



**KERALA REAL ESTATE REGULATORY AUTHORITY  
THIRUVANANTHAPURAM**

**Complaints No. 188/2023, 190/2023, 191/2023, 192/2023, 194/2023,  
195/2023, 196/2023, 197/2023 & 198/2023**

Present: Smt. Preetha P. Menon, Member  
Dr. B. Sandhya, Member.

**Dated 10<sup>th</sup> March 2025**

**Complainants in Complaint No. 188/2023**

Commodore V.N. Ajith Kumar (Retd)  
S/o K Velayudhan Nair,  
Residing at C9, Rajrekha, Sankar Lane  
Sasthamangalam, Thiruvananthapuram- 695010

Represented by his power of attorney Holder  
V G M Nair  
S/o Gopalakrishnan Nair,  
Residing at 14-D, Cordon Sreevalsam, Pippinmoodu,  
Peroorkada PO. Thiruvananthapuram- 695005.

**Complainants in Complaint No. 190/2023**

Rajeev Balakrishnan,  
S/o Late k. Balakrishnan,  
Residing at Surabhi, Asramam Lane,  
Sasthamangalam, Thiruvananthapuram-695010



**Complainants in Complaint No. 191/2023**

Dr. V.G.M.Nair,  
S/o Gopalakrishnan Nair,  
Residing at 14-D, Cordon Sreevalsam, Pippinmoodu,  
Peroorkada PO. Thiruvananthapuram- 695005

**Complainants in Complaint No. 192/2023**

Ratheesh Viswanathan,  
S/o Late Viswanathan Nair,  
Residing at 301, Kesar Paradise CHS, Sector 36, Seawoods,  
Nerul West, Navi Mumbai 400076.

Represented by his Power of Attorney Holder  
V. G. M Nair,  
S/o Gopalakrishnan Nair,  
Residing at 14-D, Cordon Sreevalsam, Pippinmoodu,  
Peroorkada PO. Thiruvananthapuram- 695005.

**Complainants in Complaint No. 194/2023**

Dr. Ajay Venugopal,  
S/o Prof. R. Venugopal,  
Residing at 7A2, Royal Crest Villaments,  
B'Canti Homes, Jawahar Nagar, Kowdiar,  
Thiruvananthapuram- 695003.

**Complainants in Complaint No. 195/2023**

Thailaiyil Jose @ Thailaiyil AugustineJose  
S/o Late Augustine Kuruvila,  
Am Heidjoechl 5A/4, A-1220 Vienna, Austria.

Represented by his Power of Attorney Holder,  
Abraham K. George, S/o George K.T  
Residing at Thuruthel, Kavinpuram, Vilappilsala PO, Vilappil,  
Thiruvananthapuram- 695573.



**Complainants in Complaint No. 196/2023**

Afzal Machingal,  
S/o Koyamu Machingal  
Residing at Machingal House, Mundekad, Ponnundam Po,  
Malappuram 676106.

Represented by his Power of Attorney Holder  
V.G.M Nair

S/o Gopalakrishnan Nair,  
Residing at 14-D, Cordon Sreevalsam, Pippinmoodu,  
Peroorkada PO. Thiruvananthapuram- 695005.

**Complainants in Complaint No. 197/2023**

Mrs. Sukum Shekhar,  
D/o Late Col. S.R.Pillai,  
Residing at Somalee Hut, Chekkakonam PO, VTC, Aruvikkara,  
Nedumangad, Thiruvananthapuram- 695564.

**Complainants in Complaint No. 198/2023**

Sreekumar R Nair,  
S/o Late Ramakrishnan Nair,  
Residing at 71B, Andheri Greenfield Tower,  
JV Link road, Poonam Nagar,  
Andheri East, Mumbai 400076,

Represented by his Power of Attorney Holder  
V. G. M Nair

S/o Gopalakrishnan Nair,  
Residing at 14-D, Cordon Sreevalsam, Pippinmoodu,  
Peroorkada P O. Thiruvananthapuram- 695005.

[ By Adv. Jaideep G. Nair ]



**Respondents**

1. Santha Kumari Subash,  
TC No. 1/805, "Vinu Raj" Kumarapuram,  
Medical College PO., Thiruvananthapuram,  
Kerala – 695011

2. Dr. Rajesh S. Bose,  
TC No. 1/805, "Vinu Raj" Kumarapuram,  
Medical College PO., Thiruvananthapuram,  
Kerala – 695011

[Adv. Sharan Shahier, Mohammed Febin, Itty Paulson, Stephy  
Mary Saji, Rahul Krishnan & R. Suja Madhav]

The above Complaint came up for hearing on  
03.10.2024. The Counsels for both parties appeared for the online  
hearing.

**ORDER**

1. As the above Complaints are related to the same  
project developed by the same Promoters, the cause of action and  
the reliefs sought for in all the complaints are one and the same,  
these Complaints are clubbed and taken up together for joint  
hearing and Complaint No. 188/2023 is taken as leading case for  
passing a common order under Regulation 6 (6) of Kerala Real  
Estate Regulatory Authority (General) Regulations, 2020.



2. The factual matrix of the Complaint No.188/2023 in brief are as follows: The Complainant has executed Agreements for construction and purchase of land with regard to 'Haritham' Apartments which is an apartment complex which is part of the project named 'The Greens' a Joint Venture township project at Karakulam, Nedumangad Taluk, Thiruvananthapuram. The Greens, mentioned above, was a Joint Venture between the land owners Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent, his wife and the Builder MIR Realtors Pvt. Ltd., a construction company as promoters. The Promoters sought to develop 11 acres, 15 cents and 685 square links of property in survey numbers 1231/3, 1232/3 and 1187/1 (Resurvey number 233/1) in Block number 34 of Karakulam village, Nedumangadu Taluk and put up a township consisting of 58 villas, 300 residential apartments (in four apartment towers) and associated facilities. The apartment tower "Haritham" is the second apartment tower in the project. As specifically mentioned in the Agreement for sale executed with the parties that the entire extent of the said property has been set apart for the project and for development of the villas, apartments and common amenities as aforesaid. The land owners, Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent had executed a Joint Venture agreement dated 16.12.2006 as well as a supplementary agreement dated 31.05.2011 and an Additional Supplementary Agreement on 19.06.2012, with the said MIR Realtors Pvt Ltd., agreeing to develop the said property as mentioned above. The building



permit for the whole project was issued in the name of the said Subhash Chandra Bose and the 1<sup>st</sup> Respondent. The land owners have also executed a Joint power of attorney dated 17/01/2007 in favour of the Managing Director of the said company, appointing the company, as their Attorney, allowing the company to act on their behalf. As per the Joint Venture Agreement, the land owners did not transfer any title of the land to the Company and were to receive a percentage of the profits to be realized from the sale of the Apartments and as such they are in the position of Builder viz a viz the Complainants and also a 'Promoter' for the purpose of the RERA Act and in the position of a "Partner" in the Joint Venture for the purpose of the Indian Partnership Act 1832. The project was registered with RERA under certificate of Registration Number K-RERA/PRJ/209/2021, mentioning only MIR Realtors as Promoter. The Land owners, holding title of the entire project land and also being a Joint Venture Partner is also liable to be considered as promoters. The said Subhash Chandra Bose passed away in June 2021, and the Respondents 1 and 2 are his legal heirs. The 'Haritham' Tower Project is a Joint Venture; being jointly developed by MIR Realtors Pvt Ltd, and the Respondents. In view of the said Joint Venture, the Respondents as well as the said MIR Realtors Pvt Ltd were in the legal status of partners and were jointly and severally liable to complete the project and fulfil the obligations viz a viz the Complainants. The Joint Venture project known as the Greens was promoted as a massive venture, with 58



villas, 4 apartment complexes and appurtenant common facilities to be constructed in the entire area mentioned as 11 acres and of property as aforesaid and the same was marketed to the Complainants also as a Joint Venture. In gross violation of the said agreement, and without the consent or concurrence of Complainants who had already entered into Agreement for Sale and construction, the said land owners had transferred the right title and interest over the property, over which the Apartment complex was being completed, in favour of the builder Company, in November 2011. The project continued to be a Joint Venture since, the properties over which common areas and amenities were being developed continued to be in the name of the Land Owners and since no public announcement of dissolution of Joint Venture was made and no action was taken by either of the partners, to wind up the Joint Venture in accordance with the Indian Partnership Act. It may be noted that the sale of a portion of the property in favour of one of the parties of the Joint Venture, was against the principles of the Joint Venture and also against the rights conferred to the allottees under Section 11 (4)(h) of the RERA Act, 2016. The Complainants therefore seeks a declaration that the said transfer does not affect the right and interest of the allottees/Complainants to obtain possession and title of the said property. Moreover, the permit for construction from the statutory authorities also continues in the name of the Land owners, the said Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent. The application for renewal



of permit was also submitted in their names in the year 2020. This shows that in spite of the transfer of property to the name of the Builder, the land owners continue to be involved in the project as parties of the Joint Venture. It is also understood that the renewal has not been granted due to unauthorized increase in the club house area from the sanctioned area of about 23000 Sq. ft to about 26000 Sq ft, encroaching on the area earmarked for visitors parking. Though the time for completion of the project had long been passed, the Promoters continued the construction at a snail's pace citing financial difficulties. There has been inordinate delay in completing the project and it has been more than 15 years since the project has been launched. While so, the said MIR Realtors Pvt Ltd, had without the knowledge or consent of the Complainants, who had entered into agreements for purchase of Apartments and land, pledged the said "Haritham" Tower building and the property that it stood on to Federal Bank, Ernakulam North Branch and obtained a loan of Rs. 10,00,00,000 (Rupees Ten Crores) and had thereafter virtually abandoned the project. The said loan was restructured in the year 2021 as per settlement entered between the Builder and the Bank. It is now understood that the amounts received from the Complainants as well as the amounts received from the loans from Banks have been diverted by the Respondents and have been divided up amongst themselves. It is noticed from payment details given in the Additional Supplementary Agreement that a total of Rs. 7,14,58,800/- was paid to the Respondents before





