



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

IA(IBC)/181/KOB/2022

IN

IBA/11/KOB/2020

(Under Section 60(5) of IBC, 2016 and Rule 32 of the NCLT Rules, 2016)

In the matter of:

MIR Realtors Private Limited:

MEMO OF PARTIES:

HARITHAM BUYERS ASSOCIATION, 14-D, Cordon Sreevalsam, Pippinmoodu, Thiruvananthapuram – 695 005. Represented by its President – V N Ajit Kumar, C9, Rajrekha, Sankar Lane, Sasthamangalam, Thiruvananthapuram – 695 010;

... Applicant

-Versus-

1. P.T JOY, Interim Resolution Professional/Resolution Professional (M/s. MIR Realtors Private Limited), P T Joy and Associates, CAs, 34/306C, First Floor, J B Plaza, Edappally- Thripunithura Road, Near N S S Hostel, Padivattom, Edappally P.O, Oberon Mall Junction, Ernakulam, Kerala – 682 024;
2. MIR REALTORS PRIVATE LIMITED, 41/2030, M.M Building 1st Floor, Kalabhavan Road, Cochin, Kerala – 682 018;
3. THE FEDERAL BANK LIMITED, Having its Registered Office at Federal Towers, Bank Junction Aluva, Ernakulam District, Kerala, and one of the Branch Office at LCRD, Ernakulam Division, Ground Floor, Federal Towers, Marine Drive, Ernakulam – 682 031. Represented by its Vice President.

... Respondents

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Mr. Bijoy P Pulipra, Adv.



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For Respondents : Mr. Sankar P Panicker,
Advocate for R1 & R2
Mr. P.T Joy, IRP
Mr. Mohan Jacob George,
Advocate for R3

Order reserved on: 14.12.2022
Order pronounced on:08.02.2023

ORDER

1. This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 32 of the National Company Law Tribunal Rules, 2016, by Haritham Buyers Association, who are Financial Creditors/Homebuyers, seeking directions against the Resolution Professional (RP), to amend or alter or modify the Information Memorandum (IM) and Request for Resolution Plan (RFRP) issued by the RP, and to expand the scope of Forensic Audit conducted in the CIRP. Brief facts of case are as under: -
2. MIR Realtors Pvt Ltd, the Corporate Debtor (CD) was admitted to CIRP *vide* order dated 16.11.2021. The respondent No. 1 was appointed as RP and the COC was constituted on 11.01.2022 with Homebuyers and Financial Institutions including additional respondent No.3. The applicant-Haritham Buyers Association, a registered society under The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, are the homebuyers of 'Haritham Towers', a part of Project 'Greens' promoted by MIR Realtors Pvt Ltd, the corporate debtor (CD) in Trivandrum, Kerala. They are represented in COC by Authorised Representative. The applicants are aggrieved by the statements in RFRP and IM issued by the RP.

The impugned part of the RFRP is that:-

"Mir Realtors Private Limited (CD, Company) was incorporated to carry out real estate activities. MIR is executing two township projects, one in Trivandrum (The Green) and



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the other one in Ernakulam (MIR Green Metropolis); in the Trivandrum project, one of the towers (under construction) with 72 units is situated in 87 cents of land owned by the company, (out of 72 units 2 units sold and registered (Proportionate UDS is to be deducted) and as per the title deed the company has right to use the common facilities and amenities in the total township project. The Project other than 72 units as above, is executed under a joint venture arrangement with land owner. Wholistic resolution plan in CIRP will be sought for the entire project including the land in the name of CD. The Ernakulam project is executed under joint venture agreement with land owner.'

The impugned part of the IM is that: -

“Haritham Apartments Trivandrum

The Apartment is constructed in the land of area 87 cents which belongs to the CD namely MIR REALTORS as per the title deed and tax receipt No 0259217 dated 17th January 2019 and in G+15 storied building constructed in this land only 2 flat no. 2022 of area 1390 sqft and No 2035 of area 1930 sqft along with UDS of land are registered. So, the remaining property and flats are in possession of the CD.

Total No of Apartment - 72 Nos

Total Plinth area of Apartment 120090 Sq ft

No of Apartments Sold 64 Nos (Including Duplex Type)

No of Apartment registered - 2 Nos

Area of Registered Apartment- 1930 + 1390: 3320 Sqft.

The structure of the G+ 15 Storied building is completed. Internal and external Plastering is almost finished. Electrical and Lift Conduit lift etc are remaining. Flooring using tiles & Bathroom wall tiling are completed only for very few flats”

3. The applicant states that the IM does not contain material information regarding the registration of common areas and amenities under the project, the existence of joint venture agreement for construction of project and the building permit. Applicant state that a Joint Venture agreement (JVA) dated 06.12.2006 was executed between the landowners and CD for execution of Project Greens (the Greens), a township project containing multi storey apartments,



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commercial buildings and villas in 11 Acre 37 cents land. A power of attorney for entering into agreement of sale in respect of share of land including undivided share and for other regulatory actions was executed between land owners and CD. On the basis of JVA, the building permit was obtained by land owners for entire Project 'Greens'. The brochure of 'Greens' contains 'Haritham Towers' as a part of 'Greens' where a specific 87 cents land has been earmarked. The said JVA was amended on 31.05.2011. Applicant state that the common facilities and amenities in the project such as septic tank, underground and overhead water tank, roads passages are integral part of the Haritham Towers. It is stated that as per the clause 23 of the JVA, the registered association of the 'Greens' comprises all apartment owners of Haritham Towers. It is stated that a RERA registration has been obtained for Project 'Haritham' where promoter is the CD and Project address as 'The Greens Township'.

