IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/369/KOB/2025

IN

CP(IBC)/01/KOB/2021

(Under Section 60(5)(C) of IBC,2016 r/w Rule 11 of NCLT Rules,2016)

Date of Institution: 06/10/2025

&

IA(IBC)/105/KOB/2026

IN

IA(IBC)/369/KOB/2025

IN

CP(IBC)/01/KOB/2021

(Under Rule 11 of NCLT Rules, 2016)

Date of Institution : 30/01/2026

Order Deliverd on : 20/11/2026

In the matter of:

M/S Nucleus Premium Properties Pvt Ltd

IA(IBC)/369/KOB/2025

MEMO OF PARTIES:

Sakhy Thomas, W/o Thomas verghese, aged 57 years Allottee of Unit 4D in Eleganza Apartment Project (Member, Nucleus Eleganza Apartment Owners' Association) Nucleus Eleganza,Padamugal,Kakkand, Cochin, Kerala-682021;

….. Applicant

Versus

1. M/s Nucleus Premium Properties Pvt Ltd, 34/239 C, Near Meriya Park, Padivettam , Palarivattom, Edapally, Kochi -682 024,

represented by its Ex Resolution Professional Sri K.P Dileep.

2. Sri K. P. Dileep, chairman, Project Monitoring Committee Elegenza project, residing at Flat No. 8A, Paradise Apartments, Paradise Road, Vyttila P 0., Kochi -682 019.

3. M/s Buildwell, represented by its Managing partner Mr. Sajikumar K P, Successful Resolution Applicant, 50/1112-D5-A, 3rd Floor, Muhammed Hali Building, Edapally, Ernakulam -682 021

……. Respondents

IA(IBC)/105/KOB/2025

Sajikumar KP, Managing Partner, M/s Buildwell, Successful Resolution Applicant(SRA) in the matter of Nucleus Premium Properties Pvt Ltd, 1st Floor, Faihja Arcade, Arakkakadavu Road, Vennala P.O, Kochi-692028

…….. Applicant

Versus

1. Sakhy Thomas, w/o Thomas verghese, aged 57 years Allottee of Unit 4D in Eleganza Apartment Project. (Member, Nucleus Eleganza Apartment Owners' Association) Nucleus Eleganza,Padamugal,Kakkand, Cochin, Kerala-682021;

2. M/s Nucleus Premium Properties Pvt Ltd, 34/239 C, Near Meriya Park, Padivettam , Palarivattom, Edapally, Kochi -682 024,

represented by its Ex Resolution Professional Sri K.P Dileep.

3. Sri K. P. Dileep, chairman, Project Monitoring Committee Elegenza project, residing at Flat No. 8A, Paradise Apartments, Paradise Road, Vyttila P 0., Kochi -682 019. …… Respondents

Coram:

SHRI VINAY GOEL : **MEMBER (JUDICIAL)**

SHRI RAVICHANDRAN RAMASAMY : **MEMBER (TECHNICAL)**

Appearances

IA(IBC)/369/KOB/2025

For the Applicant : Rojo Joseph, Advocate

For the Respondent : Mr. Krishnan Unni, Company Secretary

IA(IBC)/105/KOB/2025

For the Applicant : Prashant Kumar, Advocate

For the Respondent : Rojo Joseph, Advocate

O R D E R

1. The Interlocutory Application (IA (IBC) 369/KOB/2025) has been filed by the Applicant Mrs. Sakhy Thomas under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with the Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs.

(i) To direct the 2nd and 3rd respondents to hand over the key and return full possession of Unit No. 4D (Apartment No. 4D) in the Nucleus Eleganza Apartments to the Applicant finding that the Applicant is the absolute owner of the said apartment.; and

(ii) Consequential direction to respondents no. 2 and 3 to effect registration of the title deed of Flat No. 4D in favour of the Applicant herein.

(iii) to pass such order orders deemed fit and proper in the interest of justice and that may be prayed for hereafter.

2. The IA (IBC) 105/KOB/2026 is the maintainability application of IA (IBC) 369/KOB/2025 filed by the Successful Resolution Applicant , M/S Build well, under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs.

> *(i) Dismiss I.A (IBC) NO. 369/KOB/2025 application filed by the Respondent No.1 due to lack of maintainability;*
> *(ii)Grant any other relied that this Hon'ble Tribunal may deem fit, in the interest of justice and equity*

Brief facts of the case in IA(IBC)/369/KOB/2025:

3. The Applicant submitted that she is the widow of Late Thomas Verghese, a former IFS officer, who was allotted Unit No. 4D in Nucleus Eleganza Apartments and died on 20.01.2024 while serving in Madagascar. They had no children, and she claims to be his sole legal heir. On 12.06.2015, her husband entered into an agreement with Respondent No. 1/Corporate Debtor for purchase of the flat and made the agreed payments, following which possession and the key were handed over, though certain works remained incomplete.

4. The Applicant further submitted that Mr. Aruldas Jacob, another allottee, informed them that Respondent No.3 had taken over the project and demanded additional payment for completion. Representing himself as authorised to collect the amount, he assured that the payments would be remitted to the builder. Accordingly, Rs. 6,57,000/- was paid between 06.08.2023 and 03.11.2023, and was credited to the account of Mr. Aruldas Jacob and thereafter transferred to the builder's SBI account managed by Respondent No.3. The Applicant contended that the payment was made without knowledge of the CIRP proceedings, as the amount was demanded by the escrow agent towards common area and beautification works

5. That, after the demise of her husband on 20/01/2024, the Applicant returned to India, and kept her belongings in the subject flat and used it

intermittently. She was also a member of the Flat Owners' Association and regularly paid maintenance, electricity, cooking gas and other charges. The electricity receipt and postal cover addressed to her at the subject flat are produced . She contended that these documents establish her possession and enjoyment of the flat, notwithstanding that the title deed had not been registered in her name.

