



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Suo Moto proceedings No. 1891/L1/K-RERA/2024

Present: Dr. Asha Thomas, Chairperson
Dr. B Sandhya, Member

Dated 2nd August 2025

Respondents

M/s MIR Builders and Developers Pvt Ltd
1st Floor M M Building,
Kalabhavan Road, Ernakulam North,
Near North Town Hall, Kanayannur, Ernakulam,
Kerala- 682018

M/s MIR Builders and Developers Pvt Ltd
House No. 2698, Chooreparambu Road,
Opp to Metro Pillar No.558A
Near Stadium Metro Station
Ernakulam – 682 017
Email: cccochin@mirrealtors.in

This Suo-moto proceeding was initiated pursuant to the direction dated 02.07.2024 of this Authority in IA No. 74/2021 in Complaint No. 11/2019. The Suo-moto proceeding came up for final hearing on 08.04.2025, for which the Counsel for the



Complainant, MIR Cintra Flat Allottees Association (Register No. EKM/TC/121/2019) herein after referred to as 'the Association' in Complaint No. 11/2019, Adv. Sandeep Sreekumar along with the representative of the Association and the Land Owners (Additional Respondents impleaded) appeared. Even after notice dated 10.03.2025 had been published through newspaper dated 18.03.2025, the Respondent/Promoter chose not to appear. However, his Counsel Abraham Mathew sent an email dated 07.04.2025 seeking permission to appear online which was not permitted as the hearing was scheduled for personal appearance/ physical hearing.

The factual matrix of the Complaint in brief and the directions of this Authority therein:

1. The registered Association of Allottees of the real estate project, MIR CINTRA, Angamali, Enakulam, filed Complaint No. 11/2019 against the Respondent/Promoter, Arun Kumar Managing Director of the promoter Company MIR Builders and Developers Pvt. Ltd, seeking following reliefs: (1) to register the project under RERA; (2) to renew the building permit or otherwise to refund the investments of the Complainant (3) to give possession of the project to the owners before 24 months from 01.01.2020 and exempt them from tax liability as the delay was not of their default; (4) in case the builder is not capable to complete the project, direct him to refund the money to the Complainants. The promise of the Respondent/promoter, as per the agreements



executed with many of the allottees, was to complete the project by 31.07.2017. According to the Complainant, 15.06 crores were collected from the allottees and not even structural works were over. This Authority, after hearing both the sides in detail and examining the documents placed on record by both sides, issued directions vide order dated 05.02.2021, as follows: *“(1) The Respondents shall complete and hand over, the project ‘MIR CINTRA’ to the Complainants, with all amenities and facilities, as committed/promised as per agreements executed with the allottees, along with all the mandatory sanctions/approvals required to be received from the Authorities concerned, on or before 06.07.2022 without fail; (2) The Respondent shall open an escrow/joint account with the Association of allottees and make sure that all the receivables from the said project shall be deposited in the said account and the amount from the said account shall be used only for the works in the project MIR CINTRA; (3) The Respondent shall submit before this Authority the status/progress report of the works, in every 2 months, starting from 15.02.2021, in the form of a sworn affidavit with copy to the Complainants; (4) The Association shall monitor the progress of works and make sure that it is being carried out as per the Works Schedule. In case of any default from the part of the Respondent, the Association can approach this Authority; (5) The Respondent shall also ensure the quality of the materials used in the construction works thereby safety and security of the allottees of the said Project, in all*



respects.” It was also made clear that in case of non-compliance of the order by the Respondent, the Authority shall initiate severe penal actions as provided under the Act.

The factual matrix of the IA No. 74/2021 in brief and the directions of this Authority therein:

2. On 07.04.2021, the complainant filed IA No 74/2021, alleging that no works has been carried out by the Respondent/promoter, after issuance of above order and requested appropriate order. This Authority passed interim order dated 10.09.2021, in the said IA as follows: *“(1) The Escrow account opened by the Respondent shall be made joint with the Association before 20-09-2021 and shall be reported to the Authority before next posting date. (2) An amount of Rs 50,00,000/- (Fifty Lakhs only) must be deposited in the Escrow Account by the Respondent before 15-09-2021. (3) The amount, as per the new proposal, Rs 2.5 Crores shall be deposited in the Escrow account before 31.12.2021, and the work shall be progressed as per the schedule.”* But the Respondent/promoter who opened the Joint Escrow account in the presence of the Complainants, has not deposited Rs 50,00,000/- in the said account, as directed by this Authority and according to the Respondent/promoter, there exist some issues with the landowner. The Authority vide interim order dated 22.09.2021, again issued the directions as follows: *“(1) The Respondent shall deposit an amount of Rs. 50,00,000/- (Fifty Lakhs only) before 27-09-2021 in the escrow account, without fail.*



(2) The Complainant shall file Impleading petition to implead the Land Owner in the party array and the notice is to be obtained by hand from the Office of Authority by 27-09-2021, and to be served to the Land Owner. (3) The Complainant, Respondent and Land Owner shall jointly discuss the issues and to arrive at a consensus for a speedy settlement.

3. The Respondent/promoter has neither complied with the above order nor deposited any amount in the joint account. The Respondent/promoter again requested for enlargement of time to deposit Rs. 50 lakhs in the joint account. The Complainants repeatedly alleged that the Respondent/promoter is not willing to complete the project, and he could not raise the amount so far, despite the direction by the Authority. The direction on 22.09.2021 was to implead the land owners as Additional Respondents and they were impleaded. The Authority observed that the Respondent/promoter is purposefully dragging on the matter and submitting lame excuses one after another and the Authority decided to impose a penalty on him under Section 63 of the Act, for non-compliance of directions. Thus, the Authority vide interim order dated 04.10.2021 directed as follows: *“(1) the Complainants shall arrange valuation of the project with the help of a chartered valuer and submit report before the next posting date; (2) The land owners shall file counter statement before the next posting after serving copy to the Complainant and the Respondent; (3) The Respondent shall remit an amount of Rs. 5000/- everyday, as*



*penalty, up to the date of compliance of previous order passed by this Authority. The amount of penalty shall be deposited in the penalty account of the Authority through Demand draft.” In the hearing on 21.10.2021, the Respondent/promoter submitted that he had remitted Rs 50 lakhs in the Escrow account, which was also confirmed by the Counsel for the Complainant. On 21.10.2021, the Authority directed the Respondent/promoter as follows: “(1) *The Respondent shall remit the penalty amount of Rs. 5000/- per day, from 04.10.2021 to 21.10.2021. The amount of penalty shall be deposited forthwith in the penalty account of the Authority through Demand draft; (2) The Respondent shall file work progress report before the next posting date.*” On 03.01.2022, the Respondent/promoter through IA No. 201/2021 requested the Authority to waive the penalty imposed. There is no provision in the Act to waive the penalty imposed and the IA was dismissed vide interim order dated 03.01.2022. On 23.05.2022, the Respondent submitted that they need the co-operation of the Complainant for completing the project and raising the required funds. So, the Authority vide interim order dated 23.05.2022 has directed as follows: “(1) *The Respondent/promoter, Complainant Association and the land owner along with their Counsels shall meet on 30.05.2022, prepare the draft agreement to be executed between them and execute the same as early as possible; (2) The Respondent/builder shall hand over all the required documents and drawings related to the project to the Complainant association**



on or before 30.05.2022, without fail; (3) The Respondent/builder shall co-ordinate with all the parties including land owners and take all initiative to fix the venue of the meeting and make the meeting successful.”

