



KERALA REAL ESTATE REGULATORY AUTHORITY

THIRUVANANTHAPURAM

Complaint No. 198/2021

Dated 06th December 2021

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

Complainant

1. R. Murali Krishnan
No.572, 15th main road,
Padmanabha Nagar
Bangalore-560070
2. Anupama C Raman
No.572, 15th main road,
Padmanabha Nagar
Bangalore-560070

Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
(Represented by its Managing Director)
34/239 C, Near Mariya Park,
Padivattom Pipelineroad,
Near NH Byepass, Palarivattom
Edapally P O, Kochi-682024
Compass, N.H. Bypass, Thammanam P.O,
Ernakulam, Kochi-32.
2. Mr. Nashid N P,
Director,
M/s Nucleus Premium Properties Pvt Ltd.,
Nellayaputhenpeedikakkal House,



Thazhekode West P O, Perinthalmanna,
Malappuram-679352.

3. Roy Alias Roymon
Ambat House,
4/466 of Thrikkakkara Municipality,
Vazhakkala village, Pallipuram Kara,
Edapally P O, Pin- 682024, Ernakulam

ORDER

1. The facts of the case are that the Complainant is the Allottee of Apartment number 3B of Nucleus AURA APARTMENT which is the project of the Respondent company. Project “Nucleus Aura” was advertised as the combination of 14 villas and a sky villa containing 12 floors and 22 apartments.
2. In the year 2014-2015, believing in the Respondents, the Complainant had paid the following as per the details given below

Payment Schedule

Date	Amount Paid
a 30/12/2014	- Rs. 30,000/-
b. 31/12/2014	- Rs. 1,70,000/-
c. 10/01/2015	- Rs. 2,50,000/-
d. 19/01/2015	- Rs. 1,50,000/-
e. 02/03/2015	- Rs. 6,00,000/-
Total	Rs. 12,00,000/-

3. The Complainants entered into a tripartite agreement with the Respondents on 23/05/2015. The 2nd Respondent had signed the agreement as the power



of attorney holder of landowners. The Respondents informed the Complainant that the respondents got the building permit copy with a reference number TP1-TBA(18917)/2015 dated 19/06/2015.

4. The completion of the Project and possession of the Nucleas AURA Sky Villa 3B Apartment given in the agreement is as 24 months with a grace period of 3 months from the effective date or the date of the building plan sanctioned whichever is later (total 33 months). This period had expired in the year 2018 itself. According to the Complainant, nothing happened in the Project "Nucleus AURA Sky Villas" and even after 4 years of the agreement, the site for the sky villa is a vacant place with few piles and water. The complainant also submits that there is no permission obtained for Sky Villa from Municipality or government. The respondents had not shown any seriousness in the building works, instead, all the Directors of the Respondent company were busy with their businesses like film fare awards, stage shows etc. Hence the Complainant had demanded to the Respondents to repay the amount of Rs. 12,00,000/. The Respondents were not ready to repay the amount but insisted the complainants for cancellation of the agreement after 4 and half years of their investment. The site, even after 4 and half years, is still like 2015 status. The complainants have no hope about the completion of Sky Villas and their apartment 3B. The Respondents did not turn towards the demand of complaints for returning their amount and interest.
5. In view of the above the Complainant prayed for the following relief.
 - a) Direct the Respondents to return Rs. 12,00,000/- (Twelve Lakhs only) along with its interest @15.2% from 02/03/2015 till the order of the this authority to complainant and pass a decree accordingly.



