrum-695 003

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

11.COMPLAINT NO: 104/2020

Complainant:

Sri. Rajeev C & Smt Meera Angel
No.8, MerryDale, Christ Nagar,
Kowdiar, Thiruvananthapuram-695 003

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

12.COMPLAINT NO: 105/2020

Complainant:

Dr. Meena Nair
No.7, Ring Road, DAE Township,
Kalpakkam-603012

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

13.COMPLAINT NO: 106/2020

Complainant:

Sri. John Mary & Smt. K.Prema
Flat No.213, Journalist Colony,
Peroorkada, NCC Nagar,
Trivandrum

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

14.COMPLAINT NO: 107/2020

Complainant:

Sri. Afzal Machingal,
S/o Koyamu .M,
Machingal House, Ponmundam P.O,
Malappuram-676 106

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

15.COMPLAINT NO: 108/2020

Complainant:

Smt. Nalini Sivaraman
Block 2, Villa C,
Gujan's Atreya Near Bharatiya Vidya Bhavan School,
Ajjnoor Road, Coimbatore-641046

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

16.COMPLAINT NO: 109/2020

Complainant:

Sri. Jiju John
J.J Bhavan, Kuzhimannil House,
Angadickal North P.O, Kaipattoor,
Pathanamthitta-689 648

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

17.COMPLAINT NO: 110/2020

Complainant:

Sri. Jose Thailayil &
Smt. Annie Thailayil
Thailayil House, Kuninji P.O,
Vazhithala, Thodupuzha, Idukki-685 583

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

18.COMPLAINT NO: 111/2020

Complainant:

Sri. Ratheesh Viswanathan
301, Kesar Rapadise,
Co-op Housing Society Ltd, Plot No. 373-385,
Sector-36, Nerul West Navi Mumbai- 400706

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

19.COMPLAINT NO: 112/2020

Complainant:

Smt. Beela Mathew
TC 27/2124, Observatory Lane,
Trivandrum- 695 033

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

20.COMPLAINT NO: 114/2020

Complainant:

Sri. Mini D'Cruz & Sri. Carlton D'Cruz
C/o Sri. Clement P.M
Velayil Veedu, Harisree Nagar 112,
Asaramam South, Kollam-691 001

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

21.COMPLAINT NO: 221/2020

Complainant:

CMDE VN Ajit Kumar(Rtd)
C9, Rajrekha, Sankar Lane, Sasthamangalam,
Thiruvananthapuram- 695 010

Respondent:

Mr. Arun Kumar,
Managing Director,
MIR Builders & Developers Pvt. Ltd,
Cochin.

COMMON ORDER

1. As the subject matter, cause of action and reliefs sought in all the above complaints are one and the same as it is related to the same apartment project developed by the same Promoter, the said Complaints were being clubbed and taken up together for joint hearing for passing a common order, as provided under Regulation 6(6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020, treating Complaint No. 10/2020 as leading case.

2. The Complainants are allottees of a real estate project named 'The Greens-Haritham' at Karakulam Village, in Thiruvananthapuram District developed and promoted by the Respondent MIR Realtors Pvt. Ltd. The Complainant in complaint No. 10/2020 has paid Rs. 40,00,000/- out of the total amount of consideration of Rs. 55,66,181/- and as per the agreement, the Respondent agreed to complete and hand over the apartment in December 2016. But the project has not been handed over to the allottees till date despite they visited the Respondent umpteen times and requested to complete the project and hand over it to them. Hence the Complainants pray for a direction to the Respondent to complete the project and to hand over the possession within a fixed time frame or to refund the amount with interest.

The documents submitted by the Complaints are **Exbt.A1 to Exbt. A60**

3. The Respondent appeared and filed counter statement in Complaints No. 10/2020 to 13/2020 in which he contended as follows: The Project named 'MIR THE GREENS' situated at Karakulam, Thiruvananthapuram is a township project situated in 12 acres of land and it consists of 58 villas and 4 apartment towers consisting of 75 apartments each. The Respondent already completed all the villas and one tower of the project and handed over the units to the respective customers. The Respondent has also completed all the infrastructural facilities like internal roads, street light, sewage system and treatment plants, garden, amphitheatre, power connection, water supply etc. The demonetization implemented in the Country affected the sale and thereby cashflow. Most of the customers stopped payments of instalments. The apartment tower named 'Haritham' under construction is having a total receivable of Rs. 5,03,78,421/- from the sold units. Apart from that there are 18 units to be sold and the approximate value of the unsold units will be 14 Crores. The amount required to complete the works of said tower is 8 Crores. The project is having positive net worth and viability for completion, if the existing customers also extent their co-operation and support to complete the same. The Respondent also declare that he values the customers and regret the inconvenience caused to them due to the delay and assure that he will complete the project as early as possible and hand it over to them with utmost care and seriousness. The Respondent also submitted a statement of objection dated 14.10.2020, to the allegations regarding the defaults/failures of the Respondent, put forwarded as 'presentation to RERA' by the President, Haritham Buyers Association, in which he states that the amount required towards the cost of construction of the apartments alone is Rs. 26 Crores. This is apart from the cost of land which amounts to approximately 7.5 Crores and cost of amenities which amount to approximately 5.5 Crores. So altogether the project cost would be around Rs. 39 Crores. The Respondent had invested the total amount required towards cost of land and 80% of the amenities have been