Valuation Report by the Complainant Association as per direction dated 04.10.2021:

4. On 20.09.2022, the Complainant Association filed copy of valuation report dated 12.09.2022 with regard to the construction effected by the Respondent/promoter and details of amount collected from the allottees as directed by the Authority on 04.10.2021. As per the report Rs. 8,72,29,777/- alone has been spent at site, whereas the Promoter has collected Rs. 16,78,97,335/-. The Complainant sought (a) to have the documents accepted and direction to the Respondent to return the excess amount collected, (b) to remove 1st Respondent/ Builder from the place of Promoter with all his liabilities and hand over the Project to the Association & Land owners and the Association intends to take over & complete it and (c) to impose appropriate punishment to Respondent/builder for making delay and financial loss to the allottees and not honouring the directions of the Authority.

Reply by the Respondent/promoter towards direction of the Authority dated 23.05.2022.

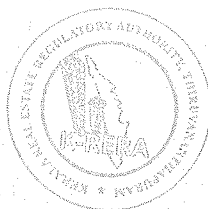
5. In response to the directions dated 23.05.2022, the Respondent/Promoter submitted an affidavit dated 31.10.2022



stating that discussions were held with the Complainant Association in which conditions and demands were placed by the Association (1) that the builder shall unconditionally exit with all the liabilities, (2) difference of the amount to be returned back to the investors, (3) builder to pay the penalties as per the RERA Law. The Respondent/promoter also put forth 3 options for consideration, which were as follows: (a) he had approached SWAMIAH Funds managed by SBI CAPS for the financial support with which the projects will be completed, (b) If the said funding fails, the funds has to be raised from the balance amounts to be received from the customers, (c) if the decision of the association is to continue with the construction of the project without engaging the builder, the company is ready to handover the project to the association in “as is where is” condition.

Direction to the Respondent/promoter to submit Audit report of the project:

6. Even though the Association of allottees submitted that they were willing to take over the Project to complete it for which the intervention of the Authority is required, it was conveyed to them on 02.11.2022 that Section 8 of the Act, 2016 shall be invoked by this Authority only in cases of lapse or revocation of registration. It was found that the proposals put forth were not acceptable to either of the parties in the meeting. The Respondent/promoter suggested for deputing an Auditor who is acceptable to both the parties and to get the project valued. But the



Complainants submitted that Auditor be appointed by the Authority at the expense of the Promoter. Then the Respondent/Promoter was directed, through interim order dated 2.11.2022, *“to submit the Audit report before the Authority after serving copies to the Complainants, so that the Complainants could verify the same with the help of their Auditor, before the next hearing date”*.

Filing of Independent Auditor's report dated 02.12.2022 of the promoter company, by the Respondent/ Promoter:

7. In compliance of the order dated 2-11-2022, the Respondent/promoter filed an audit report, but the Complainant's Counsel alleged that the report submitted was with regard to the audit report of the entire company, not of the project in question exclusively. The Respondents were directed vide interim order dated 12.01.2023, *“to submit the audit report certified by a Chartered Accountant, exclusively with regard to the accounts of the project in question, before the next hearing date.”* The Authority vide interim order dated 08.03.2023, directed the Respondents *“to produce all the details and schedules related/supporting to the Audited Statement certified by the Chartered Accountant and also to submit the details/ addresses of all the allottees in the project after serving copy to the Complainant before the next posting date”*.



Registration of the project u/s 3 of the Act, 2016:

8. The project 'MIR CINTRA' was registered vide Certificate No. K-RERA/PRJ/139/2021 under Section 3 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred to as "the Act, 2016") and the Registration expired on 30/12/2022. As it was found that the Promoter is entitled to get extension for 6 months from 31-12-2022 on account of Covid -19, the time was extended till 30.06.2023 which was also lapsed.

IA No. 89/2023 filed by the Complainant to allow them to take over the project and directions therein by the Authority dated 03.07.2023 including show cause why Section 8 shall not be invoked:

9. When the IA No. 74/2021 came up for hearing on 03.07.2023, the Complainant filed I.A. 89/2023 to allow them to take over the project and carry out all the remaining works. It was informed that as the registration is lapsed, the Authority can consult the appropriate Government to take action and the Association shall have the right of refusal as per section 8 of the Act, 2016. The Respondent/ Promoter submitted that the "Swamih" fund for completion of the project was sanctioned in principle by the bank and they seek cooperation of the Complainant Association for executing the same. The Authority noted that the Respondent/promoter have not produced any sanction letter for the same. The Counsel for the Complainant



alleged that the Respondent/promoter has sold flats and they have also not deposited the amount in the escrow account which is a clear violation of the order issued by the Authority, but the Respondent/promoter denied the same and submitted that they have not sold any of the flats after the initiation of these proceedings. The Complainant submitted that there are some variations in the information furnished by the Respondent /promoter with respect to the number of flats and funds etc on the website of the Authority. The Respondent/promoter was directed to correct the discrepancy regarding the number of flats on the website/ portal of the Authority and to provide an explanation for the same on the website itself. After hearing both sides, vide interim order dated 3.07.2023, directions were issued as follows: *“(1) the Respondents shall show cause why section 8 of the Act, 2016 shall not be invoked in respect of the project in question named “MIR CINTRA” by this Authority within 2 weeks from the date of receipt of the order after serving copy to the Complainant. The Complainant shall file replication, if any to the same within one week; (2) The Respondent is hereby given final chance to submit the sanction of Swamih funds, as stated by him, within 30 days from the date of receipt of the order. (3) The Respondents shall not sell/allot/alienate or to enter into any agreement with respect to any of the unsold flats in this project until further orders. (4) The Complainants shall verify the audited*



accounts submitted by the Respondent and to file reply to the same, if any before the next hearing date”.

The Respondent/promoter challenged the interim order dated 03.07.2023 in appeal:

10. In the hearing of IA 74/2021 on 20.10.2023, the Counsel for the Respondent/promoter submitted that they had approached the Hon'ble Kerala Real Estate Appellate Tribunal challenging the interim order dated 03.07.2023 and the Tribunal as per order dated 17.10.2023 in UNNUMBERED REFA had given them time up to 04.11.2023 to submit the reply to the Authority. The Complainants filed I. A. 129/2023 for a direction to produce more documents by the Respondent/promoter.

Reply furnished by the Respondent/promoter to the Show Cause Notice dated 03.07.2023

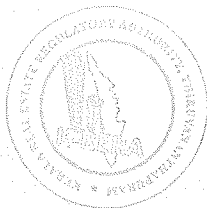
11. On 08.11.2023, the Respondent/promoter filed reply to the show cause as follows- The interim order dated 03.07.2023, and show cause notice therein has been issued against Respondent/Promoter, the Managing Director alone without passing any orders against the company MIR Builders and Developers Ltd. and the said show cause notice is not enforceable in law. The said company which alone has got privity of contract with the Complainants has not been made party in the proceedings. The sale and construction agreements with respect to the project are those executed by the respective allottees with the said



company as the promoter of the project and the omission on the part of the Complainant to seek reliefs against the Company cannot be rectified at this point of time. The Respondent/promoter, the Managing Director Arun Kumar is only a nominated officer of the company and he cannot be made answerable or accountable to all acts and responsibilities of the company when the company is not a party to the proceedings. Even when orders of penal nature were issued by the Authority, the company was not party to any such orders and all such orders have been passed against Mr. Arun Kumar. It was submitted that they had made all possible efforts to see that the project is completed, but the Complainants were not co-operating with him at all to complete the project and were only showering accusations against him. The company had taken the initiative to arrange funds from the Swamih funds managed by the State Bank of India and accordingly had obtained sanction in-principle, for an amount of Rs. 14 crores as the company had satisfied all the eligibility criteria before the statutory financing authority. But as the Complainants were not ready to cooperate with the company, the company could not take the risk of remitting the processing fee of Rs. 14 lakhs, being 1% of the fund sanctioned. The Complainant always wanted to see that the project came under their control and management and with that intention, the Complainants were raising dishonest allegations against the company. Even when the direction dated 10.09.2021 was complied with by opening an escrow account and depositing Rs. 50 lakhs in