6. The Complainant had approached the adjudicating officer, Thiruvananthapuram vide Complaint No. CCP.137/2020 filed on 12.11.2018 and the Hon'ble adjudicating officer had passed an order dated 02/08/2021 stating that the adjudicating officer has no jurisdiction to grant the relief for return of amount with interest as sought for in the above petition and directed the petitioner to present the complaint before this authority.
7. Consequent to this, the above complaint was filed before this authority on 18/08/21. The complaint was taken up on 25/10/21 and posted for counter statement and final hearing on 11.11.2021.
8. On 11/11/2021, both the counsel had attended and were heard. The matter was taken up for orders. The counsels for the respondent accepted the fact that they have abandoned the project "Nucleus AURA Sky Villas".
9. The tripartite agreement for Sale and Construction dated 23/05/2015 entered into between the Complainant, the landowners represented by M/s Nucleus Premium Properties Pvt. Ltd., the promotor/1st respondent through its Director Nashid M P, 2nd respondent and Nucleus Premium Properties Pvt. Ltd., promotor/builder is produced and marked as **Exhibit A1**. As per the agreement, the builder/promotor was to complete construction of the said apartments and hand over possession to the allottee within 24 months with a grace period of 3 months from the effective date or from the date on which the building plan/permit are sanctioned by the authorities concerned, whichever is later.
10. As per the above, the building must have been completed on or before September 2018. However, even the commencement of the works of the apartment above the ground level has not commenced and the counsel for the respondent has accepted the fact that they have abandoned the project.



11. In the above circumstances, the complainant is entitled to withdraw from the project under Section 18 of the Real Estate (Regulation & Development) Act 2016, and claim the return of the amount paid to the respondents along with interest from the date of receipt of payment by the promotor till refund to the complainant with interest.
12. The complainant had admittedly paid the instalments as detailed below on the respective dates as per the receipts produced with the complaint.

Payment Schedule

Date	Amount Paid
a 30/12/2014	- Rs. 30,000/-
b. 31/12/2014	- Rs. 1,70,000/-
c. 10/01/2015	- Rs. 2,50,000/-
d. 19/01/2015	- Rs. 1,50,000/-
e. 02/03/2015	- Rs. 6,00,000/-
Total	Rs. 12,00,000/-

13. The non-completion and non-delivery of possession by the Respondent are also admitted by the Respondents. The interest payable by the Respondent to the allottees is by State Bank of India PLR rate plus 2% from the date of payment till the date of refund as laid down in Rule 18 of Kerala Real Estate (Regulation and Development) Rules, 2018. The present SBI PLR rate is 12.15% as of the date of the Order. The Complainant is entitled to get 14.15% simple interest on the amount paid, from the date of payment as detailed above in the payment schedule till the date of refund.
14. Section 18 of the Real Estate (Regulation & Development) Act 2016 stipulates that "*if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms*



of the agreement for sale or duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

15. Section 19(4) of the Act specifies that "*The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".*

16. While discussing the objects and reasons of the Act 2016 Supreme Court in Judgement dated 11/11/2021 M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others had made a very important observation and the same is reproduced below

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



to the allottee. If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”

17. Hence, the Complainant herein is entitled to get the refund of amount along with interest and Respondents are liable to refund the amount along with the interest as prayed for. As per Rule 18 of Kerala Real Estate (Regulation & Development) Rules 2018, the rate of interest payable by the Promoter to the Allottee shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The Complainant is entitled for refund of the amount of Rs. 12,00,000 Lakhs paid by him along with interest at the rate of SBI PLR + 2 Percent per annum, from the date of payment till date of receipt of refund with interest. The Respondents have not filed any counter statement or submitted any documents from their part.

18. On the basis of the above facts and findings, invoking Section 37 of the Act, this Authority hereby passes the following order:-

- 1) The Respondents are directed to return the total amount received by them, **Rs.12,00,000/-** to the Complainant with simple interest @ 14.15% per annum from the date of payment to the promoter/respondents, as per the payment schedule above till date of receipt of refund of the amount paid to the respondents with interest
- 2) If the Respondents fail to pay the aforesaid sum with interest as directed above within a period of 45 days from the date of receipt of



this order, the Complainant is at liberty to recover the aforesaid sum from the Respondents and their assets by executing this decree in accordance with Section 40 (1) of the Real Estate (Regulation & Development) Act and Rules.