completed. There is an existing project loan for an amount of Rs. 10 Crores from the Federal Bank in which Rs. 4.5 crores have been paid off. The current outstanding is around 8 crores due to the accumulated interest. The Bank agreed to reschedule this loan for next 18 months by making initial payment of 1 Crore to facilitate the rescheduling, and that will be done within a week's time. This reschedule is with a view to avail Swamih Fund. The Respondent is raising substantial funds to reschedule the Federal Bank loan which will help to raise further funds from Swamih fund. The request for raising the stress fund Swamih, which is expected to be completed by the end of December 2020. The Respondent will be able to start the work in full swing by first week of January 2021 and will be able to complete the work and hand over the project in 10 months 'time. Regarding the loan from the Federal Bank, this is already rescheduled and the Swamih fund will also get an undertaking from the existing bankers not to take any recovery actions till the completion of the project.

The documents submitted by the Respondent are **Exbts. B1- Exbts B6**

4. Heard both parties and examined the documents submitted by both sides. This Authority,* vide Interim Order dated 15.10.2020, directed the Respondent to submit application for Registration of Project under section 3 of Real Estate (Regulation & Development) Act, 2016 ("the Act" for short) within 30.10.2020 with a sworn Affidavit in the proper manner affirming that the renewed permit shall be obtained within a specified time period and also with the approval/consent of the existing allottees and also to furnish, before the next hearing date, documents to prove all the credible steps taken by him to complete and hand over the project such as application submitted to Bank for rescheduling the loan, the reply from the Bank, documents to show actions taken by him to avail Swamih fund and other documents, if any. In compliance of the said direction, the Respondent submitted application for registration of the Project 'Greens Haritham' under section 3 of the Act along

with a sworn affidavit (**Exbt.B5**) declaring that the renewed permit for the whole Project "MIR Greens Township" will be obtained by 31st January 2021. In the Affidavit submitted by the Respondent it is stated that the Respondent has approached the Regional Town planner, Trivandrum for the renewal of building permit by the 10/A Committee. Copy of the Acknowledgement is produced (**Exbt. B1**). The processing of Swamih fund under SBI caps is also on progress and the sanction is expected to be obtained by January 2021. The copy of the application given for Swamih fund is produced (**Exbt. B2**) and the financial data as per the Swamih fund format for Greens Project including Haritham Tower is produced (**Exbt. B3**). The request given by the Respondent to the Federal Bank for settlement of the loan is produced (**Exbt B4**). In the abovesaid Affidavit, the Respondent also states that the total receivables in respect of sold apartments is Rs. 4.13 Crores after adjusting the payment due to some of the customers whose bookings are doubtful. The value of the unsold inventory and receivables are Rs. 14.1 Crores on fair calculation of the value of the apartment. The amount required for completion of the project in all respects is estimated to be Rs. 8 Crores. The Respondent assures that the works will be in full swing before 01.01.2021 and he will be able to hand over the finished units with occupancy certificates to the allottees within 10 months starting from January 2021 and he undertakes that he will also be regularly updating the progress of construction and other aspects to the allottees' Association.

5. As the Respondent admitted the delay occurred in the completion and handing over the project and requested further time for completion of the project and settlement of the loan availed by him and as it is found that earnest efforts are being made by the Respondent to solve the issues, this Authority found it is justifiable to grant some more time to the Respondent to complete and hand over the project in all respects. Consequently, the

