



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint Nos.314/2020, 20/2021& 178/2021

Dated 7th January, 2022

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

Complainants

1. Shaheen Nawaz @ : Complaint No.314/2020
Kalathiparambil Abdul Salam,
S/o K A Abdul Salam,
Kalthiparambil House,
Opposite Sarangi Theater,
Chiyyaram P.O, Thrissur-680026.
2. Jiju K Mathew & : Complaint No.20/2021
Anila Mathew
Represented by Power of Attorney
Holder, Mrs.Preetha Sajan Thomas,
TC.10/121 (3), Kaleekal, MRA-47,
K.K. Nagar, Mannathal,
Thiruvananthapuram-695015.
3. Sujith Chembil Kunnath : Complaint No.178/2021
Represented by Power of Attorney
Holder Anupama Sunil
1014, Emerald Park, MIR Green,
Metropolis, Ambadimoola,
Kakkanad, Kochi-682030.



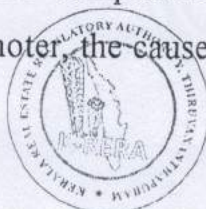
Respondents

1. MIR Realtors Pvt.Ltd.,
Having its registered office at
M.M.Building, Kalabhavan Road,
Ernakulam North Kochi-682018.
2. Arun Kumar,
Managing Director,
M.M.Building, Kalabhavan Road,
Ernakulam North Kochi-682018.
3. The Secretary,
MIR JADE HEIGHTS-1 Association,
Flat No.2123,Near NGO Quarters,
Kakkanadu-682030.
4. The Trustee,
MIR JADE HEIGHTS-1 Association,
Flat No.2123,Near NGO Quarters,
Kakkanadu-682030.
5. Ajai Kumar N,
Operating Officer,
M/s MIR Realtors Pvt.Ltd.
M.M.Building, Kalabhavan Road,
Ernakulam North Kochi-682018.
6. Samson T George,
Thanninilkunnathil House,
Edapariyaram Desom, Elanthoor,
Kozhenchery Taluk,
Pathanamthitta – 689643.

The above Complaints came up for virtual hearing today. Counsel for the Complainant Adv.Raj Mohan P and Counsel for the Respondent Adv.Abraham Mathew Vettoor attended the hearing.

ORDER

1. As the above three complaints are related to the same project developed by the same Promoter, the cause of action and the reliefs sought in



all the complaints are one and the same, the said Complaints are clubbed and taken up together for joint hearing and Complaint No:314/2020 has been taken as leading case for passing a common order, as provided under Regulation 6 (6) of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

2. The facts of the Complaint No.314/2020 is as follows:- Being attracted by the advertisement of the Respondent / builder, the Complainant has booked an apartment bearing no.2052 in the real estate project named 'Jade Heights-I' which is the second phase of the Respondent's township project of MIR Green Metropolis at Kakkanad, Ernakulam. Based on their reputation as Promoters, the Respondents herein had entered into a joint agreement with Samson T George, Thomas George & Philip P John, whereby the said owners of the property had set apart the entire extent of 5 Acres and 86 cents and 648 links of contiguous land for developing and converting the same into a township project named 'MIR Green Metropolis' and have authorised and entrusted the Respondents herein to execute the project on commercial buildings, Villas, multi storied apartments with common areas such as road etc. The 'Jade Heights', which is the second phase of the said township project, consisting of 33 storeys, altogether 160 dwelling units, which is the subject matter in issue as far as the Complainant is concerned. The total consideration of the real estate project to be paid by the Complainant / allottee was fixed at Rs.45,08,566/-. An agreement for sale and construction dated 26/04/2011 was also entered into between the Complainant and the Respondent. As per the agreement only 18 months were required to finish the project and handing over. The Complainant had obtained a housing loan from State Bank of India, Kalloor Branch for Rs.30,00,000/- and a tripartite agreement was also executed between the Complainant and bank. The payments of the said flat was promptly made by the Complainant without any delay and he had paid Rs.22,67,503/- directly to the Respondent / builder. In consonance with the agreement entered into, the