Dated this the 11th December of 2021

Sd/- Sri M.P Mathews Member	Sd/- Smt. Preetha P Menon Member	Sd/- Sri. P H Kurian Chairman
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/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Exhibits on the side of the Complainants

- Exhibit A1 : Copy of the Sale and Construction agreement
- Exhibit A2 : Payment details
- Exhibit A3 : Brochure of Aura Project
- Exhibit A4 : Photograph showing status of work site AURA Sky Villas
- Exhibit A5 : Email to the respondents from the complainants.



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

**Execution Petitions No.25/2022,26/2022,27/2022,28/2022,
&30/2022**

**(In Complaints No.
198/2021,256/2020,197/2021,199/2021,206/2021 respectively)**

Present: Dr. Asha Thomas, Chairperson

Dated 6th February, 2026

EP No. 25/2022 in Complaint No. 198/21

Decree Holders/Complainants

R.Murali Krishnan & Anupama C. Raman,
Residing at No. 572,
15th Main road,
Padmanabha Nagar,
Bangalore

Judgment Debtors/Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
Represented by its Managing Director,
34/239 C, Near Mariya Park,
Padivattom, Pipeline Road,
Near NH Byepass, Palarivattom,
Edappally P O, Kochi- 682024
2. Mr. Abdul Nasar N. P
Director, M/s. Nuclear Premium Properties Pvt Ltd.
Nellayaputhenpeedikakkal House, Thazhekode,
West P O, Perinthalmanna, Malappuram District
Pin- 679352.



3. Roy Alias Roymon
 Ambat House,
 4/466 of Thrikkakkara Municipality,
 Vazhakkala Village, Pallipuram Kara,
 Edapally P O- 682024, Ernakulam

EP No. 26/2022 in Complaint No. 256/2020

Decree Holder/Complainant

John Kulangara George,
 Parayil House, Pallom P.O,
 Kottayam-686007

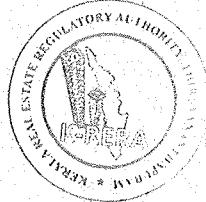
Judgement Debtors/Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
 Represented by its Managing Director,
 34/239 C, Near Mariya Park,
 Padivattom, Pipeline Road,
 Near NH Byepass, Palarivattom,
 Edappally P O, Kochi- 682024
2. Mr. Nashid N P
 Director, M/s. Nuclear Premium Properties Pvt ltd.
 Nellayaputhenpeedikakkal House, Thazhekode,
 West P O, Perinthalmanna, Malappuram District
 Pin- 679352.
3. Mr. Abdul Nasar N. P
 Director, M/s. Nuclear Premium Properties Pvt ltd.
 Nellayaputhenpeedikakkal House, Thazhekode,
 West P O, Perinthalmanna, Malappuram District
 Pin- 679352.

EP No. 27/2022 in Complaint No. 197/2021

Decree Holder/Complainant

Krishnapriya P.B,
 Pandiath House,
 Puthukkad Desom, Puthukkad P.O,
 Thrissur



Judgement Debtors/Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
Represented by its Managing Director,
34/239 C, Near Mariya Park,
Padivattom, Pipeline Road,
Near NH Byepass, Palarivattom,
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2. Mr. Abdul Nasar N. P
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Nellayaputhenpeedikakkal House, Thazhekode,
West P O, Perinthalmanna, Malappuram District
Pin- 679352.
3. Biju Paul
Perumpillil House,
Aikkarad South Village, Kolenchery Desom,
Kunnathunadu Taluk, Ernakulam District- 682311

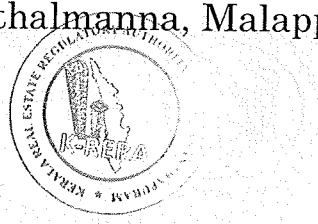
EP No. 28/2022 in Complaint No. 199/2021

Decree Holder/Complainant

Krishnan Sundaresan&
Nithya Chittur Ramakrishnan
Residing at 21162,
New Kalpathy,
Near Mandakkara temple, Palakkad

Judgement Debtors/Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
Represented by its Managing Director,
34/239 C, Near Mariya Park,
Padivattom, Pipeline Road,
Near NH Byepass, Palarivattom,
Edappally P O, Kochi- 682024
2. Mr. Nashid N P
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Nellayaputhenpeedikakkal House, Thazhekode,
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Pin- 679352.