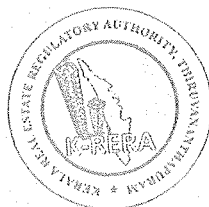
the signing of the agreement on 19.06.2012 and has issued Cheques/Post-dated cheques for 3 Crores to be cashed by July 2013. It can thus be understood that the Respondents had collected more than 11.5 Crore rupees, (as against an amount of Rs. 7.80 crores payable as per Rs.70,000 per cent as per the Joint Venture Agreement) as their percentage of profits of the Greens project, even before the constructions were completed. It may be noted at this point of time that the Respondents have already obtained the entire market value for the property owned by them and also amounts worth crores as their percentage of profit. As such the properties currently held in the name of the land owner cannot be treated as property that the land owner has full title to, but has to be treated as property of the Home buyers or of the Joint Venture, held in trust by the land owners. Thus, the land owners, Respondents 1 and 2 have taken their full share of cost of entire project land and also their share of profit without completing the project and also while retaining the bulk of the project land in their own name. The Respondents 1 and 2 had also transferred more than 22 flats in Prakriti and 11 villas in Tapovanam, which are part of the 'Greens' project to the personal name of Mr. Arun Kumar, the erstwhile Managing Director of the Builder company at grossly under-valued rates of about 10 Lakhs per Flat/Villas. This is recorded in the Forensic Audit Report commissioned by the Committee of Creditors formed by the National Company Law Tribunal in 2022. The Forensic Audit has also uncovered diversion



of crores to the sister firms and to the Directors/related parties. As such the Respondents have no interest in completing the project and handing over the completed Apartments and common facilities to the Complainants. Their intention, all along, apparently has been to collect all monies possible under the project and to abandon the same midway, leaving it to the fate of the customers, including the Complainants. When the Rs. 20.75 crores collected from customers before availing the loan from Federal Bank and a loan of 10 crores which was availed specifically for construction of 'Haritham' Towers from Federal Bank are considered and when the same is compared to the fact that the estimate for the construction of 'Haritham' Towers was only 23 crores (now revised to 26 crores) and total cost of services and amenities for 'Haritham' Towers is Rs. 4.75 crores (23 crores divided among all 4 Towers and 58 Villas), it can be seen that the total money collected from customers and the loan amount, should have been more than enough to complete the construction work on 'Haritham' and meet the proportionate share of the cost of the expenditure for common services and Amenities (23+4.75) 27.75 crores. The fact that the 'Haritham' towers was not completed and the Amenities are also not completed till date in spite of collection of funds more than sufficient to complete the project, is a clear indication of diversion of the customer's money and the Loan amount. This clearly shows that there is violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 and



that orders need to be passed by this Authority to safeguard the interests of the Complainants who have Bonafide invested the life earnings in the project with the hope of obtaining a Home with the promised common facilities. The MIR Realtors Pvt Ltd had become the subject matter of a proceeding before the NCLT and by order dated 21/06/2023 in IBA/11/KOB/2020 of the National Company Law Tribunal, the said Company has been ordered to be liquidated and is no longer in existence. As such said Company is not made party to these proceedings. However, in view of the Joint Venture as well as the partnership relationship between the Respondents and the said Company, each of the Respondents is personally and jointly liable to complete the project and/or face the penalties imposed by this Authority for failure to do so. The Joint Venture stands dissolved consequent to the liquidation order issued on 24 April 2023 against MIR Realtors in accordance with section 41(a) of the Partnership for winding up the joint Venture, after settling all claims/Contractual obligations, remain with the surviving Joint venture partner, the Respondents. Moreover, the Respondents have transferred the Club house land comprising 41 cents which were part of the said 11 Acres and odd of the property in which the project is being developed, to Sri Arun Kumar in his personal capacity vide Sale Deed No. 3936/12 dated 16 November 2012 of the Karakulam Sub-Registry. The said portions purchased by him included those earmarked for the development of the common amenities which were agreed to be provided as per the



said Agreement for purchase and construction aforesaid. Though this transfer was to the name of Sri. Arun Kumar, the payment was made from the accounts of the Company, which was the money paid by the Customers. The said Arun Kumar has knowingly perpetuated the fraud by sale of almost 95% of the club house to two individuals Subin Joseph and Gautham Chand vide Sale deed Nos. 1747/2016 and 691/2019 of the Karakulam Sub Registry. These were a deliberate action to defeat the purpose of the RERA Act which require the transfer of this common facility to the Resident's Association. An Encumbrance certificate of the Clubhouse land also reveals 4 court attachments on the land, all related to cases against Arun Kumar. The Respondents also committed a fraud on the Kerala RERA by not revealing the sale of the club house land to himself and the subsequent sale by him to others of the same, while seeking registration of the project with RERA. The Complainants had instituted Complaints before this Authority as Complaint No. 221/2020 against the Builder to complete the project and for obtaining compensation. This Authority had passed a common order dated 16/11/2020 in the above said complaints directing the completion of the project. However, by the dissolution of the Company, MIR Realtors, the said proceedings have been rendered infructuous. Similarly, a Complaint was filed as 275/2021 by the Association of apartment owners of Haritham Towers seeking reliefs against Builders and the Respondents herein, but the same was also not disposed in view



of the moratorium order passed by the NCLT. However, this present Complaint is laid on a different cause of action that has arisen consequent on the death of the original land owner Mr. Subash Chandra Bose and the consequential termination of the Power of Attorney in favour of the Company and also in view of the order of liquidation passed against MIR Realtors Pvt Ltd by the NCLT on 21/06/2023 vide order in IBA/11/KOB/2020. The properties that are to be part of the project and over which the common areas are to be constructed are being transferred surreptitiously, while the allottees are left in the lurch. It is apprehended that the Respondents who are also promoters of the Joint Venture may leave the jurisdiction of the court and transfer their interests in the properties in favour of third parties to defeat the legitimate rights of the Complainants. If they are allowed to do so, the orders likely to be passed in favour of the Complainants may become infructuous. As such it is highly necessary that interim orders are passed prohibiting the creation of any encumbrance or transfer or other liability on the entire 11 acres, 15 cents and 685 square links of property in survey numbers 1231/3, 1232/3 and 1187/1 in block number 34 of Karakulam village, Nedumangadu Taluk, in which the project is being undertaken, until the finalization of the dispute with the Complainants. For the same a separate petition is also being filed. The Complainants are also entitled to an order declaring that the mortgage created by the Respondents and the Builder on the 'Haritham' Towers and the



property that it stands on is not binding on the Complainants in view of Section 11(4)(h) of the Act. The Complainants seeks following reliefs:

1. Declare the Respondents as promoters of the Greens Township Project.
2. Direct the Respondents to renew the Permit for the project issued by Karakulam Panchayat.
3. Direct the Respondents to complete construction, including all common services of the HARITHAM tower and other facilities common to all residents of the Greens Township project as specified in the agreement, and hand over the flats to the customers or alternately refund the amount paid, with interest and compensation, in accordance with the RERA Act.
4. Declare that the Sale Deed No. 3936 of 2012 executed by the Respondents involving the Joint Venture project property and all subsequent documents executed thereunder, do not bind the Complainants under section 11(4)(h) of the Act.
5. Direct the Respondents to liquidate all existing mortgages on the property and building 'Haritham' Towers, as well as the properties over which the common services and amenities are to be developed, within a time specified by the Authority.
6. It may be declared that the Haritham Towers is a property of the JV and hence cannot form part of the Liquidation estate of the company and also cannot be mortgaged for a loan by MIR Realtors.



7. Direct the Respondents to pay compensation as provided under the Act for the delay in handing over the completed Apartments.