4. It is stated that subsequently the CD and land owners executed a sale deed dated 17.12.2011 transferring 87 cents of land earmarked for Haritham Towers. The funds for the said sale were utilised from the proceeds of the Homebuyers money. It is further stated that in subsequent agreements for sale with new homebuyers, the deed mentions Haritham Towers as part of Greens.
5. It is contended that the said 87 cents of land belongs to Homebuyers of Haritham Towers and the CD has an encumbrance with Federal Bank made without consent of the Homebuyers. The applicant state that as per *Hon'ble Supreme Court of India in Faqir Chand Gulati Vs. Uppal Agencies Private Limited & Another (2008) 10 SCC 345*, the nature of a joint venture agreement is closely akin to Partnership and therefore the provisions of Partnership Act, 1932 shall apply to such arrangement. Hence, in that view as per section 14 of Partnership Act, unless the contrary intention appears, property and rights and interest in property acquired with the money belonging to the firm are deemed to have been acquired for the firm. It is contended that JVA to be non-existent has to be



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dissolved in view of its nature of partnership and in this case the purpose of JVA is still not achieved and is still continuing.

6. Applicant further submits that the money used for purchase of said 87 cent land i.e., 60.9 lakh, out of homebuyer's money and money expended on project raises suspicions due to mismatches and therefore requires Forensic Audit.

7. Applicant state that the building permit obtained in name of Greens has not been amended to separate Haritham Tower. The applicant state that the RP had not considered the facts and projected Haritham as independent project in the RFRP and IM. RP failed to consider that common areas and amenities form part of entire project from the brochure, and agreements for sale and building permit issued to CD and hence the representation of fact by RP is misleading. He states that as per section 29 of the IBC the IM shall contain all relevant information pertaining to asset and liabilities and RP did not consider the existence of JVA and its legal validity in nature of a partnership. It is stated that the RP did not include the JVA and its applicability in project and wrongfully coloured Haritham as separate distinct project. He relied on regulation 36 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to state that IM and RFRP plays critical role in forming opinion by prospective RA and any error and non-disclosure of vital information shall adversely affect the interested parties. Applicant state that in absence of clarity, Haritham homebuyers and joint venture partners shall be considered separately. It is contended that the RERA registration and building permit shows separate picture which was ignored by RP to consider the project Greens and Haritham Tower as separate entity as per IM and RFRP. The applicant also attacks the response email issued to applicants answering the grievance on the issue which state as:-

“The 87 cents of the land as above is owned by the CD and given as Security to M/s Federal Bank, who is member of CoC as Secured Financial Creditor. While registering 2 units out of the 72 Units, as above, the undivided share of land is transferred by the CD,



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being the Owner of the land. Other than the 87 cents of the project, the land owner and Land developer are not the same persons and thus stated as a joint venture. Thus, there is no factual inaccuracies in the statement.”

8. He further says that the term ‘wholistic’ appearing in RFRP is not a real word having meaning in English. He contends that the RP has not listed out the assets in name of CD in the IM. It is further stated that as per RERA, the possession of common areas in real estate project shall vest with association of allottees and in this case, the common areas pertain to entire project ‘Green’ and not confined to ‘Haritham Towers.’ He states that the application for renewal of building permit dated 27.10.2020 by CD is pending before Chief Town Planning commissioner and has not been pursued owing to CIRP initiation.
9. Respondent No.1, RP stated that he relied on documents available with him for conduct of CIRP such as Audited Financials, Books of Accounts, registered sale deeds. He stated that the JVA has a clause in it mentioning that the expiry is on a period of 30 months and as per subsequent amendments to it, the effective expiry was as on 30.04.2013. Further the building permit applicant relies on has expired and the empowered committee under Kerala Panchayat Building rules, 2016 has to be constituted to extend the period of permit after 10 years which in this case has not been made. RP stated that by way of registered sale deed dated 17.12.2011, 87 cents of land had been transferred to CD and by way of same, the allottees will have rights in undivided common area pertaining to 87 cents of land earmarked for Haritham Towers as purchaser cannot give any right which he does not enjoy per se. RP state that 2 registered sale deeds in Haritham Towers has been executed mentions that the allottees will have rights in undivided common area only to 87 cents land. RP state that in order to resolve deficiency in documentation, the RP stated ‘wholistic resolution’ in RFRP. RP further state that the applicant has violated the confidentiality agreement signed by applicant member while sharing IM with him. RP stated that 5th COC dated 10.06.2022 discussed and approved RFRP