3. Roy Alias Roymon
 Ambat House,
 4/466 of Thrikkakkara Municipality,
 Vazhakkala Village, Pallipuram Kara,
 Edapally P O- 682024, Ernakulam

EP No. 30/2022 in Complaint No. 206/2021

Decree Holder/Complainant

Deepak Geevarghese John,
 Represented by Power of Attorney Holder,
 Parayil House,
 Pallom P.O,
 Kottayam P.O-686007

Judgement Debtors/Respondents

1. M/s Nucleus Premium Properties Pvt Ltd,
 Represented by its Managing Director,
 34/239 C, Near Mariya Park,
 Padivattom, Pipeline Road,
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 Pin- 679352.
3. Biju Paul
 Perumpillil House,
 Aikkarad South Village, Kolenchery Desom,
 Kunnathunadu Taluk, Ernakulam District- 682311

ORDER

1. The above Execution Petitions No: 25, 26, 27, 28 & 30 of 2022 were filed before this Authority for the execution of orders in



Complaints No. 198/2021, 256/2020, 197/2021, 199/2021, and 206/21 respectively. The execution of the orders was requested to be done in EP 25, 27, 28 & 30 of 2022 by way of initiating Revenue Recovery proceedings and in E.P. 26 of 2022 by imposing penalty against M/s Nucleus Premium Properties for non-compliance of the completion order. The Counsel for the Decree Holders/ Complainants filed petitions for impleading the Directors of the company in the said Execution Petitions. The Authority informed that additional parties cannot be impleaded at the stage of execution of a decree. Notices were ordered to the original and proposed additional respondents and paper publication was also issued. None of the respondents attended the case.

2. During the first hearing of the above Execution Petitions, although the Execution Petition did not mention the fact, it came to the notice of the Authority that the Judgement Debtor/Respondent Company was undergoing Corporate Insolvency Resolution Process (CIRP) before the National Company Law Tribunal [herein after referred to as 'NCLT'] under the IBC Act, 2016.

3. The proceedings related to the Respondent No. 1/ Judgement Debtor company/ Corporate Debtor M/s Nucleus Premium Properties was subsequently disposed by the NCLT, vide order dated 09.02.2024, as per which NCLT approved the Resolution Plan filed by the Resolution Applicant, in accordance with Sections 30 and 31 of the Code and also complying with Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016. In the order, it was specified in Para 68 that "*The Resolution Plan attached with this*



order shall become effective from the date of this order and shall form part of this order. The Resolution plan as approved is binding on the Corporate Debtor, Creditors and others involved so that the revival of the Corporate Debtor can come into force with immediate effect.” Holding that this order would prevail over all the claims relating to the Judgement Debtors, the above Execution Petitions were closed vide order dated 19.06.2024.

4. The Decree Holders/Complainants approached the Kerala Real Estate Appellate Tribunal against the said order dated 19.06.2024. All the appeals were allowed in part by setting aside the order of the Authority in dismissing the EPs and by restoring the E.P.s so that RERA could proceed with the same in accordance with law. The Appellate Tribunal mentioned that “*the Director or Managing Director cannot escape from liability simply because of the reason that a resolution order is passed or a moratorium is imposed as against the company. But, in the present case, the right of hearing not provided to the additional respondents, who were not impleaded in the party array of the original proceedings. It may be a question of violation of natural justice as envisaged under Section 38(2) of the Act.*” The KREAT order restored the Execution Petition, required that further opportunity be provided to the original respondents and to the proposed additional respondents, and to take into reference the case of Ansal Crown Heights Flats Association v Ansal Crown Infra Build Pvt Ltd to decide the maintainability of the EP against additional respondents who were not in the original party array, and whether the MD and Director who were in the original array can be proceeded against in their individual capacity.