3. The 1<sup>st</sup> Respondent, on behalf of the 2<sup>nd</sup> Respondent also filed a petition IA No.78/2024 challenging the maintainability of the Complaint No.188/2023 contending as follows: The Complaint is not maintainable and the Complainant are guilty of not disclosing the full/true facts. The Complaint is filed for completion of works in Haritham projects. The Complainants have not produced any valid documents evidencing his right with respect to the project. The Complainant only stated that he is an allottee executed agreement for construction and purchase of land. Other than this not produced documents to prove that he was an allottee to the project. The Complainant had filed another Complaint No. 11/2020 for the same alleged cause of action namely completion of Haritham apartments against the actual Promoter namely, MIR Realtors Pvt Ltd. and this Authority granted relief by its order dated 16.11.2020. The specific case in the said Complaint was that MIR Realtors Pvt Ltd is the promoter of Haritham apartments and on the basis the Complaint was allowed and directions were issued to the said promoter. Such directions were issued with the consent of the Complainant. The Complainant has concealed the order passed by this authority and the Complainant is estopped and barred from contending that the Respondents are to be considered as the promoters of the project.



Further the Complainant cannot be permitted to prosecute different Complaints on the same cause of action and for the same reliefs. The Complaint is also hit by the principle of res judicata and/or constructive res judicata. It is trite law that a Complaint must include his entire claim related to a specific cause of action in one lawsuit, if one intentionally or not omit a part, he cannot file a separate suit for it. Further a part of claim is relinquished the same cannot be sued for thereafter. In this case, the Complainant has already sued the developer MIR Realtors Pvt Ltd, for the same cause of action now claimed in this Complaint. The Complainant did not have a case in that Complaint that the Respondents are also promoters of the same project and the Complainant has therefore relinquished his alleged right to sue the Respondents and cannot prosecute these Respondents. The Complaint is also liable to be dismissed for non-joinder of cause of action. The principle of avoidance of multiplicity of suits prevents the Complainant from raising the same issues that were already brought in the action against the promoter MIR Realtors Pvt Ltd and decided by this Authority by common order dated 16.11.2020. Merely because the promoter MIR Realtors Pvt Ltd against whom the Complaint has already obtained orders from this Authority has gone into liquidation is not a ground to file a separate Complaint against the original owners of the land on the same cause of action and seeking the same reliefs. This is an afterthought and abuse of the process of law. There is no cause of action against these Respondents and





the cause of action claimed is false and imaginary. The Respondents have no privity of contract with the Complainants and the Complainants cannot have any cause of action against these Respondents. The Complaint is also bad for non-joinder of necessary parties. When admittedly the Developer is the Promoter of the project, and who has obtained registration under RERA for the project in question the present Complaint without them or the liquidator representing them being in the party array is barred. The Complainant has also not arrayed all the legal heirs of late Subash Chandra Bose. The Complaint is not maintainable against the Respondents since they do not fall in the category of promoters. The petitioners have filed the Complaint on the premise that the Respondents would become promoters of the project by virtue of the different agreements entered in to with the actual developer/promoter. The respondents are only the original land owners and in the facts of the case the Respondents did not fall in the category of promoter as explained in the RERA Act, 2016. The Legislature has clearly not included the land owners as promoters and has provided specific instances when a land owner can be considered a promoter. The promoter of Haritham apartment and the Greens project is MIR Realtors Pvt Ltd and the Respondents were only land owners. The land for Haritham apartment were also transferred to MIR Realtors Pvt Ltd. much before the RERA Act was introduced. Consequently, the Respondents cannot be considered as promoters. The Complainant has twisted the content



of the agreements entered in to by the land owner with the builder/promoter to create confusion in an attempt to try and legitimise the Complaint. Even according to the Complainants, the right title and interest in the land on which the Haritham apartment was proposed had already been transferred to the Builder/developer in 2011. The said transfer was in accordance with the agreement executed by the land owners with the builder, based on that the RERA registration was granted to MIR Realtors, as promoter of the project. Having accepted the transfer, registration under RERA and having already initiated action against the developer the Complainant is barred and estopped in taking contrary contentions. The reliefs claimed are beyond the jurisdiction of the Authority and some of the reliefs claimed had been adjudicated by the Authority and further consideration of very same claim is beyond the jurisdiction of the Authority. Late Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent were the land owners of 11.46 Acres. In 2006, the 1<sup>st</sup> Respondent along with her late husband entered in to an agreement on 06.12.2006 with MIR Realtors Pvt Ltd a company which was into development of townships. The said developer envisaged a project comprising of villas and apartment towers in the said property. This agreement had a validity of 30 months. Even as per the agreement the requisite funds for due execution of construction works and execution was the responsibility of the developer and the respondents were not bound to share in any portion thereof in any



event. This agreement modified and novated on 31.05.2011 and 19.06.2012 due to non-performance on the part of the builder. On perusal of the three agreements the respondents were initially entitled for a portion of the net profit from the builders from the execution of the said project and since there was delay and expiry of agreements the same was modified, as per which the transaction between the parties was modified to one for sale of land and construction payable to the land owner was fixed as lumpsum consideration for sale of land and the entitlement to share in profit was deleted and substituted. The agreement finally concluded was thus a land sale agreement for a total consideration of Rs. 12,00,00,000/-The supplementary agreements make it clear that the Respondents cannot be considered as promoters whatsoever and respondents were merely outright sellers as well as allottee in a part of the project. As per agreed terms, the consideration was to be paid in instalments and the Respondents were obliged to execute sale deeds for parcels of land in favour of the developer/promoter proportionate to the consideration paid. The villa project was completed by the developer/ promoter and sale deeds for the appropriate land was also executed by the Respondents on receipt of appropriate consideration. None of the villa owners have any complaint. The first apartment tower by name "Prakrithi" was also completed by the promoter and sale deeds for the land was executed by the Respondents on receipt of consideration. Like wise on receipt of appropriate consideration land on which "Haritham



apartment” was proposed the land owner /Respondents executed sale deed for the land in question as early as in December 2011. Later a further extent of land on which the developer had projected the club house was also transferred by the land owners Respondents as directed by the Developer. All these are known to the Complainant and the Complainant has expressly and impliedly accepted the same by their conduct. These Respondents have not been paid with the entire consideration agreed as per supplementary agreements. The additional supplementary agreement dated 19.06.2012 also expired on 30.04.2013. The builder has not performed his part. In any event, the final agreement in place between the land owners and developer is the additional supplementary agreement dated 19.06.2012 as per which there is no joint venture in place and the respondents are only land owners entitled to a lumpsum consideration which till date they have not received. Tower three and four of the project appeared to have been abandoned by the developer and since no consideration for the lands on which the same was proposed was paid to the Respondents, the said portion of land continues to belong to the respondents and they are entitled to the same legally. The Complainants also admits that the developer /promoter has mortgaged the land on which the Haritham apartment was to be constructed with the Federal Bank. This could have been possible only since the developer was the owner of the land and this mortgage was the subject matter of the proceedings before the



National Company Law Tribunal and in Complaint No.... and other Complaints before this Authority. Claims with respect to it has already been considered at the NCLT and this Authority resulting appropriate orders. The Respondents do not qualify as promoter and not liable to complete the construction of the project or liquidate the existing mortgage or even compensate the Complainant. The POA executed by the Complainant is not registered and hence the credibility is questionable. The usage of POA makes the Complaint non-maintainable.

3. The Complainants filed counter affidavit to the above-mentioned petition on 11.07.2024 which was as follows: No letter of authorization has been produced by the 1<sup>st</sup> Respondent authorizing her to represent the 2<sup>nd</sup> Respondent and as such, the averment that the affidavit is being filed on behalf of the 2<sup>nd</sup> Respondent as well is not admitted. There has been no suppression by the Complainants as alleged. The attested copies of the Agreement for sale as well as the agreement for construction have already been produced before this Authority. There has not been any concealment as alleged. The earlier complaints were not instituted on the same cause of action or for the same reliefs. As has been specifically pleaded in the Complaint, this present Complaint is laid on a different cause of action that has arisen consequent on the death of the original land owner Mr. Subash Chandra Bose and the consequential termination of the Power of