the account, the Complainant was insisting that the company should bring in Rs. 2.5 crores to be deposited in escrow account. The Respondent/promoter already started the work on the site, but due to the non-co-operation of the Complainant, they were not able to do their work. They couldn't bring Rs. 2.5 crores to the escrow account. The Complainant has repeatedly alleged that the Respondent/promoter is not willing to complete the project and he could not raise the amount so far as directed by the Authority. The Respondent/promoter submitted that he needs the co-operation of the Complainant association for completing the project and raising the fund for which an execution of agreement is necessary. It was further submitted by the Respondent/promoter that the valuator appointed by the Complainant, was earlier a consultant of the company and had been terminated from service by the company due to poor services. For that reason alone, he should not have been appointed as an independent valuator as he is prejudiced against the Respondent/promoter and the company. The valuator visited the site without notice to the company. Even the number of floors reported to have been completed in the project was wrong. He was not aware that a lot of amount has to be spent for administrative expenses of the company including marketing and branding expenses, amount required for payment of salaries and allowances to the employees of the company etc. Even during the Covid-19 situations and the flood calamity, when the company was not able to carry out the constructions, it has been paying the administrative



expenses. It is on the basis of this false report that the Complainant sought direction for the Respondent to return the excess amount collected, to remove the 1st Respondent from the place of promoter with all his liabilities and hand over the project to the association and land owners as if the association intends to take over and complete the project and to impose appropriate punishment to the Respondents for making delay and financial loss to the allottees and for not honoring the directions of the Authority. Despite the hostile attitude being shown by the Association, the promoter company put forth the 3 options, as (a) he had approached Swamih Funds for financial support with which the project will be completed (b) the allottees shall pay the balance amount and (c) if the decision of the association is to continue with the project without engaging the builder, the company is ready to hand over the project to the association in as is where is condition. But the Complainants were not prepared to accept that proposal also. The company had also made suggestions with regard to deputing an auditor acceptable to both the parties and making a valuation of the project, but the Complainants objected to that proposal also. However, in compliance with the direction of the Authority, the company had submitted a statement of accounts certified by the auditor. But the Complainants objected to the audit report also. In view of the direction issued pursuant to the objection, the company submitted an audit report certified by the chartered accountant exclusively with respect to the accounts of the project in question.



It had also produced the details of the schedules related to/supporting the audited statement and also the address of the allottees in the project. But the Complainants have filed an affidavit that they are not satisfied with the same and also all the books of accounts of the company including supporting documents should be produced, which is a laborious process. The Complainants wanted to take advantage of the fact that the period of registration of the project has expired without duly understanding the provisions of Sec 8 of the Act. The Respondent cannot avail the Swamiah funds for completion of the project unless the Complainant Association co-operates with the further constructions to be made in order to complete the project. But the Complainants continued with their allegations that the promoter has transferred/sold flats and has not deposited the amounts in the escrow account. The Company has not effected any sale subsequent to the initiation of the proceedings. What has been done by the company was to duly record certain cancellation of bookings already done. But the Complainants wanted to misinterpret the same also to their advantage. In so far as the company had furnished the details of the existing allottees, there was no room for making such false allegations apart from their dubious intentions. The Company had also truly disclosed the numbers of flats already sold in their website. The letter of sanction of the Swamiah funds managed by the SBI funds was also produced. The company has not done any sale as alleged by the



Complainant. The Complainant have not filed any reply to the audited accounts submitted by the Company. In view of the scenario being created by the Complainant that they will not allow the company to carry out the constructions and complete the same even if the Authority grants sufficient time for completion of the same. It was submitted that the company would be ready and willing to complete the project under the direct supervision of the Authority detaching all interferences and aspirations by the Complainants to take over the project and if the Complainants are not ready and willing to concede to the same, the Company may be relieved of the project without any consequences with regard to penalty or compensation.

Counter Affidavit filed by the Respondent/Promoter to the IA No. 89/2023, with regard to take over of project by the Association.

12. The Respondents also filed counter affidavit on 08.11.2023 to IA No. 89/2023 in which it was submitted as follows:- The Complainant is not entitled to a direction to take over the project 'MIR CINTRA' enabling the complainant to carry out the remaining development works as has been aspired by them. The scheme of Section 8 of the Act does not empower the petitioner for such rights at this point in time. The petitioners are also quite incompetent to file such a petition in Complaint No. 11/2019. The relief sought in the petition are also those made against an individual, wherein the promoter is not a party and in as much



as all the reliefs are indirectly oriented against the Company which has not been impleaded as a party Respondent, the petition is highly misconceived and same cannot be entertained as per law. Therefore, the petitioner is not entitled to any relief in the above petition. The promoter company has, throughout, been making a very sincere effort to complete the project in all respects. It was also fully cooperating with the land owners to fulfill its commitment to deliver the apartments due to them and to effect the delivery to all the allottees of the project. However, the order of the Secretary of the Angamaly Panchayath canceling the building permit happened to be a great shock and blocked its sincere efforts to complete the project. Two floods and the Covid-19 pandemic also occurred, and the building permit could be renewed only pursuant to the Judgment dated 05-02-2021 passed by the Hon'ble High Court of Kerala in WP(C) No. 14917/2015. In the meanwhile, without realizing these difficulties and resultant cost escalation that had happened, the Allottees Association filed Complaint No. 11/2019. This Authority passed order dated 05-02-2021 in the said Complaint with several directions with regard to the completion of the project. The Association was given authority to monitor the progress of the work and make sure that it is being carried out as per the works schedule with a liberty to approach the authority on default. On account of the said order, the Complainant wanted to take advantage of the situation and dictate to the builder with regard to several matters with literally prevented the promoter



from duly observing the directions in the judgement. This aspect has already been brought before the Authority by way of reply to the various petitions filed by the Allottees Association. They were not ready to bear with the promoter in any manner as they had got certain assurances with regard to the compensations that could be claimed. Even though the promoter company had made all earnest efforts to restart the work, the members of the Association has been interfering with the said attempt and accusing the promoter of several deficiencies and ultimately complaining that the promoter did not deposit Rs 2.5 crores in the escrow account. This Authority had also issued direction with regard to execution of a specific agreement with the co-operation of the Association and even though the company had insisted and persuaded the Complainant's representatives to execute an agreement as desired by this Authority, the Association backed out from the same also. Ultimately, the contractor engaged by the Respondent/promoter also abandoned the works on fear of action against it by the Complainant and the Authority. However, the Company had arranged a funding of Rs. 14 crores from the Swamih funds on apprising the authorities of the State Bank of India that the project is a viable one. But the promoter could not so far avail the funds on making a pre-deposit of 1% of the sanctioned amount on account of the non-co-operation of the Complainant and consequent uncertainty which is prevailing even now. Even though the promoter had submitted an audited report of the accounts, the