5. The Execution Petitions were then taken up for hearing again based on the above order of the KREAT. In view of the implied direction to provide further opportunity to be heard to all respondents – original and potential additional – sought to be impleaded, notices were again sent to all of them. However they did not attend any of the hearings.

6. Among the respondents, Shri Abdul Nasar, Nishad, Noushad Ali, Nashid, Shameel and Abdulla P, filed objection submitting as follows- *"The reliefs sought for in the above Execution Petition are not reliefs that can be legally considered or granted by this Hon'ble Authority. The 1st Judgment Debtor company was admitted for Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4(1) of the Insolvency and Bankruptcy Code, 2016 by the National Company Law Tribunal, Kochi Bench. By Order in C.P.(IB)/01/KOB/2021 dated 18.11.2021, National Company Law Tribunal, Kochi Bench directed that a moratorium against the opposite parties under Section 14 of Insolvency and Bankruptcy Code, 2016 in regard to the institution of suits or continuation of suits or other proceedings pending in all Courts and Tribunals. That being so, the powers of the board of directors of 1st Judgment Debtor Company were suspended and the Insolvency Resolution Professional (IRP) took over the management of the company. The 1st Judgment Debtor Company thereafter underwent Corporate Insolvency Resolution Process under the supervision of National Company Law Tribunal, Kochi Bench. Judgment Debtors 2 to 7 were no longer associated with the company after the commencement and finalization of the Corporate Insolvency"*

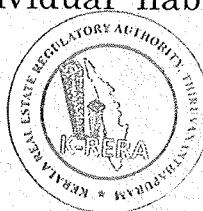


Resolution Process. After the passing of final order dated 09.02.2024, the affairs of the 1st Judgment Debtor Company are to be governed by the said Order passed by the National Company Law Board, Kochi Bench. The Decree Holder is bound by the Order passed by the National Company Law Board. The successor Resolution Applicant of the Judgment Debtor M/s Buildwell 50/1112-D5-A, 3rd Floor, Muhammed Haji Building, Edapally, Ernakulam is a necessary party to these proceedings as they are presently in management control of the 1st Judgment debtor company. The Decree Holder ought to have raised his claim, if any, before the Interim Resolution Professional or NCLT. No such claim was admittedly raised. As held by Supreme Court of India in Ghansyam Mishra and Sons Pvt. Ltd, vs. Edelweiss Asset Reconstruction Company Ltd, when a Resolution Plan is approved by the National Company Law Tribunal, all claims which are not part of the Resolution Plan shall stand extinguished and the proceedings relating thereto shall stand terminated. The claim of the Decree Holder relates to an order passed during the moratorium period and is a claim which was not submitted before or approved by the National Company Law Tribunal. As a result, the claim of the Decree Holder was not approved by the National Company Law Board. Such a claim is not enforceable in law. For the said reason, also the execution petition is not maintainable in law. The 2nd Judgment Debtor was only one among other directors of the 1st Judgment Debtor Company and he did not have any personal interest or liability in the matter. On the commencement of the Corporate Insolvency Resolution Process the 2nd Judgment Debtor was removed from the directorship and the 2nd Judgment Debtor had thereafter no