Attorney in favour of the Company and also in view of the order of liquidation passed against MIR Realtors Pvt Ltd by the NCLT on 21/06/2023 vide order in IBA/11/KOB/2020. Therefore, the contention regarding estoppel is not applicable to the facts of this case. Moreover, the Complainants in Complaint 191/2023, 194/2023, 197/2023 and 198/2023 have not filed any previous complaints and as such the said objections are not binding on them in any view of the situation. Further, the Respondents have not raised any claim that they claim through the MIR Realtors or that they are their legal representatives. In fact, they have distanced themselves from the Builders and as such cannot claim the principles of res judicata or estoppel is applicable to them. The principles of Civil Procedure Code are not applicable to proceedings before quasi-judicial bodies such as this Authority. The Builders, at the time of filing of the earlier Complaint were the Powers of Attorney of the Land Owners and representing them. However, due to the death of the said Subhash Chandra Bose, one of the land owners and due to the fact of liquidation of the Builder Company, the legal liability to fulfil the legal obligations of the Joint Venture have now fallen on the Respondents. It is in this context that the present Complaint is filed. In fact, when registration of the project was made in November, 2021, though the entire extent of land was included, the Builder alone was shown as Promoter in the records of the Authority. It is reiterated that the agreement has been executed with the Complainants on the basis



of the Power of attorney granted by the land owners to the Builders and also on the basis of the Joint Venture Agreement executed between the land owners and Builders with regard to the development of the township project. Moreover, the Land owner has received amounts towards the Joint Venture Agreement from amounts paid by the Complainants. In view of the above, the contention regarding lack of privity of contract between the Complainants and Respondents is unsustainable. The Builder, MIR Realtors has gone into liquidation and a liquidation order has been passed against them which has been produced along with the Complaint. As such there is no necessity to add a non-existing party to these proceedings. The contention that the Respondents do not fall within the category of Promoter is denied. The same has been elaborately pleaded in the Original Complaint and are not repeated here for the sake of brevity. However, it is reiterated that the Respondents who have entered into a joint venture agreement with the Builders and who have a profit-sharing agreement with the Builders is a promoter within the meaning of the Act. Moreover, the permit stands in the name of the Land owners and the Respondents have retained with themselves the right to execute Sale deeds, which shows that the Respondents have joint control over the project. For these reasons also, the Respondent can be considered as Promoters. The very fact that the property of the Haritham land was transferred in favour of the Builder as an internal arrangement for administrative convenience, would show

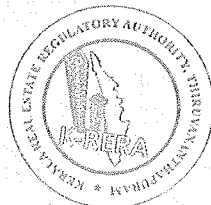


the joint control that both parties enjoyed over the Joint Venture. It is also worthwhile to note that even after the transfer, the project was being marketed as part of the Greens project and the approved plan and license continued to be in the name of the Respondents and even the agreements entered which the Complainants and others mentions this fact. The vague assertion regarding lack of jurisdiction regarding reliefs, without mentioning particulars, shows the callous nature in which such allegations are made. All reliefs sought for are within the powers conferred on the RERA Authority by law. The Petitioner herself admits that the original agreement envisaged profit sharing arrangement. The fact that there was modification of the said Agreements leads credence to the fact that the Respondents were also in control of the Joint Venture and had a say in the execution thereof, though the actual construction was done by the Builders as the technically expert partner. In fact, the said modifications to the said Agreements do not affect or change the relation regarding the Complainants who entered into the Agreement based on the original Joint Venture Agreement, since their consent was not taken prior to changing the terms thereof. Moreover, as regards the subsequent Complainants also, since no mention of the supplementary agreements is made in their agreements for sale and construction, the same are not binding on them either. The further averments that the 'Club House' property was transferred to the Builder, is an admission of the blatant violation of the Joint venture Agreement as well as the





agreements with the Complainants and others, since, areas specifically earmarked for common spaces and for common enjoyment as per the Joint venture Agreement were transferred the same to third parties. In fact, all these transactions were done surreptitiously, while litigations were pending. This also shows that the Respondents were working hand in glove with the Builders in defrauding the Complainants. It would also show the independent right they exercised over the project land, which further proves the joint control over the project. The further contention that land over which tower three and four were proposed has been abandoned and that no consideration has been paid is denied. It is noticed from payment details given in the Additional Supplementary Agreement that a total of 7.14588 Crores was paid to the Respondents before the signing of the agreement on 19 June 2012 and the Builder has issued Cheques/Post-dated cheques for 3 Crores to be cashed by July 2013. It can thus be understood that the Respondents had collected more than 11.5 Crore rupees, (as against an amount of Rs.7.80 Crores payable as per Rs. 70,000 per cent as per the Joint Venture Agreement) as their percentage of profits of the Greens project, even before the constructions were completed. Thus, it can be seen that as per the supplementary agreement entered into between the Land Owner and Builders, the entire consideration payable under the Joint Venture Agreement has been received by the Land Owners. In fact, no legally sustainable document has been



produced before this authority to show how much monies have been received by the Respondents from the Builders or how much is due. In view of the bald allegation's contrary to the statements in the supplementary agreement, the same has only to be discarded. Prayer No.4 for declaration is within the jurisdiction of this Authority and the decision before the Company Law Tribunal does not in any way fetter the rights of this Authority to grant the said relief. The averments contained in paragraph 18 of the affidavit are denied. The Power of Attorney for conducting cases is not required to be registered under any statute and as such, the objections based on non-registration are only to be discarded. The averments contained in paragraph 19 of the affidavit are denied. The Petition challenging maintainability is filed without Bonafide merely to delay the proceedings and the same must be dismissed with costs.

4. The Counsel for the Respondents has filed submission dated 10.10.2024 to the counter filed by the Complainants on the issue of maintainability of Complaints and submitted as follows: The Complainants have earlier filed similar complaints for the same alleged cause of action viz., completion of 'Haritham Apartments' against the Promoter/Developer viz MIR Realtors Pvt Ltd and Authority has granted relief to the Complainants of Haritham Apartments by its order dated 16/11/2020 in Complaint Nos.11/2020 and other cases. The case in those Complaints is that MIR Realtors Pvt Ltd is the Promoter



of the 'Haritham Apartments', and having envisaged the Project and purchased the land for the same from these Respondents as early as in 2011 has not completed the Project. On these averments the Complaint was allowed and directions were issued to the said Promoter with the consent of the Complainants. The very same Complainants cannot be permitted to prosecute another complaint on the same cause of action and for the same reliefs and therefore these complaints are not maintainable in law. These Complaints are hit by the principles of res judicata and/or constructive res judicata and the principle of avoidance of multiplicity of suits also prevents the Complainants from raising the same issues and claiming the same reliefs. If one intentionally or unintentionally omits a part of the claim, he cannot file a separate suit/claim for it afterwards, for which the Counsel relies Order 11 Rule 2 of the Civil Procedure Code, 1908. In those Complaints, the Complainants did not have a case that the Respondents are also Promoters of the same Project and the Complainants have therefore relinquished their alleged right to sue the Respondents as a Promoter. In the earlier complaints no leave of this Authority was obtained to proceed against these Respondents for the same reliefs sought against the Developer. The present complaints against these Respondents are clearly barred by law and not maintainable. The Complainants are estopped and barred from now contending that the Respondents are to be considered as the Promoters of the Haritham Project because the Promoter MIR



Developers Pvt Ltd, against whom the Complainants have already obtained orders from this Authority, has gone into liquidation. The Complaint shows that the cause of action alleged is “consequent on death of the original land owner Mr. Subhash Chandra Bose and consequent termination of POA in favour of the Company and also in view of the order of liquidation passed against MIR Realtors Pvt Ltd by the NCLT”. The 1<sup>st</sup> Respondent was always one of the original land owners and the 2<sup>nd</sup> Respondent is one of the sons of the 1<sup>st</sup> Respondent and late Subhash Chandra Bose. Merely because one of the original land owners died does not give a new cause of action for filing a new complaint for the same reliefs obtained in the earlier complaint. Further, the order of liquidation of MIR Realtors also does not give the Complainants a new cause of action. Instead, their remedy is to make a claim before the Official Liquidator, which the Complainants have stated they have already made. If so, their remedy is to continue that claim and not to file a separate complaint against the original owners of the land on the same cause of action and seeking the same reliefs. Based on the order already passed by this Authority the Complainants have admittedly taken up the matter with the Official Liquidator for the same reliefs now claimed in these complaints, including to declare that Haritham Towers land cannot form part of the liquidation estate of MIR Realtors and could not have been mortgaged by MIR Realtors. It is to be noted that MIR Developers have only been ordered to be liquidated and the liquidation



proceedings are going on and Home Buyers Association has a priority claim under the Insolvency and Bankruptcy Code and the Complainants and their Association have admittedly availed this benefit. When admittedly MIR Realtors is the Promoter of the Haritham Apartments who has obtained registration under the RERA for the project in question and the Complainants have admittedly already staked their claim before the Official Liquidator they cannot be permitted to maintain the present Complaints. The Respondents are only the original land owners and in the facts of the case the Respondents do not fall in the category of promoter as explained in the RERA Act, 2016. The Legislature has clearly not included a land owner simpliciter as promoters and has provided specific instances when a land owner can be considered a promoter. The Promoter of Haritham Apartment and The Greens Project is MIR Developers Pvt Ltd and their nominee, as per Agreement conditions, in 2011 and 2012 much before the RERA Act was introduced. Therefore, at the time RERA Act came into force these Respondents were not even land owners and MIR Developers have also taken out registration under the RERA. It is based on these facts that the Complainants filed their original complaint before this Authority and obtained orders. Consequently, Respondents cannot be considered as a Promoter. The jurisdictional Kerala High Court in Cordial foundation Pvt Ltd vs Dr. Purushothama Bharathi reported in 2023 (6) KLT 806 and Pooja Constructions vs Secretary, Kerala Uranma Devaswom