Complainant is not ready to accept the same. On the other hand, they want to do further audit by their chartered accountant who is reluctant to examine the documents at the office of this Respondent. It is in such a scenario that the Complainant have again filed the present petition as IA No. 89 of 2023 seeking 18 reliefs therein. The prayer No. 1 and 2 is to allow the Complainant to take over the project. The Respondent was ready to comply with the order dated 05.02.2021 passed by this Authority but for the undue interference of the members of the Complainant. Accordingly, they were waiting for expiry of the registration of the project by 31-12-2022. The Authority extended the period of registration given the force majeure situations on account of Covid-19. This caused much frustration to the petitioner which was aspiring to take over the project in collusion with the land owners. The Respondent/promoter has consented to hand over the project to the petitioner, that it is ready to return the excess receipts received from the allottees to petitioner etc. The Complainant wants to assert that only they are competent to continue with the project and that the Respondent is unable to complete it. The expiry of registration under Sec. 3 will not seriously affect the further constructions in as much as the Authority has sufficient authority and power to extend the period of registration. That is not a reason for invoking Sec. 8 of the Act and the petitioners cannot insist to this Authority that it should invoke Section 8 of the Act. It is only on account of the undue aspiration of the Complainant to take over



the project that they did not co-operate with the company to complete the project and now, they accuse the company that it has become unable to recommence and complete the project. A similar project of the company at Payyambalam, Kannur which happened to be delayed is being completed on restarting the work only on account of the full co-operation of the allottees, who even contributed additional funds for its completion taking into consideration the huge escalation in the cost of materials and services. If the petitioner is restrained from unnecessarily interfering with the due execution of the project and their aspirations for a takeover is disappointed, this Respondent is certain that the project would be completed on availing the Swamih funds already sanctioned. The Complainant has no right or authority to say that the promoter is not entitled for any extension of registration. Since the initiation of this proceedings, way back in 2019, the promoter has not sold any unit in the project in order to receive any income, much less has taken any amount from the existing allottees, still the petitioner falsely alleges that the promoter did not deposit receipts in the escrow account. Such adverse attitude of the petitioner alone has discouraged the company from bringing in further funds in the escrow account as it was really afraid that the members of the petitioner association would obtain orders of attachment against such deposit in order to defeat the promoter company. The Respondent had no hesitation in giving an undertaking with respect to the completion of the



project as it has always maintained a straight forward attitude and approach. The petitioner has no authority to complaint about the non-payment of the penalty as it can be collected only through the available mechanism.

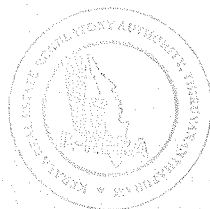
13. It was further submitted by the Respondent/promoter that the provisions of Section 8 of the Act, 2016 are to be invoked only in extraordinary situations, that too on strict compliance of the criteria thereof and therefore, the Complainant Association cannot be allowed to take over the project as they are totally incompetent to complete the same. They have not even enquired with any builder with respect to the rates being quoted for completion of a project which has been taken over from the original builder and the rates will be more than double the prevailing rates. The averment that the petitioner Association has suffered huge loss and damage in the hands of the promoter is also a false statement. They are not entitled for any of the reliefs sought for herein, much less to take over in any manner the functions and duties of the promoter as stipulated under Section 11 and 18 of the Act, 2016 or any other consequential reliefs. They have not suffered any damage due to inaction from the part of this Respondent and the petitioner cannot aspire for exemption from payment of registration fee in furtherance of their wish to take over the project. The Complainant Association is one which is reluctant to recognize the huge payments made by the company for getting the plan approved and getting the project registered with this



Authority, as reflected in the audited accounts. The relief with respect to cancellation of existing Joint Venture agreement dated 17.04.2014 is also a high-handed aspiration of the petitioner. The Complainant Association is now colluding with the land owners to defeat the promoter company. The Complainant Association, if it actually has the influence and control they have pretended to have throughout these proceedings could very well have collected the details of the payments made to the promoter company by the allottees. They have already come up with a false figure of receipts and expenditure and they have been reiterating such false statements all throughout the hearing to cause prejudice to this Respondent. This Respondent has not made any transfer of allottees from its other projects to this project or added any dubious allottees to the list as alleged in the IA. In the affidavit dated 15-07-2021, the Company had stated that it is entitled to sell 56 apartments and that the apartments so far sold are 41. The figure 41 was one stated without counting the allottees who have already approached for cancellation and refund, and when it realized that those allottees are also to be accounted, the company posted the number of allottees as 47. Of these 6 allottees, 4 have already approached this Authority and the remaining 2 may do so at any time. Therefore, the details of all the allottees have been uploaded in the website of this Authority. The Company has not resold any of the apartments whose booking has been cancelled by the respective allottees. In so far as the promoter company has not



made any sales or resales after the initiation of Complaint No. 11 of 2019, the demand for deposit of the alleged sale proceeds is just a speculative demand. The petitioner is not entitled for any access to the accounts of the company. At this point of time, the Respondents 2 to 4 are not entitled to act in any way contrary to the joint development agreement dated 17-07-2014. Going through the averments made in the affidavit, that it appears that the Complainant Association wants to procure all the original documents, sanctions, approval, plans, contracts, invoices, documents, details etc. in respect of the project as if the promoter company has abandoned the project or is incompetent to complete the project. The Complainant is not entitled for any such direction with regard to the handover of any of the documents maintained by the promoter company. The Power of Attorneys mentioned in the affidavit are those to be acted upon for due completion of the project and none of them can be cancelled by this Authority on a mere asking. There are certain procedures laid down under law of the Country with regard to cancellation of documents etc. and such provisions cannot be overlooked by this Authority. The company will not create any rights, charge or encumbrance over the project land without obtaining due permission from this Authority or other competent forums. For opening and operating the escrow account, the promoter company had not received any contribution from the Complainant Association or its members and the entire proceeds therein are to be given to this Respondent and no direction can be



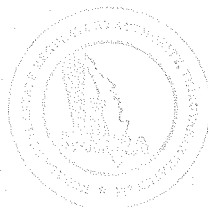
legitimately issued to the bank manager of IDBI bank Angamaly to make the petitioner Association the sole operator of the account and restraining the promoter company from operating the said bank account in any manner. No authority has so far decided any matter with respect to the mutual liability of the parties and in such situation, the petitioner has quantified the amount to be refunded as Rs. 9,03,77,723/- at a time when further amounts are due from the members of the petitioner Association. The question of payment of interest under Section 18 of the Act, 2016 to the petitioners also is one to be determined only after taking appropriate decision by way of conclusion of the proceedings. The Authority is not bound to make any direction to take revenue recovery steps against this Respondents as has been sought for in relief. It was prayed to reject the said petition.

Disposal of IA No 74/2021 in Complaint No 11/2019:

14. During the hearing of the IA 74/2021 in the above Complaint on 07.11.2023, it was noticed that the total units sold as per website details were 47 and 6 allottees had prayed for cancellation in which 3 have already received orders from the Authority. The counsel for the Complainants alleged that the Respondents have not furnished documents required for auditing despite order from the Authority. The Authority directed both the parties to let their Chartered Accountants sit together and prepare the audit report. The Land owner submitted that he is not having any objection, in the Association taking over the project. The



Authority directed to submit a detailed report within 45 days to know whether the Respondent/Promoter has invested any amount in the project or whether it is constructed only with the amount invested by the allottees. The Association was also directed to convene a meeting and pass a resolution with regard to handing over the project with participation of all the allottees and to submit the details along with the minutes and resolution. The Complainants also argued that the conditions in the Swamih fund document itself shows that it was practically impossible. In the hearing on 29.04.2024, the Respondents again objected to proceed with the I. A. 74/21 as the promoter company was not a party to the Complaint. As it is found that the Respondent No. 1 have grievously failed to comply with the order of the Authority dated 05-02-2021, penalty was imposed on him vide interim order dated 04/10/2021. As the Respondent No 1 had failed to remit the same, it was decided vide order dated 02.07.2024 in IA No. 74/2021 in Complaint No. 11/2019 to recover the penalty from the Respondent as per section 63 of the Act, 2016 as stipulated in the above-mentioned order dated 04/10/2021. The Registry of this Authority was directed to initiate immediate action for recovery of the penalty imposed on the Respondent/Promoter. As the promoter company is not a party to the Complaint, the Authority closed I.A. No. 74/21 vide its order dated 02.07.2024 and directed to issue Suo-moto notice to the Respondent/Promoter with regard to Section 8 of the Act, 2016.



Suo-moto proceedings under Section 8 of the Act, 2016.