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and provided detailed explanatory statement and legal opinion on rights of allottees. He states that the resolution was put to vote and passed with 100% voting share. The RP states that the IM and RFRP mentions about JVA with its details. He state that contrary to contention of applicant, the RP never mentioned that Haritham Tower is not part of Project Greens. It is further stated that as per section 5 of RERA, the registration of RERA is valid till date of building permit issued by local administration and the building permit having expired, the RERA also stand expired automatically. RP submitted that the RERA registration is subservient to building permit as per section 5 of RERA and separate registration has been obtained for each project of CD under the Greens. Further the RERA registration submitted by applicant proves that the registration is separate for Haritham Towers. RP has not failed to disclose any fact. RP further stated that only the right to use common amenities and facilities in total project were given to the allottees and not any right of co ownership in the project. An undivided share in property only up to 87 cents was given as per sale deed to Haritham allottees which is in ownership of CD. RP stated that the 87 cent of land was purchased by CD for getting loan from Federal Bank providing the land as security. As land was registered in CD's name and landowner was not party to sale deed for apartments, it is interpreted as not falling within JVA. The term 'wholistic resolution' used is in reference to entire project 'Greens' and considering that the common amenities falling outside the 87-cent land of Haritham Towers. The RP state that all necessary information and supporting documents has been submitted to PRA including the rationale and legal opinions.

10. RP further contended that the forensic audit is in progress which was decided as per COC meeting dated 26.4.2022 and RP is in process of filing petition to contest the matters under section 43,45,49 and 66 of IBC.
11. The Respondent No. 3 Federal bank was impleaded as additional respondent as on 21.10.2022. It was stated in their counter affidavit that 87 cent land was put as security for loan disbursements made to CD. It was contended that the



actions of the RP were approved by the COC with an intent to make the CIRP feasible.

12. The applicant had filed a detailed rejoinder to the counter filed by R3. As no specific relief has been sought against R3, the contentions raised do not per se affect the right of R3 in any manner. With regard to the merit of matters entailed in the counter affidavit of R3 and the rejoinder, it need not be taken to consideration as the contentions squarely falls within the case of R1 and R2.

13. Heard Submissions and perused documents on record. The matter for consideration is

14. Whether Haritham Tower and its common areas / facilities are part of Project Greens?

15. Whether the statements in RFRP and IM affects the rights of applicant allottees of Haritham Towers in CIRP detrimentally?

16. Whether there are any grave deficiencies in the IM and RFRP?

17. It is noted by way of brochures, agreement of JV and other registered deeds executed between parties, and the building permit that the Project Haritham Tower of the CD to be constructed in 87 cents of land is indeed a part of Project Greens. The common amenities and area in Haritham include property falling in under area of larger Project Greens. It was in the need for working capital that the CD approached the R3 Bank for loan which was granted putting the 87-cent land purchased by CD as security. Evidently, the land was purchased by CD utilising the sum paid by allottees. The JVA was the original document which envisaged the project and it was only in requirement of the capital that this arrangement was made by CD. The land is sold to CD and the loan is already availed and the allottees shall have every right to use the common area and amenities in Project Greens as per JVA. However, w.r.t undivided share in common area and amenities under Project 'Greens' falling outside the 87 cents of land of Haritham Towers, on a conjoint reading of the JVA, the provisions



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of RERA and executed sale deeds of apartments, it is clear that the applicants cannot claim anything beyond the property which is restricted to Haritham Towers standing inside the 87 cents land.

18. In regard to whether the RFRP and IM affects the rights of applicant prejudicially, it is observed that the RP has rightfully carried out his duties and stated the facts of the matter on basis of documents available at his hand. The term 'wholistic resolution' was also sought for intending a resolution for entire project Greens including Haritham Towers protecting the rights of all stakeholders including the applicants' rights. On a plain reading of the impugned IM and RFRP the RP has merely stated the facts as received by him clearly. Moreover, the RFRP was passed by the COC in which the applicant are members by a 100% vote. The applicants have refrained from voting on same in protest. Hence the statutory procedures were duly followed and RP has carried out his duties diligently.
19. As regards to occurrence of any grave deficiency in RFRP and IM, it is observed that the RP has neither omitted or concealed any relevant information nor stated anything which is beyond or contrary to the legal documents pertaining to project in the RFRP or IM.
20. In view of above, putting in mind the time bound process of CIRP, and the statutory procedures under IBC, and also considering the practical position dealing with insolvency resolution in matters of real estate insolvency resolutions, this Tribunal is of the opinion that this petition is only an inept exercise and hence unwarranted. Therefore, we are not inclined to allow this petition.
21. In result, the application stands **dismissed**.
22. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.



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23. Let the certified copy of the order be issued upon compliance with requisite formalities.

24. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.02.08 15:51:35 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN Digitally signed by PANDIAN
MOHAN RAJ MOHAN RAJ
Date: 2023.02.08 14:45:42
+05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 08th day of February, 2023.

Rohit