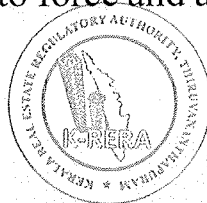
Board reported in 2024 (5) KLT 207 have held that a Landowner who has no active role in the matter of construction, investment of money and profit sharing is not a Promoter. In the instant case as per the Supplementary Agreement dated 31.05.2011 executed between the Developer and the Land Owners the arrangement between the parties was modified to one for sale of land and allotment of villa and consideration payable to the Land owner Respondents was fixed as a lumpsum consideration. The Agreements thus show that the Landowners had no active role in the matter of construction and investment of money. The earlier provision for profit sharing was specifically deleted. In 2006, the 1<sup>st</sup> respondent along with her late husband entered into Agreement on 06/12/2006 with MIR Realtors Pvt Ltd., said Developer envisaged a Project comprising of Villas and Apartment Towers, one of which is the 'Haritham' Apartment in the said property. This Agreement the land owners had initially agreed to a share in the net profit from the execution of the said project (para 22 of the Agreement). However, even as per this Agreement the requisite funds for the due execution were the responsibility of the Developer and the respondents were not bound to share in any portion thereof. In any event, since the Developer defaulted on his promises this agreement was novated on two occasions. As per the supplementary Agreement dated 31/05/2011 the arrangements between the parties were modified to one for sale of land and consideration payable to the Land owner respondents was fixed as



a lumpsum consideration for sale of land and the entitlement to share in profit was deleted and substituted. The Agreement finally concluded was thus a land sale agreement for a total consideration of Rs. 12,00,00,000/-. (Refer Clause 1 – “Thus the total value of the land involved in the project is fixed at Rs. 12,00,00,000/- which shall be the sole and total consideration that the first party shall be entitled to get from the second party”. Further Clause 12 specifically provides “Since the ‘profit sharing’ arrangement between the parties herein stands omitted from this joint venture arrangement, all the clauses/conditions facilitating but not limited to those conditions in Clause No. 18, 21, 22, 23 etc. will not be operative and the respective rights and obligations of the parties in this regard shall be invalid and unenforceable”. The second supplementary Agreement further confirms this. Thus, the supplementary agreements made it clear that the Respondents do not have any active role in the matter of construction, investment of money or profit sharing and the Respondents were merely outright sellers of land as well as an allottee in a part of the project. Therefore, going by the decisions of the jurisdictional High Court aforesaid the Respondents are not Promoters and a complaint against them is not maintainable. As per the Supplementary agreed terms the consideration was to be paid in instalments and the Respondents were obliged to execute sale deeds for parcels of the land in favour of the Developer/Builder/Promoter proportionate to the consideration paid. Clause 5 of the second Supplementary



Agreement dated 19.06.2012 provides, "Against each such part payments of the total consideration by the second party the first party shall execute the necessary sale deeds and convey such extent of land valued equivalent to the part payments made by the second party in favour of the second party or its nominees". The Villa Project was completed by the Promoter/Developer and Sale Deeds for the appropriate land was also executed by the Respondents on receipt of the proportionate consideration. None of the villa owners have any complaint either against the Developer of these Respondents for their land or common areas or amenities. Likewise, the First Apartment Tower by name 'Prakriti' was also completed by the Promoter/Developer and Sale Deeds for the appropriate land was also executed by the Respondents on receipt of the proportionate consideration. None of the Apartment owners in this Tower have any complaint either against the Developer or these Respondents for their land or Common Areas or Amenities. Likewise, on receipt of the consideration proportionate to the land on which "Haritham Apartment" was proposed the land owner respondents executed sale deed for the land in question as early as on 17.12.2011. Later, a further extent of land on which the Developer had projected the Club House was also transferred by the land owner Respondents by Sale Deed dated 16.11.2012 in favour of the Managing Director of MIR Realtors as directed by the Developer/Builder. All these transfers were made much before the RERA Act came into force and are known to the Complainants





and the Complainants have expressly and impliedly accepted the same by their conduct and filing the earlier Complaints before this Authority. In any event these were in strict compliance of the Land Sale Agreements executed by these Respondents. It was further submitted that these respondents have not been paid the entire consideration agreed as per the supplementary Agreements. The additional supplementary agreement dated 19/06/2012 also expired on 30/04/2013. In any event the final agreement in place between the Land Owner Respondents and the Developer/Promoter as are additional supplementary agreements dated 31/05/2011 and 19/06/2012 as per which there is no joint venture in place and the respondents are only land sellers entitled to a lumpsum consideration which till date they have not received. Tower three and four of the Project appears to have been abandoned by the Developer and in any event since no consideration for the land on which the same was proposed was paid to the Respondents, the said portion of land continues to belong to the Respondents and they are entitled to the same. There is also no cause of action against these Respondents and the cause of action claimed is false and imaginary. The Complainants have also twisted the contents of the Agreements entered by the land owners with the Builder/Promoter only to create confusion in the minds of the Authority to try and legitimize their complaint. This attempt is clearly an abuse of the process of law. Even according to the Complainants, the right title and interest in the land on which



the Haritham Apartment was proposed was already transferred to the Builder/Developer in 2011. This transfer was in accordance with the Agreements executed by the land owners with the Builder/Developer and that RERA registration was also granted to MIR Developers Pvt Ltd as Promoter of the Project. Having accepted the transfer, registration under RERA and having already initiated action against the Developer based on such transfer of lands, the Complainants are barred and estopped in taking contrary contentions. Further, any challenge to the said transfer of land at this point of time is barred by limitation. A perusal of the Agreements produced will show that seven of the nine Complainants entered into Agreements directly with MIR Realtors after the land for the Haritham Apartment was transferred to MIR on 17/12/2011 by Exhibit A8 Sale Deed –

<u>Complaint No.</u>	<u>Complainants</u>	<u>Agreement Date</u>
190/2023	Rajeev Balakrishnan	13.01.2016
191/2023	Dr. V G M Nair	29.07.2014
192/2023	Ratheesh Viswananth	10.10.2013
194/2023	Ajay Venugopal	16.01.2014
196/2023	Afzal Machingal	28.12.2017
197/2023	Sukum Sekhar	30.12.2015
198/2023	Sreekumar Nair	05.08.2013



5. While the Agreements in Complaint 195/2023 (Jose Thailayil) and 188/2023 (Commodore V.N. Ajithkumar) were entered into prior to the transfer of the Haritham land, those Complainants have filed Complaints 110/2020 and 221/2020 before this Authority against MIR Realtors as Promoter thus accepting the transfer of the Haritham and Club lands to the Promoter and their nominees (which transfers were made in 2011 and 2012 before the RERA was introduced) and based thereon has also obtained reliefs from this Authority. The Complainants also admit that the Developer/Builder/Promoter MIR Realtors Pvt Ltd, has mortgaged the land on which Haritham Apartments was to be constructed with the Federal Bank Ltd. Clearly this was possible only since the Developer was the owner of the land. Further the Complainants themselves agreed in their Agreements that MIR Developers could mortgage the land as seen from "WHEREAS the purchasers/agree that the vendors/builder is free to mortgage/raise finance on the land described in the schedule agreed to be transferred to the Purchaser during the project". In any event, this Mortgage was the subject matter of the proceedings before the National Company Law Tribunal and in Complaint No.11 of 2020 and other Complaints before this Authority. Claims with respect thereto has already been considered by the NCLT and this Authority resulting in the issue of appropriate orders. The reliefs claimed with respect to the mortgage are therefore without any basis. The Respondents thus do not qualify as a promoter as per the



RERA Act and hence the respondents are not liable to complete the construction of the project or liquidate the existing mortgage or even to compensate the Complainants herein. This is also impossible in view of the sale of land to the Developer. The reliefs claimed are thus beyond the jurisdiction of this Authority. Further, the reliefs claimed have already been adjudicated by this authority in the earlier complaint and orders have also been issued and therefore a further consideration of the very same claim is beyond the jurisdiction of this Authority. It is also submitted that the power of attorney executed by the Complainants to VGM Nair is not registered and hence the credibility of the same is questionable. Therefore, the usage of POA makes the complaint non-maintainable.