15. Thus, Suo-moto proceedings u/s 8 of the Act, 2016 was initiated by issuing show-cause notice dated 08.08.2024 directing the Respondent/Promoter to show cause why action mandated under Section 8 of the Act 2016 should not be taken against them, whose project registration under Section 3 of the Act, 2016 had lapsed on 30.06.2023. Show cause notice issued through registered post was returned unserved, with remarks "addressee left". The Authority from the website of the Ministry of Corporate Affairs ascertained that the company in question is still active. Thereafter a personal hearing was scheduled on 04.02.2025, for which a notice was issued on 16.01.2025. The said notice was also returned unserved, with remarks "addressee left". An email was also sent in the address given by the promoter in the application submitted for the registration of the project. It has not been bounced back and has been delivered. In the hearing on 04.02.2025, the Respondent promoter was absent. The Counsel for the Complainant Association and the Secretary of the Association were present. Heard them in detail and the Authority found that there is sufficient reason to continue with the proceedings even though the promoter is absent. Even then the Authority felt it necessary to issue notice through newspaper publication. Hence, Notice dated 10.03.2025 was published through newspaper on 18.03.2025, for the appearance of the Respondent/promoter, allottees and other related parties on 08.04.2025 and for submission of their written



objections if any against Suo-moto proceeding under section 8 of the Act. It was also informed that in case of failure to be present and non-filing of written objections, if any, further action will be initiated on the presumption that they have nothing to offer in this regard. The Counsel for the Complainant (MIR Cintra Flat Allottees Association) in Complaint No. 11/2019 along with the representative of the Association and the land owners appeared for the hearing. The Respondent/promoter was not present for the hearing.

Affidavit dated 08.04.2025 by the Counsel for the Association:

16. The learned Counsel for the Complainant Association on 08.04.2025 filed an affidavit with more or less same reliefs in IA No. 89/2023 filed earlier in IA No. 74/2021, and stated as follows: This Authority vide order dated 05.02.2021 in Complaint No.11/2019 filed by the Complainant association, directed the promoter to complete the project by 06.07.2022. Pursuant to the failure of the promoter to complete the project, the Association filed IA No 74/2021 on 05.02.2021 seeking viable solution to complete the project under the guidance of this Authority, this Authority, while considering the application, observed on 02.11.2022 that "In case the Association of allottees are willing to take over the project and complete it and hence this Authority can invoke Section 8 of the Act. The Complainant association is informed that Section 8 of the Act, 2016 shall be invoked only after 30.12.2022, the completion date in the registration certificate and



the Complainant association shall be given the right to take over the project.” Thereafter at the time of hearing on 12th January, 2023, the promoter has appraised this Authority that they have filed an application for extension of registration for another 6 months on account of Covid-19 taking into account Force Majeure, extension order was issued by the Authority up to 30/06/2023 to the Promoter. Despite extension of registration, the promoter was unable to complete the project. There is no progress in terms of work and execution of the project is at standstill. The promoter is unable to construct and complete the project. The promoter has in its affidavit dated 31st October 2022 admitted that the promoter is not in a good financial position even to pay compensation, if any ordered by this Authority. Further, in the said affidavit promoter has also consented to hand over the project to the association. The promoter has also stated that it is ready to return the excess receipts received from the allottees to the Association. It is therefore submitted that the inability of the promoter to complete the project is evident from its statement. As the promoter’s registration under Sec. 3 has lapsed and expired on 30/06/2023 this Authority could now invoke Sec. 8 of the Real Estate (Regulation and Development) Act. 2016. There is a clear demonstration on the part of the promoter by conduct and otherwise, showing its inability to re-commence and complete the project. The promoter has violated series of orders and directions of this Hon’ble Authority including but not limited to the Orders dated 5th February 2021 and 4th



October 2021. The penalty ordered by this Hon'ble Authority vide order dated 21st October 2021 is still to be paid as directed. Hence the promoter for all reasons stated above has clearly demonstrated that it has committed defaults entitling this Authority to revoke even any existing registration under Sec. 7 of the Act. The original scheme of the project is a ten storied apartment complex. Presently works relating to structure till 8th floor have been partially completed. No substantial construction work has been carried out in the project since the year 2017. The project is at a complete standstill and the allottees who have purchased the apartments with their hard-earned money is in peril. Therefore, the Association by convening meetings and after detailed discussion among the members held on various dates including 19/11/2022, 04/06/2023, 10/11/2023 & 27/11/2023 has decided to approach this Authority to permit taking over the project. The Association has also filed and IA No. 89 of 2023 before this Authority specifically seeking permission to take over the project. The copy of the signed minutes of the meeting and the consent letters issued by the members of the Association was produced before this Court in aforementioned proceeding arising out of Complaint No. 11/2019. It was therefore submitted that the Association may be allowed to take over the project and may be allowed to carry out construction as per the sanctioned plans. It was further submitted that for the purpose of carrying out the functions and duties of the Respondent/ promoter as stipulated under section 11 and 18 of the Act 2016, it is essential



that this Association may be also be granted consequential reliefs as it may deem fit to enable the Association to complete the project. It was further submitted that in view of the peculiar circumstances of the case and considering that allottees in the project has already suffered huge loss and damages due to inaction on the part of the promoter, the Association may be exempted from payment of any registration fees for registering as promoter in the project. The promoter has already registered the project and the registration fees for the same has been adjusted from the payments made by the allottees towards the apartments. A further levy of fees, may put extra burden on the allottees who are already in loss. It was submitted that the Association and land owners Additional Respondents 2 to 4 impleaded, in IA No. 89/2023 in IA No 74/2021 in Complaint No. 11/2019 had entered into an understanding that they would enter into a fresh Joint Venture Agreement once this Authority allows the Association to take over the project. In order to enter into a fresh Joint Venture Agreement with the land owners, the Authority may cancel the existing Joint Venture Agreement dated 17.07.2024 after reserving the right of the parties to approach appropriate Court for damages for breach, and allow to enter in to a new Joint Venture Agreement. It was submitted that the Respondent/promoter is trying to transfer allottees from its other projects to this project. The total units which the Promoter is entitled to sell is 56 and as on 15.07.2021 and there are only 41 allottees, however the current status in the



website is showing 47 units being sold out as on 30.06.2023. The promoter has added 6 dubious names. The promoter was required to deposit such monies, if any, received from allottees in the escrow bank account as per order dated 05.02.2021 of the Authority, which was not done and the promoter had committed fraud on the allottees, hence it was submitted to pass appropriate direction. It was submitted to issue direction to deposit monies received from any allottees into the escrow bank account in compliance with the order dated 05.02.2021. It was submitted that the land owners be directed to execute sale deed in favour of allottees suggested by the Association in respect of individual share in land and building, common amenities in favour of the Association. It was submitted that several Power of Attorneys was issued by land owners to the officers of the Respondent/Promoter for executing agreements with prospective allottees hence necessary direction may be issued restraining the promoters from acting upon the Power of Attorneys or Joint Development Agreement dated 17.07.2014 or from creating any rights charge or encumbrances over the project land in question consisting of 99.73 cents. The promoter be restrained from advertising and marketing projects. Necessary direction may be issued to the promoter and the Manager of IDBI Bank Angamali to make the Association, the sole operator of the escrow account and promoter be restrained from operating the bank account. It was requested to pass order clarifying that any liability of the Association begins only from the