Complainant had through SBI, Kalloor Branch wherein loan facility was availed and paid to the Respondent / Builder Rs.40,57,707/- at various intervals so as to facilitate the completion of the Apartment allotted within time as per the construction agreement dated 26/04/2011. It was further submitted that despite making almost the full payment up to Rs.40,57,707/- the Respondent is not taking any steps to register the Flat in favour of the Complainant. It is further submitted that the said project is not registered under section 3 of the Act. the said project ought to have been completed as stipulated within eighteen months. This has happened solely because of the recalcitrant negligent attitude of the Respondent being the promoter of the project. Hence the Respondents are liable to pay compensation to the Complainant. Copy of construction agreement dated 26/04/2011, copy of sale agreement dated 26/04/2011, copy of tripartite agreement, copy of payment receipts and copy of bank statement are the documents produced from the part of the Complainant.

3. The Reliefs sought by the Complainants are (1) to direct the Respondents to take urgent steps to register sale deed regarding the apartments as per the approved plan in the name of the Complainants within a time limit prescribed by the Authority (2) direct the Respondent to pay interest at the rate of 12% for the amounts deposited and received by the Respondent from 04/07/2015 to 25/01/2021 amounting to Rs.36,80,554/- and future interest till the date of realisation (3) to direct the Respondent / promoters to pay compensation to the Complainant as provided under the Act (4) to take cognizance of the fact that the project stands registered by the Respondents as per section 3 of the Act and to proceed under section 59 of the Act of 2016.

4. The Respondents have filed counter statement and denied the averments contained in the Complaint and submitted that the project named



'MIR GREEN METROPOLIS' is a township project, which consists of 26 Villas and 3 Apartment towers having a total of 404 Apartments. The 1st Respondent company has already completed all the Villas and 2 apartment towers by name Emerald park and Jade Heights 1. The construction in respect of 3rd tower being Jade Heights 2 is under progress. The 1st Respondent has also completed all the infrastructural facilities like internal roads, street light, sewage system, and treatment plants, garden, power connection, water supply, club house, swimming pools, indoor courts etc. in connection with the township project. The management of the amenities is provided to the owners of the Villas and the 2 apartment Towers which is handled by the Apex committee formed by the officers of independent associations in respect of Villas. It was submitted that the construction of the apartment tower named 'Jade Heights 1' was fully completed during the year 2013. The respective Allottees of the various apartments who have paid the full consideration due to the Promoter have been put in possession of the respective apartments from the year 2013 onwards. There was delay in getting electric connection and the Respondent has been providing power supply to the various Apartments by installing heavy duty generators on bearing heavy expenses on that account. Till 2018, the 1st Respondent has been continuing with such arrangement and on that ground alone, the 1st Respondent had to suffer an additional expense to the tune of Rs.5 Crores. The KSEB did not provide the power allocation in respect of 'Jade Heights 1' on the ground that there is no sufficient power allocation from the Grid to satisfy the requirements for the 32 storied building comprising of 160 apartments with other amenities. Due to the earnest effort of the 1st Respondent amply supported by the Jade Heights 1 owners association, the KSEB has provided power connection to the apartment tower named 'Jade Heights1' also. It was further submitted that the said tower was fully completed in the year 2013 and the Occupancy also commenced from 2013 onwards. The 1st Respondent had also submitted the Completion certificate and completion plan before the authorities of the Thrikkakkara Municipality during