6. The Authority in the first instance, decided to consider the issue of maintainability of the above Complaints before this Authority which was also sought for by the Respondents herein. Heard both parties in detail regarding the maintainability of the Complaints [I.A No. 78/2024 in Complaint No.188/2023] and examined the documents placed on record. The documents produced by the Complainants are marked as **Exhibits A1 to A19**. No documents have been produced by the Respondents. The Copy of Power of Attorney dated 26/07/2023 executed by the Complainant in Complaint No No.188/2023 in favour of Dr. VGM Nair, the Complainant in complaint No



No.188/2023 is produced and is marked as **Exhibit A1**. The POA has been attested by an Advocate & Notary and certified that the particulars have been entered in the Notarial Register on 28.07.2023 kept by the Notary. The Copy of brochure of the project in question is produced and is marked as **Exhibit A2**. As per Exhibit A2, the promoters of the project, M/s Mir Realtors declare that “they dream to build a green, gated and guarded community and Zero pollution Zone with 364 luxury dwelling units comprising of apartments, and villas spread in almost 12 Acres of virgin greenery, the project is a beach taking beauty, comprising of 4 high rise apartment towers and 58 luxury villas”. The copy of the print out from the website of the promoter, M/s M/s Mir Realtors showing the details of the ‘Haritham’ project is also produced and is marked as **Exhibit A3** as per which “Haritham is the only one of its kind integrated Township in Trivandrum with all amenities. Haritham is one among the four 15-storied towers in the project. ----- Town ship comprises of 58 villas and four 15-storied apartment towers. ----- Features a modern 25,000 sq.ft. Club House with a host of world class amenities. ----- Amenities includes: Hitech multi gym with Sauna & Jacuzzi, Swimming pool, Home theatre, Crèche & day care centre, Guests suits, Dormitory with lockers for drivers, Special changing rooms, & toilets for servants, conference hall, cafeteria, super market, ATM Counter, Doctors clinic, Beauty Parlour, Reading Room, advanced sewage treatment plant and water



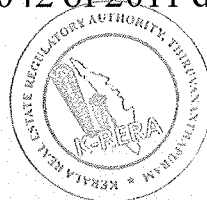
treatment plant.” The copy of Joint Venture Agreement dated 06.12.2006 is produced and is marked as **ExhibitA4** which was executed by the land owners, Mr. Subhash Chandra Bose and his wife, the 1<sup>st</sup> Respondent herein with MIR Realtors Pvt Ltd. represented by its Managing Director Arun Kumar K. As per the said agreement, Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent are shown as “the land owners” who are in absolute possession of 11 Acres 15 cents and 685 sq link of land wherein it was stated that the parties analysed the feasibility of the project and marketability thereof and being convinced and mutually agreed that the MIR realtors Pvt Ltd will undertake construction of the township project as a joint venture, undertaking to safeguard the respective interests of both the parties and to the best interest and advantage of the prospective customers for villas, apartments and other units in the township project. As per the said Exhibit A4 agreement, a consideration of Rs. 7,80,50,000/- was agreed and as per clause 22 of agreement it was specified that “the land owners are entitled for getting 27% of the net profit from MIR Realtors derived from the execution of the township project upon completing its various phases and by marketing/selling the units and the net profit shall be calculated based on square feet rates of each units of the township project after deducting cost of construction per sq feet which includes construction cost, overhead costs and the cost of land per sq. Feet. The actual extent of sold-out area coming under each unit of the villas and apartments shall only be taken for



calculating the said 27% profit payable to the land owners. The land owners shall assign the undivided share in the landed properties in favour of the intending purchasers of apartments, villas, etc. as per the directions and instructions of MIR Realtors Pvt Ltd on payment of value /consideration". The period of said agreement was shown as 30 months. The copy of Power of Attorney dated 17.01.2007 executed by the Land Owners in favour of Mr. Arun Kumar, Managing Director of MIR Realtors Pvt Ltd, allowing the company to act on behalf of Respondents is produced and is marked as **Exhibit A5**. As per Exhibit A5, the Land owners authorised the company "to make agreement for sale, to make agreement for construction with intending purchasers and to make or enforce payment of and to receive payments and to give effectual receipts and discharge for all payments to which land owners entitled from intending purchasers in respect of the property, to sign/execute/admit execution of agreements/assignments and other assurances deemed fit and necessary for the purpose of developmental activities of the township project and for matters connected thereto etc". The copy of Supplementary Agreement dated 31.05.2011 executed by the Respondents with the MIR Realtors Pvt Ltd is produced and is marked as **Exhibit A6**, as per which the consideration was revised and refixed as Rs. 12,00,00,000/- and the period of was extended till 31.10.2011. The total land area involved in the supplementary agreement is 10.97 Acres 685 sq links (excluding the two villa

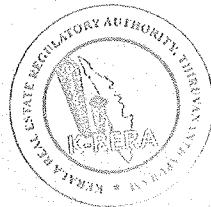


plots developed for the nominees of the land owners approximately in 17 cents). In the supplementary agreement the profit-sharing arrangement stands omitted. The copy of Additional Supplementary Joint Venture Agreement dated 19.06.2012 executed by the Respondents and MIR Realtors Pvt Ltd is produced and is marked as **Exhibit A7**, as per which it was agreed to revise and modify the terms in the previous two agreements stating the two agreements are valid and binding on the parties regarding all unamended clauses, terms and conditions. The period of joint venture agreement was extended till 30.04.2013. Towards the mutually agreed compensation for delay in completion of the agreement and time extension thereof, the company agreed to construct and sell to the land owners or their nominees two villas in the proposed Kannur project of the company at a discounted rate and the value of said two villas shall be adjusted towards the balance of total consideration to be paid to the land owners. It was stated in clause 14 of Exhibit A7 that “upon execution of the deed of conveyance in respect of the entire lands owned by the land owners on receiving the total consideration of joint venture and on registration of apartments and villas and appropriation between parties the joint venture arrangement shall be deemed to have been wound up and the land owners shall not be having any independent right or claim in the project or any land covered by it except land or building retained in their names on separate agreement.” The copy of Sale Deed No. 4042 of 2011 dated 17.12.2011 executed by





the Land Owners in favour of the MIR Realtors is produced and is marked as **Exhibit A8**. As per Exhibit A8, land owners had transferred the right title and interest over 87 cents of land in the property, over which the Apartment complex was being completed, in favour of the MIR Realtor Pvt Ltd. The copy of Building Permit No. 358/07-08 dated 27.10.2007 is produced and is marked as **Exhibit A9**. The permit for construction from the statutory authorities is in the name of the Land owners, Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent. The copy of application dated 27.10.2020 for renewal of permit by the POA holder of the land owners is produced and is marked as **Exhibit A10**. The copy of letter dated 09.02.2021 issued by the Town Planner, to the land owners, rejecting the renewal of permit due to increase in the club house area from the sanctioned area, is produced and is marked and **Exhibit A11**. The copy of letter dated 22/01/2021 issued by the Chief Town Planner is produced and marked as **Exhibit A12**. The copy of Loan Agreement dated 06.03.2015 entered between Federal Bank and MIR Realtors Pvt Ltd is produced and is marked as **Exhibit A13**. The property mortgaged is with respect to 87 cents, as per which the MIR Realtors obtained a loan of Rs. 10,00,00,000/- (Rupees Ten Crores) from the bank. The copy of letter dated 22.01.2021 issued by Arun Kumar, Managing Director of MIR Realtors to Federal Bank is produced and is marked as **Exhibit A14**. As per Exhibit A14, the initial cost of the project including land was estimated to Rs. 23 crores and due to delay of



project, cost escalated to 26 crores. The total sale value realisation was 32.73 crores, and collection was Rs. 28.29 crores. The copy of letter dated 02.02.2021 issued by the Federal Bank is produced and is marked as **Exhibit A15**. As per Exhibit A15, a settlement of liabilities under NPA account was arrived and bank directed the MIR Realtors to remit Rs. 11.65 crores before 30.06.2022. The copy of encumbrance certificate dated 08/03/2011 and is marked as **Exhibit A16**. The copy of Sale Deed No. 3936/12 dated 16.11.2012 of the Karakulam Sub-Registry executed by the Respondents in favour of Arun Kumar is produced and may be marked as **Exhibit A17**. As per Exhibit A17, 41.5 cents have been transferred out of 11 Acres 15 cents and 685 Sq. links for construction of club house. The copy of encumbrance certificate dated 22/03/2023 issued by the Karakulam Sub Registry is produced and may be marked as **Exhibit A18**. The copy of Order dated 21/06/2023 in IBA/11/KOB/2020 of the NCLT, Kochi Bench is produced and may be marked as **Exhibit A19**. As per Exhibit A19, MIR Realtors Pvt Ltd was ordered to be liquidated and appointed a liquidator. The copy of agreement for sale dated 27.11.2011 is produced and is marked as **Exhibit A20**. As per Exhibit A20, the 1<sup>st</sup> Respondent and her husband entered agreement with the Complainant in Complaint No.188/2023 and his wife for the sale of 1604/120090 undivided share in the property of 87 cents of land belonging to the Respondents, set apart for constructing the second block of the project named Haritham