date of takeover and its registration as a promoter of the Project and the current promoter shall be held liable to contractors, allottees and any third parties for all acts of omissions committed in respect of the project including but not limited to payment of outstanding dues on work done in the project until the Association takes over the project. Directions may be passed to the Secretary, Angamaly Municipality, to renew building permit and approvals given in respect of the project in question, in the name of the Association otherwise consent and no objection from the promoter is required. The promoter may be directed to refund excess receipts of Rs. 9,03,77,723/- As per direction of the Authority dated 04.10.2021, the Chartered Valuer of the Complainant valued the project as per which the total monies spent on the project is around Rs. 8,72,29,777/-. The Association on 12.09.2022 had filed valuation report prepared by the said valuer as directed by this Authority. The total receipts from the allottees as per the statement of accounts of the promoter is Rs. 17,76,07,500/- and this fact is admitted in the Chartered accountants certificate dated 07.03.2023 of the promoter. The promoters Form 3 certificate dated 01.03.2023 before the Authority under Regulations before the Authority shows that it has received Rs. 17,76,07,500/- from the allottees and cost incurred on the project is Rs. 9,55,60,225/. A copy of report was also produced. Assuming the same to be correct, as per admission of promoter Rs. 8,20,47,275/- received from the allottees was not spent on the project. In the calculation



of Association, Rs. 9,03,77,723/- received from allottees has not been spent and the promoter is liable to return the same. as per direction of the Authority. The Promoter has produced their audit report and schedules by its affidavit dated 25.04.2023, but failed to submit supporting documents showing the expenses mentioned in the audit report. Therefore, adverse inference may be drawn and in the absence of materials supporting the claim of promoter, the Audit report dated 12.09.2022 submitted by the Association may be accepted and promoter may be directed to refund Rs. 9,03,77,723/- to the association being excess receipts from allottees over and above the project expenditure. A copy of affidavit dated 31.10.2022 of the promoter agreeing to refund excess receipts was also produced. The original hand over date of project was 31.07.2017 and the Promoter was directed as per order of the Authority to hand over project by 06.07.2022 and the promoter has failed to hand over the project hence the promoter may be directed to pay interest for every month of delay as per Section 18 of the Act. For the reasons stated, the Association may be allowed to take over the project, the members of the Association present in the meeting held on 27.11.2023 had unanimously agreed to take over the project as it is the only means to recover or at least partially recover their hard-earned monies spent for purchasing apartment in the project. The copy of minutes of meeting was also produced.



Orders/reliefs sought by the Association:

1. The Association may be allowed to take over the Project “MIR Cintra” and carry out all remaining construction works not limited to construction of apartments and common amenities as per sanctioned plan under Section 8 of the Real Estate (Regulation and Development) Act, 2016.
2. The Association may be permitted to register as the promoter of the Project “MIR Cintra” and be exempted from payment of any registration fees.
3. The existing Joint Venture Agreement dated 17th July, 2014 in respect of Project “MIR Cintra” entered into between the Promoter and the Land Owners may be cancelled and annulled and Land owners may be directed to enter into a Joint Venture Agreement with the Association for the purpose of enabling take over the Project.
4. The Land Owners be directed to execute registered conveyance deed for undivided share in respect of land and building to the allottees who are eligible to get such undivided shares in their favour as per list of eligible allottees prepared by the Association.
5. The Land Owners be directed to execute registered conveyance deed for undivided share in respect of land and building to the allottees who are eligible to get such undivided shares in their favour as per list of eligible allottees prepared by the Association.
6. The Land Owners may also be directed to execute sale deed conveying the common areas in favour of the Association within 3 months from the date of issuance of occupancy certificate.



7. The Promoter and its officers be restrained from entering into any conveyance deeds, agreement for sale, lease, power of attorney, hypothecation or any transactions in respect of Project "MIR Cintra" or in respect of 99.73 Cents equivalent to 40.38 Ares comprised in Re-Survey No. 419/12-2, 419/9-3, 14-4, 14-8, 12-5, 14-6, 16-5, 17-2, 17-4 in Re-Survey Block No. 11 of Angamaly Village, Aluva Taluk, Ernakulam District and the restrained from further acting on the Power of Attorney dated 21st February, 2015 registered as Document No. 65/2015/IV in Angamaly SRO, Power of Attorney dated 21st February, 2015 registered as Document No. 66/2015/IV in Angamaly SRO, Power of Attorney dated 20th February, 2016 registered as Document No. 48/IV/2016 registered in Angamaly SRO, Power of Attorney dated 20th February, 2016 registered as Document No. 50/IV/2016 registered in Angamaly SRO and such other documents executed in its favour by the land owners and appropriate directions may be passed to jurisdictional Sub-Registrar of the Registration Department in this respect.
8. The Promoter be restrained from proceeding further in any manner in respect of the Project "MIR Cintra" and be directed to remove any representation, advertisements to the public as the promoter of the Project "MIR Cintra".
9. The Promoter be restrained from operating the escrow bank account No. 0915102000006163 with the IDBI Bank, Angamaly and necessary directions may be passed to the Promoter and the Bank Manager, IDBI Bank, Angamaly to make the Association, sole operator of the said bank account.
10. The Promoter shall be held liable to third parties, allottees, statutory bodies and such other persons for all acts



and omissions committed in respect of the Project "MIR Cintra" not limited to payment of any outstanding dues towards work done in the Project until the Association takes over as a promoter in the Project.

11. The Secretary, Angamaly Municipality may be directed to renew the building permit and approvals given in respect of the Project "MIR Cintra" in the name of the Association and in place of Promoter in accordance with law within a prescribed time line as this Authority may deem fit.
12. The Promoter may be directed to refund of Rs. 9,03,77,723/- (Rupees Nine Crores Three Lakhs Seventy-Seven Thousand Seven Hundred and Twenty-Three) to the Association as excess of receipts received from the allottees over and above the project expenditure so far utilized in the Project.
13. The Promoter may be directed to pay interest at prescribed rate for every month of delay as per Section 18 of the Real Estate (Regulation and Development) Act, 2016 to the Association, which shall be distributed among the allottees by the Association.
14. The Promoter be directed to deposit any receipts received from the allottees or third parties in the project after 5th February, 2021 to the escrow bank account opened as per the Order dated 5th February, 2021 and be directed to file an affidavit showing payment details of any sale held after 5th February, 2021.
15. As appropriate penalty may be imposed for non-compliance of Orders of this Hon'ble Authority in regard to timely completion of the Project.



16. The Promoter may be directed to handover all original documents, sanctions, approvals, plans, contracts, invoices, documents, details etc., in respect of the Project MIR Cintra for the Association to act as promoter in the Project and be directed to do such acts as may be required by the Association essential for takeover of the Project.

17. Such other Orders and reliefs as this Authority may deem fit in the interest of justice.

Examination of the pleadings & documents, reasoning & findings:

17. The Authority has examined the Complaint, Counter Affidavits/Affidavits filed by the Respondents/ Complainant Association, IAs, Written submissions and Arguments thereof carefully. Section 8 of the Act, 2016 is reproduced below:

“8. Obligation of Authority consequent upon lapse of or on revocation of registration.- Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority: Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act: Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the



first right of refusal for carrying out of the remaining development work.” From a perusal of afore quoted provisions of Section 8 of the Act, 2016, it is clear that upon lapse of registration or on its revocation, RERA may consult the appropriate Government to take such action as it may deem fit including carrying out of the remaining development works by the competent authority or by some Association of Allottees or in any other manner, as may be determined by the RERA. The second proviso appended to Section 8 speaks about the first right of refusal of the Association of Allottees for carrying out of the remaining development works. As already observed above, it is a case of lapse of registration and not its revocation on the ground of default by the petitioner-company or violation of conditions or on account of involvement of the promoter-company in any kind of unfair practice. It is rather a case of lapse of registration of the project in question with RERA for the reason that the registration has not been extended after extension of registration of the project expired on 30.06.2023. It is found that the Association of Allottees are willing to take over the project and complete it and the promoter also agrees for such takeover in ‘as is where is’ condition. The Complainant Association has on 08.01.2024, produced signed minutes of the meeting dated 10.11.2023 of 22 members of the Association as Document No. 1 and signed consent letters from 27 members of the Association for taking over the project by the Association. This Authority can invoke Section 8 of the Act, 2016.