the year 2016 requesting them for issuance of the Occupancy Certificate. Alleging want of Fire NOC, the municipality has not issued the Completion Certificate so far. He had done all that is required in the matter of obtaining occupancy certificate, but the same has not been granted so far, purely on account of red-tapism and the 1st Respondent being the promoter are quite helpless in the situation. The Complainant had already taken possession of the apartment in question on 09/03/2016. The Complainant had specifically undertaken to pay the maintenance charges on taking possession. Now he has rented out the said apartment to One Sasikumar and is receiving rental income. The total value of the apartment mutually agreed was Rs.45,08,566/- including car parking and statutory charges. The Complainant has not cleared the entire amount due to the 1st Respondent and an amount of Rs.4,53,341/- is still due to the 1st Respondent. The Respondents had even issued an E-mail dated 08/11/2016 to the Complainant asking him to remit an amount Rs.4,71,560/- towards stamp paper and other registration charges in order to effect registration of the apartment apart from the balance amount due to the Respondents along with agreed interest. The Complainant who failed to pay the entire consideration payable by him, however got possession of the apartment, cannot be heard to say that the liability imposed on the Respondents to pay compensation to the Complainant as provided under the statute. Copy of receipt of the Completion report issued by the Thrikkakkara Municipality dated 10/01/2017, copy of receipt dated 08/03/2016, executed by the Complainant with regard to the delivery of possession, copy of email communication dated 08/11/2016, copy of letter of handing over of possession issued by the Complainant are the documents produced from the part of the Respondents.

5. During the hearing on 04/08/2021, the Authority issued directions as follows:- (1) The Complainant in Compliant No.20/2021 shall take steps to implead the land owners as Addl. Respondents within 10 days from the date of



receipt of this order (2) The Respondents shall file a detailed Affidavit as to the completion of the project along with the work schedule with mile stones for completing the works, before next posting after serving copy to the Complainants. (3) The Respondents 1 and 2 are directed to file counter in interest claim if any, before next posting date.

6. During the hearing on 10/11/2021, the Authority again directed the Respondents to file a detailed affidavit regarding the Completion of the project. In compliance of the said orders, the Respondent has filed Affidavit in the above three complaints and submitted that The Federal bank Ltd, as financial creditor, had filed IBA No.11/KOB/2020 under section 7 of the Insolvency and Bankruptcy code, 2016 against the Respondent company before the NCLT, Kochi Bench and as per order dated 16/11/2021, the Hon'ble NCLT has initiated proceedings against M/s MIR Realtors Pvt. Ltd. and the Hon'ble NCLT had also imposed a moratorium under section 11 of the I & B Code, 2016. The copy of the said order dated 16/11/2021 is also produced. The board of directors of the company stands suspended as per the said order and one of the promoters of the Company had filed a writ petition vide No.WPC 25795/2021 before the Hon'ble High Court of Kerala seeking an order of stay against the implementation of the said order and the Hon'ble court has granted an order of stay for a period of 30 days from 18/11/2021 enabling the Respondent to avail the statutory remedy of appeal before the NCLAT Chennai. An appeal was filed on 04/12/2021 and the same was came up for admission on 17/12/2021. Even though the appeal was admitted to the files NCLAT has declined to grant the interim order for grant of stay. Accordingly, the order dated 16/11/2021 passed by the NCLT stands and appointed an NCLT Interim Resolution Professional (IRP) .



7. As the matter is under consideration of NCLT, in view of the Judgement of the Honourable Supreme Court in Pioneer Urban Land and Infrastructure Ltd & Anr. V. Union of India and Others (WP (c) No.43/2019), we find that this Authority has no Jurisdiction to entertain the Complaint. The Complainants can submit their claims before the Resolution Professional.

Hence the above Complaints are hereby dismissed.

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Sd/-
Sri.M.P. Mathews
Member

Sd/-
Sri. P H Kurian
Chairman

/True Copy/Forwarded By/Order



Secretary (legal)

Exhibits

Exhibits marked from the Side of Complainants

- Ext.A1- Copy of construction agreement dated 26/04/2011.
- Ext.A2- Copy of sale agreement dated 26/04/2011.
- Ext.A3- Copy of tripartite agreement.
- Ext.A4 series - Copy of payment receipts.
- Ext.A5- Copy of bank statement.

Exhibits marked from the Side of Respondents

- Ext.B1- Copy of receipt of the Completion report issued by the Thrikkakkara Municipality dated 10/01/2017.
- Ext.B2- Copy of receipt dated 08/03/2016, executed by the Complainant with regard to the delivery of possession.
- Ext.B3- Copy of email communication dated 08/11/2016.
- Ext.B4- Copy of letter of handing over of possession issued by the Complainant.
- Ext.B5- Copy of order passed by Hon'ble NCLT in IBA11/KOB/2020 Dated 16/11/2021.