in the proposed township project named the Greens together with the right to construct apartment no. 2072 (type-D) on the 7<sup>th</sup> floor having super built up area of 1604 sq. ft and a covered car parking space in the said 87 cents of property for a consideration of Rs. 81,342/- the cost of land alone. It was stated in the agreement that “the owners of the property have set apart the entire extent of 11 Acres 15 cents and 685 sq. links equivalent to 4 Hectors 51 Ares and 152 sq. meters of contiguous land afore said for developing and converting the same in to a township project named “THE GREENS” and have authorised and entrusted the First party to execute the project on constructing commercial buildings, villas, multi-storied apartments etc. together with common areas such as roads, passages, stair case and common facilities such as septic tank, underground and overhead water tank and other common amenities--- and whereas an extent of 87 cents of land belonging to the afore said owners ----- have been set apart by the owners and the first party for constructing second block of the Township project named “Haritham” consisting all together of 15 stories to be constructed for such persons who acquire undivided rights in the afore said 87 cents of land set apart for the construction of the said “Haritham” on payment of cost of construction to the first party on the basis of the construction contract to be entered into separately by such persons with the first part and whereas as per joint venture Agreement executed between afore said owners of the property and M/s MIR Realtors Pvt Ltd the owners have



empowered and authorised the company to receive the sale consideration in respect of the undivided right in the properties set apart for construction of “Haritham” .....” The copy of agreement for construction dated 27.11.2011 is produced and is marked as **Exhibit A21**. Exhibit A21 was executed between the MIR Realtors Pvt Ltd represented by its chief operating officer Mr Ajaya Kumar N with the Complainant in Complaint No.188/2023, to construct three-bed room apartment having super built-up area of 1604 sq. ft and a covered car parking for a consideration of Rs. 50,09,164/- which includes cost of undivided share in the property. It was agreed to construct it within 36 months from the date of agreement and possession will be handed over within 180 days after completion, provided the entire amount due to the first party is paid by the Complainants.

7. The project in question is seen registered before this Authority on 16.12.2021 on the manual application submitted by M/s MIR Realtors Pvt. Ltd as the Promoter of the project as laid down under Section 3 of the Real Estate (Regulation and Development) Act, 2016 [herein after referred to as ‘the Act 2016’] and the registration Certificate No. K-RERA/PRJ/209/2021 has been issued to them. The Registration of the project expired on 22.06.2023. After the introduction of the Registration web portal of this Authority the Respondents/promoters have not created web page on the website of the Authority despite several notices in this



regard and not uploaded the details of Registration/ project details in the web portal of the Authority, for which notice was issued again on 08.06.2022 to the Respondents/promoters and they have filed reply stating that Mir Realtors Pvt Ltd is currently undergoing Corporate Insolvency Resolution Process under the provisions of Insolvency and bankruptcy code 2016 from 18.12.2021.

8. We heard both parties and the respective counsels in detail and examined the documents placed on record. The Complainants herein are the allottees who executed Agreements for construction and purchase of land in respect of 'Haritham' Apartments, which forms part of 'The Greens' township project at Karakulam, Nedumangad Taluk, Thiruvananthapuram and said project was originally conceived as a Joint Venture between the land owners (Late Mr. Subhash Chandra Bose and the 1<sup>st</sup> Respondent) and the builder MIR Realtors Pvt. Ltd. Some of the Complainants/allottees had previously filed complaints (including Complaint No. 221/2020) against MIR Realtors Pvt. Ltd., wherein this Authority had passed an order dated 16/11/2020 directing completion of the project. However, MIR Realtors Pvt. Ltd. has since been ordered to be liquidated by the National Company Law Tribunal vide order dated 21/06/2023 in IBA/11/KOB/2020. Following these developments, the Complainants herein have filed the present complaints against the Respondents, who are the



original land owners/legal heirs, seeking to hold them liable as "Promoters" under the Act, 2016.

9. Here, the contentions of the Complainants/allottees are briefly as follows: 1) The Respondents are "Promoters" within the meaning of the RERA Act as they entered into a Joint Venture agreement with MIR Realtors, had profit-sharing arrangements, and retained certain rights over the project, 2) The present complaints are based on a new cause of action arising from: a) The death of Mr. Subhash Chandra Bose and consequential termination of Power of Attorney b) The liquidation of MIR Realtors Pvt. Ltd.; 3) The Respondents had joint control over the project as evidenced by: a) Building permits being in the name of land owners b) Retention of right to execute sale deeds c) Marketing of the project as a Joint Venture; 4) The principles of res-judicata are not applicable to quasi-judicial proceedings before this Authority.

10. The Contentions raised by the Respondents in their reply are in short as follows: 1) The complaints are not maintainable as they seek the same reliefs on the same cause of action as in earlier complaints where MIR Realtors was identified as the sole Promoter of the project in question; 2) The complaints are barred by principles of res judicata and constructive res judicata; 3) The Respondents are not "Promoters" under the RERA Act as: a)



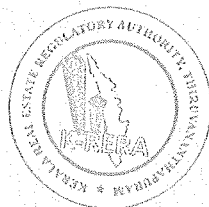
The original Joint Venture Agreement was modified through supplementary agreements b) The profit-sharing arrangement was deleted and replaced with a lumpsum consideration for land sale c) The land for Haritham Apartments was transferred to MIR Realtors in December 2011 d) The Respondents had no active role in construction or investment; 4) The Kerala High Court has held that land owners with no active role in construction, investment, or profit-sharing cannot be considered Promoters; 5) The Complainants have already taken up the matter with the Official Liquidator appointed by the NCLT which is their appropriate remedy.

11. After hearing the learned counsels appeared for both sides and examining the documents placed on record, the following issues were emerged for consideration of this Authority for adjudicating the issue of maintainability of the complaints on hand:

1. Whether the above Complaints against the Respondents are maintainable in the light of the previous complaints considered by this Authority against MIR Realtors Pvt. Ltd.?

2. Whether the Respondents qualify as "Promoters" under Section 2(zk) of the Act 2016?

3. Whether there exists any privity of contract between the Complainants and the Respondents herein?



4. Whether the Complainants, who have already sought remedy under the IBC by submitting their claims, can approach this Authority for redressal of the same grievances?

**Issue No. 1:**

Some of the Complainants/allottees have previously filed complaints against MIR Realtors Pvt. Ltd. before this Authority, specifically mentioning this Company as the 'Promoters' of the project in question and showing the 1<sup>st</sup> Respondent herein and her husband as 'Land Owners'. Consequently, this Authority had passed orders directing MIR Realtors, the Promoters to complete the project within the time-period prescribed therein. It is to be noted that during the hearings of the earlier complaints mentioned above, the Promoter MIR Realtors never raised any such contentions that they were not the Promoters of the project or the Respondents herein, the Land owners were having any liability in the execution/completion of the project in question. However, subsequent to those orders, two significant developments have occurred: a) The death of Mr. Subhash Chandra Bose, one of the original land owners and husband of the 1<sup>st</sup> Respondent herein b) The liquidation of MIR Realtors Pvt. Ltd. by order of the NCLT. While the principle of res judicata generally bars the filing of multiple complaints on the same cause of action, it is well established that a new cause of action can arise from supervening events that materially alter the legal relationships between parties. It could be found that the





liquidation of MIR Realtors, the original Promoters has created a situation where the previously granted reliefs cannot be enforced against it. Moreover, Section 31 of the Act 2016 provides that “any aggrieved person may file a complaint with the Authority against any promoter, allottee or real estate agent”. Hence, the Issue No. 2 above, i.e; the question as to ‘whether the Respondents qualify as “promoters” is intrinsically linked to the question of maintainability itself.

**Issue No. 2:**

Section 2(zk) of the Act 2016 defines "Promoter" as follows: “(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State*



level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.