Authority, vide interim order dated 03.11.2020, directed the Respondent to file an affidavit before this Authority with clear affirmations regarding the completion of the whole project in all respects with all the statutory approvals, amenities and facilities as committed/promised to the allottees, registration of common areas in favour of the association and handing over all the documents related to the project including land title deeds, electricity & plumbing drawings, etc to the Association and also to submit the stage-wise work Schedule with dates and to serve copy of the affidavit to the Complainants. In compliance of the said order, the Respondent filed an Affidavit dated 16.11.2020(**Exbt.B6**) along with the Work Schedule for completion of the pending works. In this affidavit also the Respondent repeatedly affirms that the project is having a very strong positive net worth and so the chances of getting the Swamih fund sanctioned for this project is very high and the Respondent is arranging funds from his own personal sources as a stand-by arrangement to overcome the situations even if the Swamih fund is not sanctioned for any unforeseen circumstances. The total receivables in respect of sold apartments is Rs. 4.13 Crores after adjusting the payment due to some of the customers whose bookings are doubtful. The value of the unsold inventory and receivables are Rs. 14.1 Crores and on a worsened scenario, the Respondent expects to arrange an amount of Rs. 5 Crores from his side on various stages of construction and the Association can mobilize balance Rs. 3 Crores as due from the allottees and thus the construction can be completed by way of joint effort of the association and the builder. He confirms that the construction works will be commenced before 01.01.2021 and he will be able to hand over the finished units to the clients by 31.10.2021. Once the works achieves progress in full swing, the allottees have to clear their overdue, which can be collected by the association and deposited in an escrow account operated by the Respondent. The amount in the escrow account can be paid directly to the contractors on physical satisfaction of the stage wise progress of the work given as per the work

schedule. It is stated in the affidavit that the amenities and facilities are for the whole township and there are two more towers are to be constructed under the same permit. 80% of the amenities are completed and balance 20% is to be completed along with the completion of the other two towers and earnest efforts will be taken by the respondent to complete the remaining facilities and amenities at the earliest. The Respondent states that two associations are in existence including that of the Tower belongs to the Complainants herein. He further undertakes that after completion of remaining 2 towers, the associations will be formed for them too and finally an apex body of Associations will be formed and registered for the proper management of the whole Township. The common area registrations shall be done infavour of the said Apex Association.

6. This Authority noticed, while considering such complaints related to multi-towered/phased projects, that most of the promoters make inordinate delay in completion of the amenities/facilities offered to the allottees, keep on saying that it could be completed along with completion of the last tower/s proposed to be constructed which results in unending difficulties and agonies to the existing allottees/occupants. As observed in the earlier orders passed by this Authority, an allottee of a real estate project invests his/her hard earned money, that too a bigger amount than that of an individual house property, not only for the single unit/apartment/villa but for the whole amenities and facilities offered to him/her in the project and also for enjoying a peaceful community living there. The 'Explanation' to Section 3 of the Act specifies that "For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered as a stand alone real estate project, and the promoter shall obtain registration under the Act for each phase separately". From this provision, it is clear that though phasing is permitted in such big projects, each phase shall be considered as a **'stand -alone real estate project'**. As envisaged by the law, each phase shall consists of the amenities

and facilities offered/promised to the allottees of that phase so that such phasing shall not affect the interests of the allottees. Otherwise, in certain circumstances, if some non-basic amenities could be possible to be completed only in the last phase of such projects, the Promoters shall detail it in all the agreements entered into with the allottees. Anyhow, the promoters of such multi-phased project shall be responsible to complete the whole project within a time frame and to reveal the period of completion of the whole project to each and every allottee of the project through the agreement itself.

7. On the basis of the confirmations and undertakings by the Respondent as per the above mentioned two affidavits and with the consent of the Complainants, invoking Section 34(f) & 37 of the Act, this Authority hereby issue the following directions :

(1) The Respondent shall complete and hand over, the project 'MIR Greens Haritham' to the Complainants, in all respects as committed/promised to them, along with all the mandatory sanctions / approvals required to be received from the Authorities concerned, on or before 31.10.2021 without fail.

(2) The Respondent shall open an escrow/joint account with the Association of allottees and make sure that all the receivables from the said project are deposited in the said account and amount from the said account shall be used only for the works in the project. The Association shall fully cooperate with the Respondent in withdrawal of amount from the joint account.

(3) The Respondent shall submit before this Authority the status/progress report of works, in every 2 months, starting from 01.01.2021, in the form of an affidavit.

(4) The Association shall monitor the progress of works and make sure that it is being carried out as per the Work Schedule. In case of

any default from the part of the Respondent, the Association can approach this Authority.

(5) The Respondent shall also submit a proper work schedule for the completion of the whole Township project, in all respects, along with submission of the first bi-monthly work progress report;

In case of non-compliance of this order by the Respondent, the Authority shall initiate severe penal actions as provided under the Act.

This order is issued without prejudice to the right of the Complainants to approach the Authority for compensation, for the loss sustained to them, in accordance with the provisions of the Act and Rules.