(a) It is seen that this real estate residential project developed by the Respondents is registered under section 3 of the Act, 2016 as per registration No. K-RERA/PRJ/139/2021 and it was lapsed on 30.06.2023. As stated by the Respondent promoter, the original permit for this project had been obtained from the Angamali Municipality vide No. BA/215/13-14 dated 15.02.2014 and was valid up to 14.02.2017 and later renewed up to 14.02.2023. As per the permit, the total floor area of the building is 13216.29 sqm.

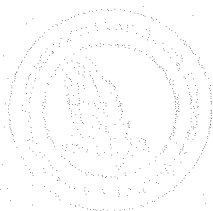
(b) As admitted by the Respondent/promoter, in the Amendment agreement dated 31.05.2019 with the Association, they were developing 10 storied apartment complexes at Angamali and the structural frame work of 8 stories has been completed and the project is delayed and actual handing over date is already overdue. There are 74 units in the apartment complex of which the promoter share is 56 units.

(c) The Additional Respondents No. 2 and 3 who were impleaded in the Complaint as per IA 145/2021, in their counter statement dated 18.10.2021 has admitted that the Respondent/promoter and the Additional Respondents No. 2 and 3 (impleaded land owners) entered into a JV Agreement dated 27.07.2014 with regard to the development works to be done in their property having an extent of 99.73 Cents (40.38 Ares) comprised in Re-Survey No. 419/12-2, 419/9-3, 14-4, 14-8, 12-5, 14-6, 16-5, 17-2, 17-4 in Re-Survey Block No. 11 of Angamaly



Village, Aluva Taluk, Ernakulam District. As per the JV agreement Additional Respondents No. 2 and 3 impleaded were entitled to get 22.5% of the total constructed area towards their share against the consideration for the land set apart for the project.

(d) The Respondent /promoter have also admitted that they are in dire financial condition and have admitted to their inability to resume the remaining construction in the project and complete and handover the units to the allottees along with common amenities in a timebound manner without the co-operation of the Complainants. The multi-storeyed flats, which were booked by the allottees have not been completed along with various common amenities promised to the allottees by the Respondents till date. Despite extension of registration, and repeated directions by this Authority from 2021, and repeated assurances by the Respondent/promoter from 2021, the promoter was unable to complete the project which was promised to be completed by 31.07.2017. There is no progress in terms of work and execution of the project is at a standstill with structural completion only up to 8th floor in a 10 storied building complex. The promoter has in its affidavit dated 31st October 2022 admitted that the promoter is not in a good financial position even to pay compensation, if any ordered by this Authority. Further, in the said affidavit, the promoter has also consented to hand over the project to the Association. The promoter has also stated that it is ready to return



the excess receipts received from the allottees to the Association. The project is a badly delayed one where the allottees having made part or full payment are deprived of the apartment units booked by them after having paid Rs. 17,76,07,500/- to the Respondent/promoter.

(e) The Respondent/promoter in the reply filed on 08.11.2023 to the show-cause notice dated 03.07.2023 in the IA to the Complaint, has submitted that the valuer appointed by the Complainant was earlier a consultant of the company and his service was terminated due to poor quality of services. According to him, for that reason alone, he should not have been appointed as an independent valuer as he is carrying a lot of prejudices against the Respondent/promoter and the company. This was also considered by this Authority. As per Affidavit dated 25.04.2023 (IA No. 80/2023 in IA No.74/2021 in Complaint No.11/2019) the Respondent/promoter had admitted that the total amount collected from the allottees were Rs. 17,76,07,500/- (Schedule A-Statutory collected Rs. 1,25,66,240/-, Schedule-B Association, transformer, KSEB, PCB etc., Rs 1,01,04,738/-, Schedule-C collection without Statutory Rs. 14,63,36,522, Schedule -D Car Parking Rs. 86,00,000/-) Schedule -E construction cost towards land owners share was Rs. 2,47,00,000/- Schedule-F Construction cost was Rs. 9,55,60,225, Schedule -G joint venture advance land owner was Rs. 50,00,000/- Schedule- H Proportionate share of Employee Benefit expense Rs. 2,19,02,796/-, Schedule-I Proportionate share



of administrative & Other Expenses Rs. 2,07,38,951/-. Though no materials supporting the contentions were produced, the schedules were seen prepared and signed by Jose Thomas, (M No. 212106) for Kovoov & Co. Chartered Accountant. As per the Schedules, the total cost was Rs. 14,32,01,972/- Hence as per the Schedules produced by the Respondent/promoter, the balance amount of money available with the Respondent/promoter is Rs. 3,44,05,528/- The total number of Allottees from whom monies collected were shown as 46, as signed by the Chartered Accountant. But, in the details of allottees with their name, flat number allotted and address, there are 47 allottees. No amount was seen collected from the last allottee named, "Angel Shibu" as per the Schedules produced.

Conclusion:

18. Based on these facts and circumstances, the Authority concludes that the Respondent/promoter is not able to complete the project. This situation suggests a potential intervention and a plan for the successful completion of the project and the Authority decides to exercise its discretion for completing the project. The Authority, therefore with a view to facilitate the completion of the project in a time bound manner and to protect the interest of the allottees, exercising the powers conferred upon it under Section 8 of the Act, 2016 read with Section 37 of the Act, 2016 and other enabling provisions of the Act, 2016, the Rules and the Regulations made thereunder, authorise the MIR Cintra Flat

Allottees Association (Register No. EKM/TC/121/2019), with the consent of the majority of allottees, to undertake the completion of the remaining development and construction work of the project including the common amenities in the project “MIR Cintra” and also to maintain the said project, by taking over the entire project in question situated in 99.73 Cents (40.38 Ares) of land comprised in Re-Survey No. 419/12-2, 419/9-3, 14-4, 14-8, 12-5, 14-6, 16-5, 17-2, 17-4 in Re-Survey Block No. 11 of Angamaly Village, Aluva Taluk, Ernakulam District, with following directions for strict compliance:

Directions to be complied with:

- (a) The Complainant Association shall apply for extension of registration of real estate project “MIR Cintra”, with this Authority, in their name, after obtaining renewal/planning permission from the concerned Local/Planning Authorities., within 90 days from date of receipt of this order. This order shall come into effect only subsequent to the extension of registration of the project by the Association.
- (b) The existing Joint Venture agreement dated 17.07.2014 executed in respect of the project between the Respondent/Promoter and land owners stands cancelled reserving the right of the parties to approach appropriate Court for damages for breach etc. The Land owners shall enter into a fresh joint venture agreement with the MIR Cintra Flat Allotees Association



for enabling the takeover of project within three months from date of receipt of this order.

- (c) The Authority Local/Planning Authorities shall accord renewal/revised planning permission to the Complainant Association since the planning permission already accorded has lapsed on 14.02.2023, as and when the Complainant Association applies for the renewal/revised planning permission and fulfils the various statutory requirements currently in force, without waiting for the consent of the Respondent/ promoter.
- (d) The Respondent/promoter and its officers are restrained from proceeding further in any manner in respect of the real estate project MIR Cintra including making advertisements, entering into agreement to sell, sale deed execution, lease, hypothecation etc. The Respondent/promoter shall also remove any representation or advertisements to the public as the promoter of the Project "MIR Cintra."
- (e) The Association shall take steps to execute registered conveyance deed for undivided share in respect of land and building to the 46 allottees in their favour after completion and obtaining occupancy certificate. The execution of registered conveyance deed in respect of allottee in serial number 47, shall be subject to payment of consideration for the apartment/undivided share of land. The Association is at liberty to verify documents of the allottees including agreement for sale, payment receipts and other relevant details of the allottees in



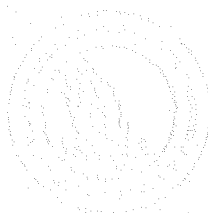
respect of their allotment of apartment and undivided proportionate share in land and building in the project "MIR Cintra" and at liberty to cancel the allotment in the absence of sufficient documents as above.