**Explanation.**—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;" It can be found that the said definition does not specifically indicate that the Land Owners of the projects shall be Promoters. In this regard, the rulings produced by the counsel for the Respondents need to be considered. The Kerala High Court in *Cordial Foundation Pvt. Ltd. vs. Dr. Purushothama Bharathi* (2023 (6) KLT 806) and *Pooja Constructions vs. Secretary, Kerala Uranma Devaswom Board* (2024 (5) KLT 207) has held that a land owner who has no active role in construction, investment, or profit-sharing cannot be



considered a Promoter under the Act 2016. In the present case, we found that the following facts are very relevant in the adjudication of the issue under consideration. The Exbt. A6, original agreement dated 16.12.2006 between the land owners (2<sup>nd</sup> Respondent & her husband) and MIR Realtors did include profit-sharing arrangements. However, this arrangement was subsequently modified through Exbts. A6 & A7, supplementary agreements dated 31.05.2011 and 19.06.2012, which replaced the profit-sharing arrangement with a lumpsum consideration for sale of land. Clause 1 of the Exbt. A6/supplementary agreement dated 31.05.2011 states "Thus the total value of the land involved in the project is fixed at Rs. 12,00,00,000/- which shall be the sole and total consideration that the first party shall be entitled to get from the second party." Clause 12 specifically provides "Since the 'profit sharing' arrangement between the parties herein stands omitted from this joint venture arrangement, all the clauses/conditions facilitating but not limited to those conditions in Clause No. 18, 21, 22, 23 etc. will not be operative and the respective rights and obligations of the parties in this regard shall be invalid and unenforceable." Moreover, the land for Haritham Apartments was transferred to MIR Realtors by sale deed dated 17.12.2011, well before the Act 2016 came into force. Above all, the RERA registration for the project was taken in the name of MIR Realtors as the sole Promoter and Form B Affidavit has been signed by Mr. Arun Kumar, the Managing Director of M/s MIR Realtors Pvt. Ltd.



declaring that they are the Promoters and they are having legal title over the project land. Seven of the nine Complainants herein entered into agreements directly with MIR Realtors after the land for Haritham Apartments had been transferred to MIR Realtors. Considering these facts and the established legal position, it is found that the supplementary agreements fundamentally altered the relationship between the land owners and MIR Realtors from a profit-sharing joint venture to a land sale arrangement and the Respondents did not have active roles in construction or investment in the project. Besides, the land for Haritham Apartments was transferred to MIR Realtors in 2011, well before the Act 2016 came into force and prior to most of the complainants entering into agreements. Hence it could be found that the Respondents do not qualify as "Promoters" under Section 2(zk) of the Act 2016. The issue No. 1&2 are answered accordingly in favour of the Respondents.

**Issue No. 3:**

Seven of the nine Complainants entered into agreements directly with MIR Realtors after the land for Haritham Apartments had been transferred to MIR Realtors in December 2011 through Exbt. A8. Furthermore, Exbt. A13, the Loan agreement executed with the Federal Bank reveals that MIR Realtors were the then owners of the project land. Only two Complainants entered into agreements prior to this transfer. However, even these Complainants have previously filed



complaints against MIR Realtors as the Promoter, thereby acknowledging the transfer of land and accepting MIR Realtors as their contractual counterparty. While the building permit was in the name of the land owners, this alone does not establish the Respondents as Promoters, especially in the light of the supplementary agreements that clearly delineated roles and responsibilities. The Complainants has no case that they have paid any amount of consideration to the Respondents herein. Instead, the documents show that the Promoter MIR Realtors themselves had collected the amount of consideration from the Complainants/allottees as per the terms of the agreements executed between them. Hence, it is found that there is no privity of contract between the complainants and the Respondents herein and Issue No. 3 also is answered in favour of the Respondents.

**Issue No. 4:**

The Insolvency and Bankruptcy Code, 2016 (IBC) provides a comprehensive framework for dealing with insolvency and bankruptcy of corporate entities. In this case, MIR Realtors Pvt. Ltd., the Promoter of the project in question has already been liquidated pursuant to the order dated 21/06/2023 passed by the National Company Law Tribunal (NCLT) in IBA/11/KOB/2020, and consequently the company has ceased to exist as a legal entity. The IBC recognizes allottees of real estate projects as 'financial creditors' under Section 5(8)(f), giving them specific rights in the insolvency and liquidation process. This amendment was



specifically introduced to protect home buyers by providing them a forum to participate in these proceedings and stake their claims. It is noteworthy that the Complainants herein have failed to disclose before this Authority the actual status of their claims in the liquidation proceedings before the NCLT. This non-disclosure is material, as it deprives this Authority of crucial information regarding whether the Complainants have: 1) Filed their claims with the Liquidator within the prescribed timeline; 2) Received any distribution from the liquidation proceeds; 3) Had their claims adjudicated upon by the Liquidator or NCLT. The Section 53 of the IBC establishes a clear waterfall mechanism for distribution of assets during liquidation, with allottees of real estate projects having been accorded a specific position in this priority order. The Hon'ble Supreme Court of India, in Pioneer Urban Land and Infrastructure Ltd. v. Union of India [(2019) 8 SCC 416], has affirmed that the IBC provides an effective remedy for aggrieved allottees of real estate projects. Once a company is liquidated under the IBC, its assets are distributed according to the priority order, and the appropriate remedy for all creditors, including allottees, lies within that framework. This ruling had significant implications for the real estate sector, as it provided a mechanism for homebuyers to seek redressal when developers face financial difficulties. The Insolvency and Bankruptcy Board of India (IBBI) has also issued a clarification on the Pioneer judgment, emphasizing the importance of safeguarding the interests of



homebuyers during CIRP proceedings. However, the finality of liquidation proceedings under the IBC cannot be circumvented by initiating parallel proceedings under RERA against parties who are not recognized as promoters. The Apex court also noted in the said judgement that RERA and the IBC must coexist, and in the event of a conflict, RERA must give way to the Code. The principle of finality of insolvency proceedings is fundamental to the IBC regime. As the Hon'ble Supreme Court observed in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta [(2020) 8 SCC 531], the insolvency resolution process is meant to be time-bound and conclusive for all stakeholders. This principle applies with even greater force to liquidation, which represents the terminal stage of corporate existence. The attempt to pursue claims under the Act 2016 after the liquidation of the promoter company appears to be an attempt to circumvent the finality of the IBC proceedings. This Authority cannot countenance such an approach, particularly when the Complainants have not been forthright about their participation in and the outcome of the liquidation proceedings. Therefore, on this ground as well, the complaints before this Authority are not maintainable. The appropriate forum for the Complainants was the liquidation process under the IBC, which has already concluded with the dissolution of MIR Realtors Pvt. Ltd. Hence, Issue No. 4 is also decided in favour of the Respondents herein.



12. Based on the above facts and findings, we find that:

1. The Respondents do not qualify as "Promoters" under Section 2(zk) of the RERA Act, 2016, as the supplementary agreements transformed their role from joint venture partners to mere sellers of land, with no active involvement in construction, investment, or profit-sharing.

2. The land for Haritham Apartments was transferred to MIR Realtors prior to most of the complainants entering into agreements, establishing privity of contract between the complainants and MIR Realtors, not the Respondents.

3. The Complainants' appropriate remedy lies with the Official Liquidator in the liquidation proceedings of MIR Realtors, where they have already staked their claims.

13. In view of the above findings, the preliminary objection raised by the Respondents is upheld. The complaints against the Respondents are not maintainable and are accordingly dismissed.

Sd/-  
Preetha P. Menon  
Member

Sd/-  
Dr. B. Sandhya  
Member

True Copy/Forwarded By/Order



Secretary (Legal)



**APPENDIX****Exhibits marked from the side of Complainant in Complaint****No. 188/2023**

- Exhibit A1: The Copy of specific Power of Attorney dated 26/07/2023 executed by the Complainants and attested by the Advocate Notary.
- Exhibit A2: The Copy of brochure of the project issued by the Builder.
- Exhibit A3: The copy of the print out from the website of the promoter showing the details of the project.
- Exhibit A4: The copy of Joint Venture Agreement dated 06.12.2006 executed between the Land Owners and M/s MIR Realtors Pvt Ltd.
- Exhibit A5: The copy of Power of Attorney dated 17.01.2007 executed by the Land Owners in favour of Mr. Arun Kumar, Managing Director of MIR Realtors Pvt Ltd.
- Exhibit A6: The copy of Supplementary Agreement dated 31.05.2011.
- Exhibit A7: The copy of Additional Supplementary Joint Venture Agreement dated 19.06.2012.

- Exhibit A8: The copy of Sale Deed No. 4042 of 2011 dated 17.12.2011 executed by the Land Owners in favour of MIR Realtors Pvt Ltd.
- Exhibit A9: The copy of Building Permit No. 358/07-08 dated 27.10.2007.
- Exhibit A10: The copy of application dated 27.10.2020 for renewal of permit by the POA holder of the land owners.
- Exhibit A11: The copy of letter dated 09.02.2021 issued by the Town Planner, to the land owners.
- Exhibit A12: The copy of letter dated 22/01/2021 issued by the Chief Town Planner.
- Exhibit A13: The copy of Loan Agreement dated 06.03.2015 entered between Federal Bank and MIR Realtors Pvt Ltd.
- Exhibit A14: The copy of letter dated 22.01.2021 issued by Arun Kumar, Managing Director of MIR Realtors to Federal Bank.
- Exhibit A15: The copy of letter dated 02.02.2021 issued by the Federal Bank.
- Exhibit A16: The copy of encumbrance certificate dated 08/03/2011.

- Exhibit A17: The copy of Sale Deed No. 3936/12 dated 16.11.2012.
- Exhibit A18: The copy of encumbrance certificate dated 22.03.2023.
- Exhibit A19: The copy of Order dated 21.06.2023 in IBA/11/KOB/2020 of the NCLT, Kochi Bench.
- Exhibit A20: The copy of agreement for sale dated 27.11.2011.
- Exhibit A21: The copy of agreement for construction dated 27.11.2011.
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