Sd /-

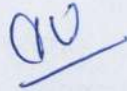
Smt. Preetha P Menon
Member

Sd/-

Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order/




Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

| | | |
|--|---|------------------------|
| Exhibit A1 : Copy of the Sale Agreement | } | Complaint No. 10/2020 |
| Exhibit A2 : Copy of Bank account statements | | |
| Exhibit A3 : Copy of Receipts | | |
| Exhibit A4 : Copy of Construction Agreement | | |
| Exhibit A5 : Copy of the Sale Agreement | } | Complaint No. 12/2020 |
| Exhibit A6 : Copy of Receipts | | |
| Exhibit A7 : Copy of Allotment letter | } | Complaint No. 98/2020 |
| Exhibit A8 : Copy of Sale Agreement | | |
| Exhibit A9 : Copy of Construction Agreement | | |
| Exhibit A10 : Copy of Receipts | | |
| Exhibit A11 : Copy of Sale Agreement | } | Complaint No. 99/2020 |
| Exhibit A12 : Copy of Agreement for construction | | |
| Exhibit A13 : Copy of Receipt | | |
| Exhibit A14 : Copy of email Correspondence | | |
| Exhibit A15 : Copy of loan approval receipt | | |
| Exhibit A16 : Copy of "Haritham" sales leaflets | | |
| Exhibit A17 : Copy of Sale Agreement | } | Complaint No. 100/2020 |
| Exhibit A18 : Copy of Construction Agreement | | |
| Exhibit A19 : Copy of Receipts | | |
| Exhibit A20 : Copy of Sale Agreement | } | Complaint No. 101/2020 |
| Exhibit A21 : Copy of Construction Agreement | | |
| Exhibit A22 : Copy of Receipts | | |
| Exhibit A23 : Copy of Sale Agreement | } | Complaint No. 102/2020 |
| Exhibit A24 : Copy of Construction Agreement | | |
| Exhibit A25 : Copy of Receipts | | |
| Exhibit A26 : Copy of Sale Agreement | } | Complaint No. 103/2020 |
| Exhibit A27 : Copy of Construction Agreement | | |
| Exhibit A28 : Copy of Receipts | | |

| | | |
|--|---|------------------------|
| Exhibit A29 : Copy of Sale Agreement | } | Complaint No. 104/2020 |
| Exhibit A30 : Copy of Agreement for Construction | | |
| Exhibit A31 : Copy of Receipts | | |
| Exhibit A32 : Copy of Sale Agreement | } | Complaint No. 105/2020 |
| Exhibit A33 : Copy of Agreement for Construction | | |
| Exhibit A34 : Copy of Receipts | | |
| Exhibit A35 : Copy of Sale Agreement | } | Complaint No. 106/2020 |
| Exhibit A36 : Copy of Agreement for Construction | | |
| Exhibit A37 : Copy of Receipts | | |
| Exhibit A38 : Copy of Sale Agreement | } | Complaint No. 107/2020 |
| Exhibit A39 : Copy of Agreement for Construction | | |
| Exhibit A40: Copy of Receipts | | |
| Exhibit A41 : Copy of Sale Agreement | } | Complaint No. 108/2020 |
| Exhibit A42 : Copy of Agreement for Construction | | |
| Exhibit A43 : Copy of Receipts | | |
| Exhibit A44 : Copy of Sale Agreement | } | Complaint No. 109/2020 |
| Exhibit A45 : Copy of Agreement for Construction | | |
| Exhibit A46: Copy of Receipts | | |
| Exhibit A47 : Copy of Sale Agreement | } | Complaint No. 107/2020 |
| Exhibit A48 : Copy of Agreement for Construction | | |
| Exhibit A49: Copy of Receipts | | |
| Exhibit A50 : Copy of Sale Agreement | } | Complaint No. 111/2020 |
| Exhibit A51 : Copy of Agreement for Construction | | |
| Exhibit A52: Copy of Receipts | | |
| Exhibit A53 : Copy of Sale Agreement | } | Complaint No. 112/2020 |
| Exhibit A54 : Copy of Agreement for Construction | | |
| Exhibit A55: Copy of Receipts | | |
| Exhibit A56 : Copy of Sale Agreement | } | Complaint No. 114/2020 |
| Exhibit A57 : Copy of Agreement for Construction | | |

Exhibit A58 : Copy of Sale Agreement
Exhibit A59 : Copy of Agreement for Construction
Exhibit A60 : Copy of Receipts

} Complaint No. 221/2020

Exhibits on the side of the Respondents

Exhibit B1 : Copy of the Acknowledgement issued
by Regional Town Planner, Tvp
Exhibit B2 : Copy of the application given to Swamiah Fund
Exhibit B3 : Copy of Financial data as per the Swamiah Fund
Exhibit B4 : Copy of the request given to Federal Bank
Exhibit B5 : Affidavit dated 02.11.2020
Exhibit B6 : Affidavit dated 16.11.2020