control or involvement in the management of the 1st Judgment Debtor Company. The 2nd respondent could not have returned any amount from the 1st Judgment Debtor as he had no involvement or control over the affairs or management of the 1st Judgment Debtor Company. The Judgment Debtor had not collected any amount in his personal capacity and the impugned Order was passed against him in his capacity as an erstwhile director of Judgment Debtor Company. On the date when the Order was passed, the directorship of the Judgment Debtor was suspended and he is unable to exercise the powers of a Director. Hence, he cannot be held responsible for any default or non-compliance of Order of the Hon'ble Authority. The persons arrayed as Judgment Debtors 3 to 7 were not parties in the complaint or to the order passed by this Hon'ble Authority. No direction had been passed against them. Hence the allegation that they have violated the Order of this Hon'ble Authority is without any basis or substance. The Execution Petition is not maintainable against Judgment Debtors 3 to 7. Hence the proceedings against respondents 3 to 7 have to be dismissed in limine. The allegations that funds of the 1st Judgment Debtor Company were misappropriated by the Judgment Debtors 2 to 7 are absolutely false. The accounts of 1st Judgment Debtor were inspected as per directions of NCLT and there was nothing amiss found by the NCLT. Enquiry into such unsubstantiated allegations is beyond the scope of authority of this Hon'ble Authority."

7. In the matter of impleading additional respondents, the Decree Holder argued that the dismissal of the execution petition by the Authority was done solely based on the IBC Moratorium without evaluating individual liability of directors and they are



necessary parties in the execution stage. Taking into consideration the pleadings on both sides, it was decided that the additional respondents, who were not parties to the original complaints, and whose individual liability had not been considered in the original orders of the Authority, cannot be impleaded at the execution stage of an order. In this case, the Execution Petitions were filed against the company only, and impleading of Directors during the course of the hearings is not legally valid.

8. Both sides were heard in detail regarding the liability of Directors of a company in situations where CIRP proceedings are finalised by Resolution Plans. The counsel for the Decree Holder raised the issue that CIRP proceedings in NCLT are against the Judgement Debtor Company only and not the Directors or shareholders. The Decree Holder pointed out that the Hon'ble Supreme Court in *Ansals Crown Heights Flats Association v Ansals Crown Infra Build Pvt Ltd*, clarified that "the moratorium under section 14 of the IBC does not protect the Director/Officers of the company for the liability in the execution stage." The Decree Holder argued that the dismissal of the execution petition was done solely based on the IBC Moratorium without evaluating individual liability of directors and they are necessary parties in the execution stage. The Authority notes that the committee of creditors of Respondent No.1 company has already approved the Resolution Plan submitted by the Resolution Applicant and the Resolution Plan was sanctioned by the NCLT by its order dated 09.02.2024. The order of the NCLT is marked as **Exhibit X1**. As per the order, the reliefs asked by the resolution applicant against the corporate debtor are granted especially in point



No. 2, 5, 6, 13, 14, 15 stating that no claim would lie before any other courts or forums or tribunals in respect of the debt of Judgement Debtor No.1. Once the Resolution Plan is sanctioned, no separate proceedings would lie before any Forum against the Judgement Debtors. The payment entitlement of all the creditors would be strictly as laid down in the Resolution Plan , and all other claims unless otherwise provided in the resolution plan shall cease to exist. As per Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") "all creditors are liable to adhere to the resolution plan once sanctioned by the National Company Law Tribunal .The Section 31 of the IBC is set out below

"1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 1 [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan."

9. In fact, any creditor contravening the terms of the Resolution Plan and initiating litigation can be liable for punishment as provided in Section 74 (3) of the Insolvency and Bankruptcy Code, 2016. In this case, the Decree Holders herein are technically not creditors who are part of the Resolution Plan of the NCLT, since they have not raised their claims before NCLT. However, even though their claims have not formed part of the Resolution Plan, they are still liable to abide by the provisions of the IBC (Section 31 and 74



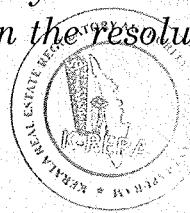
(3)), especially in view of the position held by the Supreme Court as detailed below.

10. The Hon Supreme Court has held that once the resolution plan is approved by the NCLT, the Authority cannot deal with any cases pertaining to creditors of the corporate debtor. The Apex Court in Committee of Creditors of Essar Steel India Ltd. vs Satish Kumar Gupta and Ors, (2020) 8 SCC 531 held as follows:

"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.