- (f) The Land Owners shall execute registered conveyance deed for undivided share in respect of land and building to the allottees in their favour as proposed by the Association, within 3 months from the date of issuance of Occupancy Certificate. The Land Owners shall execute the sale deed conveying the common areas in favour of the Association within 3 months from the date of issuance of Occupancy Certificate.
- (g) The Promoter is restrained from operating the escrow bank account No. 0915102000006163 with the IDBI Bank, Angamaly and the Bank Manager, IDBI Bank, Angamaly shall make the Secretary, MIR Cintra Flat Allottees Association, the sole operator of the said bank account.
- (h) The Respondent/promoter shall be held liable to third parties, allottees, statutory bodies and such other persons for all acts committed and omissions in respect of the Project "MIR Cintra", not limited to payment of any outstanding dues towards work done in the Project until the Association takes over as a promoter in the Project.
- (i) The Respondent/promoter shall refund an amount of Rs. 3,44,05,528/- (Rupees three Crores Forty-Four Lakhs Five Thousand Five Hundred and Twenty-Eight) to the Association as



excess of receipts received from the allottees over and above the project expenditure so far utilized in the Project.

- (j) The Respondent/promoter shall deposit any receipts received from the allottees or third parties in the project after 5th February, 2021 to the escrow bank account opened as per the Order dated 5th February, 2021 and shall file an affidavit showing payment details of any sales held after 5th February, 2021
- (k) The Respondent/promoter shall handover all original documents, sanctions, approvals, plans, contracts, invoices, documents, details etc., in respect of the Project 'MIR Cintra, to the Association.
- (l) The jurisdictional Sub Registrar of the Registration Department is directed not to register any Sale, Lease, Power of Attorney, Hypothecation or any other transactions by the Respondent/ promoter or land owner, for the project situated in 99.73 Cents (40.38 Ares) of land comprised in Re-Survey No. 419/12-2, 419/9-3, 14-4, 14-8, 12-5, 14-6, 16-5, 17-2, 17-4 in Re-Survey Block No. 11 of Angamaly Village, Aluva Taluk, Ernakulam District except conveyance of undivided share, plots to the allottees and conveyance deed of common areas to the MIR Cintra Flat Allottees Association (Register No. EKM/TC/121/2019) by the original land owners. A copy of this order shall also be communicated by the Registry to the Inspector General of Registration for information and necessary appropriate follow up action.



Guidelines to be followed by the Association and the concerned:

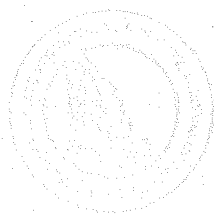
19. The Authority issues the following guidelines also, for the supervision of the completion works of the project, by the Association of Allottees.

- 1) The Association, within 30 days of this order, after a general body resolution, is required to provide an undertaking giving the assurance that it will finance and finish the pending work within the time line as contemplated herein.
- 2) The Authority imposes an obligation upon the Association, to adhere to the terms of the agreement of sale and it is obligated to complete the remainder of the work and hand over the possession of the units to the Allottees by abiding to the law and regulatory requirements.
- 3) The Association, the Allottees and all others connected with the development and completion of the project shall be bound by these orders and all other orders as may be issued in this regard from time to time.
- 4) Since the project is being rehabilitated under Section 8 of the Act, with the consent of the majority of the Allottees and the Association, it is understood that no Allottee of the project shall withdraw from it during the course of the development of the remaining works. However, if under extraordinary circumstances some Allottee of the project withdraws from it, the amount due to be returned to such Allottee shall not be



returned from the separate account of the project, rather the same may be returned from other sources or alternatively the amount due to such Allottees would continue to be a charge on the project and will be returned after completion of the project along with interest admissible as per orders of the Authority.

- 5) The Authority constitutes a 'Project Advisory and Monitoring Committee' ('PAMC') consisting of the Secretary (Technical & Administration), the Administrative Officer, and two Deputy Directors of the Technical wing of the Authority, and the Auditor appointed by the Association and the representatives of the members of the Association. The PAMC is required to monitor the progress of completion of the project and the accounts of the project bimonthly and submit report periodically to the Authority and upload it in the website.
- 6) The Technical wing of the Authority will shift the project on the Authority website, to a 'special category' under rehabilitation as per provisions of section 8 of the Act, 2016. The association shall continue to update the details of the project, including the quarterly progress reports on the website or as directed by this Authority.
- 7) The Association is required to open an account with a scheduled bank. It must deposit all the money received for the project in this account. The money in this account shall be utilised only for the work relating to the construction and development of the project. The money in this account cannot



be used for any other purpose. The association shall place the details of receipts and expenditures incurred for the project before the 'PAMC' and obtain its concurrence. The Association is required to get the separate account of the project audited at the end of the financial year and obtain the concurrence of the 'PAMC' and upload it to the website.

- 8) As per the schedules A, B & C, in document No 1, produced by the Respondent/promoter along with the affidavit dated 24.04.2023 (IA No 80/2023) the name of 46 allottees have been furnished. The finalisation of list is subject to verification of documents by the PAMC. The approval of name of allottee "Angel Shibu" shown as serial number 47 in the document No 2 produced by the Respondent promoter along with the affidavit dated 24.04.2023 (IA No 80/2023) is subject to the verification of documents by the PAMC and making payment to the Association.
- 9) Even though the Allottees are at liberty to claim for interest at prescribed rate for every month of delay as per Section 18 of the Act, 2016 from the Respondent/promoter, the Association and the Respondent/promoter may also suitably settle the issues of payment of interest for delay, if any. Any dispute between the members of the Association and the Respondent/promoter shall be amicably settled through the good offices of the 'Project Advisory and Monitoring Committee' ('PAMC') constitute in this behalf.




- 10) The promoter is required to approach the appropriate authority for requisite permissions to continue work or to complete possession formalities. The promoter is free to hire professionals to complete the work. However, it must follow a transparent tender process which will be audited by the Auditor/monitored by the PAMC.
- 11) On completion of construction, it is the Association's duty to hand over possession after applying for an occupancy certificate as per the relevant laws.
- 12) In the case of any violation of the above instructions by the concerned, the Authority will initiate action against those responsible for their lapse or failure.

The Authority sets a timeline of 18 months for completion of development and construction of the project and the Association is at liberty to apply for extension only on sufficient reason. Upon failure, the Authority shall revoke the Section 8 order and shall take appropriate action as per the Act, 2016.

Sd/-
Dr. B. Sandhya
Member

Sd/-
Dr. Asha Thomas
Chairperson

True Copy/Forwarded By/Order


Secretary (Legal)

To

The Secretary, MIR Cintra Flat Allottees Association (Register No. EKM/TC/121/2019) Angamaly, Ernakulam.

Copy to:

1. The Principal Secretary to Government of Kerala, Local Self Government Department, Government Secretariat, Thiruvananthapuram.
 2. The Inspector General of Registration, Government of Kerala, Vanchiyoore, Thiruvananthapuram.
 3. The Secretary (Technical & Administration), Kerala Real Estate Regulatory Authority.
 4. The Administrative Officer, Kerala Real Estate Regulatory Authority.
 5. The two Deputy Directors of Technical Wing, Kerala Real Estate Regulatory Authority.
 6. The Sub Registrar, Sub Registrar Office, Angamaly.
 7. The Secretary, Municipality, Angamaly.
 8. The District Town Planner, Ernakulam.
 9. The Manager, IDBI Bank Angamaly.
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