11. Further, the Hon. Supreme Court in the case of Ruchi Soya Industries Limited and Others v. Union of India and Others (2022 KHC 3706), has reiterated the position it laid down in Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd (Civil Appeal No. 8129 of 2019) holding as follows:

"95. (i) Once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and



will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;" For the aforementioned reasons, if the complainant had filed a claim before the Resolution Professional under IBC, the claim would stand frozen as per the Resolution Plan and if not, would cease to exist or stand extinguished as per the above said decisions.

12. Moreover, para 68 of the NCLT order dated 09.02.2024, clearly states as follows- *"The Resolution Plan attached with this order shall become effective from the date of this order and shall form part of this order. The Resolution Petition as approved is binding on the Corporate Debtor, Creditors and others involved so that the revival of the Corporate Debtor can come into force with immediate effect and the moratorium imposed under section 14 shall cease to have effect from the date of this order."* The Execution Petitions are filed for execution of the orders passed by the Authority in the year 2021 & 2022. The Judgement Debtor Company was admitted for Corporate Insolvency Resolution Process on 18.11.2021 itself. Despite being aware of the same, the Decree Holders have not claimed to have been unaware of the NCLT proceedings. The NCLT order states that many similar creditors have filed claims before them. However, the Decree Holders in this case have failed to file their claims before NCLT as creditors in the said proceedings.

13. Furthermore, execution of a decree can be only against the parties against whom the directions have made. Here, as per the order of the NCLT, no action can be initiated against the



Judgement Debtors/ Respondents or proposed Additional Respondents/JD 3 to 7 at this stage. The company taking over the Judgement Debtor company has admitted the earlier claims which is clearly mentioned in relief No. 14 & 15 of the NCLT order dated 09.02.2024, and the claims covered by these Execution Petitions would form fresh claims not considered by NCLT. Thus, on the basis of the NCLT order, it is clear that no action can be taken by the Authority against the 1st Judgement Debtor company as the said company M/s Nucleus Premium Properties has been taken over by another company namely, M/s Buildwell.

14. However, the order of the KREAT dated 03.02.2025 states that “*there will not be any legal objection to proceed against the Managing Director, and Director who were made as respondents in the original proceedings, in view of the legal position settled by the apex court, irrespective of whether execution can be proceeded against the additional respondents or not.*” The Tribunal here refers to the case of Ansal Crown Heights Flats Association v Ansal Crown Infra Build Pvt Ltd, in which the Hon Supreme Court clarified that “the moratorium under section 14 of the IBC does not protect the Director/Officers of the company for the liability in the execution stage.” The apex court took a similar view in Anjali Rathee v. Today Homes & Infrastructure Pvt Ltd. It is seen that the Execution Petition was filed while the moratorium under Section 14 of the IBC was in effect, and thus the Directors of the company could have been made liable for the execution of the order of the Authority. In view of the above direction of the Kerala Real Estate Appellate Tribunal, it is decided to proceed under section 40(1) of the Act, 2016 against the



Judgement Debtors – Shri Abdul Nasar VP and Shri Nishad – who are in the original party array in the order of this Authority dated 06/12/2021, 05/02/2022, 06/12/2021, 05/02/2022 in Complaint No. 198/2021, 197/2021, 199/2021 & 206/2021 (EP 25, 27, 28 & 30 of 2022). The Decree Holders are directed to submit the property details at the earliest. As the Judgement Debtors have failed to comply with the order dated 08/12/2021 in C No. 256/2020 (E P 26/2022), it has been decided to initiate proceedings against the Judgement Debtors Nashid N P & Abdul Nazar V.P for recovering the penalty amount ordered in the order dated 08/12/2021. The Secretary (Legal) shall initiate Revenue Recovery proceedings on submission of property details by the Decree Holders and also initiate proceedings for recovering the penalty amount.

The Execution Petitions stand disposed of accordingly.

Sd/-
Dr. Asha Thomas
Chairman

/True Copy/Forwarded By/Order


Secretary (Legal)