6. The Applicant submitted that she became aware of the IBC proceedings only when she approached the President of the Flat Owners' Association regarding registration of similarly placed flats. She thereafter learnt about CP(IBC) /01/KOB/2021, filed on 06.01.2021, pursuant to which CIRP was initiated on 18.11.2021 and Mr. Dileep K.P. was appointed as IRP. The homebuyers were represented by Mr. Mohan T.S., and the CoC approved the Resolution Plan with 100% voting share on 28.07.2023. The Plan was thereafter approved by this Adjudicating Authority vide order dated 09.02.2024 in I.A. (I.B.C.)/ 325/KOB/2023.

7. The Applicant further submitted that the Project Monitoring Committee identified seven of Respondent No.1's ten projects, including Nucleus Eleganza, for completion of the balance works. The project was stated to be ready for occupancy, with Rs. 38,10,428.73 /- already paid and a further an amount of Rs. Rs.6,51,000/- payable towards common amenities under the Resolution Plan. The said amount was received by the Successful Resolution Applicant , and the balance works were thereafter carried out by Respondent No.3 under the supervision of the Project Monitoring Committee in accordance with the original sale and construction agreements.

8. The Applicant submitted that none of the allottees of Nucleus Eleganza Apartments had exercised the exit option under the Resolution Plan, as recorded in the minutes of the allottee meeting dated 20.07.2025, and that an MoU dated

14.09.2021 had also been executed between Respondent No. 1 and the Nucleus Eleganza Apartment Owners' Association. She contended that, as she and her husband were residing abroad, they were unaware of the CIRP and did not receive the public announcement. She further alleged that the publication, including in *Kerala Kaumudi*, lacked adequate circulation and that the subsequent denial of registration by Respondent Nos. 2 and 3 was consequently vitiated by material irregularities.

9. The Applicant further submitted that the Resolution Plan contemplated a Project Monitoring Committee for completion of the balance works and that Mr. Aruldas was appointed as Escrow Agent at the instance of Respondent No.2 . She stated that her husband's name was reflected in the Information Memorandum, with Rs. 6,51,000/- recorded towards completion of the remaining works, and that Rs. 6,51,000/- along with Rs. 6,000/- was paid through the designated Escrow Agent between 06.08.2023 and 03.11.2023, besides Rs. 1,50,000/- towards electricity connection charges. According to the Applicant, the amounts demanded under the Resolution Plan had therefore been paid and no default existed to warrant cancellation of the allotment. She further contended that no effective personal intimation of the Corporate Insolvency Resolution Process had been given despite the Respondents' knowledge of their residence abroad and sought registration of the flat in her name by invoking the inherent powers of this Adjudicating Authority.

10. The Respondents No. 1 to 3 filed their reply and submitted that the Applicant had not produced a legal heir certificate or other documentary evidence establishing her entitlement to claim the flat allotted to her deceased husband. They further contended that, although the Corporate Insolvency Resolution Process commenced on 18.11.2021 and the Resolution Plan was approved on 09.02.2024, the Applicant filed the present Application after more

than one and a half years without lodging any claim during the CIRP. Her alleged ignorance of the proceedings on account of residing abroad, according to the Respondents, could not justify the delay and entertaining such claims would undermine the time-bound resolution process, prejudice stakeholders who had filed their claims within time, and adversely affect implementation of the approved Resolution Plan and hence, it doesn't warrant intervention under Section 60(5)(c) of the IBC, particularly when the approved Resolution Plan had attained finality and was binding on all stakeholders.

11. The Respondents, relying on Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531, submitted that the binding nature and finality of an approved Resolution Plan preclude consideration of belated or undecided claims.

12. The Respondents submitted that the Application is essentially a civil property dispute, as the Applicant seeks to establish ownership and possession of Flat No. 4D on the basis of utility payments and other documents. They contended that such reliefs fall beyond the scope of Section 60(5)(c) of the IBC and do not warrant exercise of jurisdiction by this Adjudicating Authority .

> The Respondents further submitted that the Applicant had not produced an Occupancy Certificate, possession letter or registered title deed establishing ownership or lawful possession of the flat. They contended that the alleged possession since 2020 was inconsistent with the fact that common-area and beautification works remained incomplete. The Respondents submitted that, in the absence of a registered deed in her husband's favour, no ownership or lawful possession could be claimed, and that payment of electricity, cooking-gas and other charges or intermittent occupation did not establish title or lawful possession, particularly after cancellation of the allotment.

13. The Respondents submitted that the alleged payments did not confer any right or entitlement over Flat No. 4D, as the amounts were paid to Mr. Arul Das, a third party, and not to the Respondents or the Successful Resolution Applicant.

No documentary evidence was produced to establish that the amounts were credited to the designated project escrow account contemplated under Clause 5.1.2 of the Resolution Plan. They further contended that there was no evidence of Mr. Arul Das having been appointed or authorised as an Escrow Agent to collect such payments. The Respondents also pointed out that, despite claiming recognition of her husband's liability under the Resolution Plan, no formal claim had been filed before the Resolution Professional. Accordingly, they denied having demanded or received the alleged payments and rejected the allegation of unjust enrichment.

14. The Respondents further submitted that the Applicant could not claim ignorance of the CIRP, as the prescribed notices and public announcements were duly issued to inform creditors and stakeholders. They contended that the Applicant could not, after considerable delay, challenge the mode of publication or assert that the Project Monitoring Committee was required to issue personal intimation to her or her deceased husband. The plea of ignorance was therefore contended to be an afterthought.

15. The Respondents further submitted that the forfeiture of the Applicant's husband's rights over Flat No. 4D, decided at the Project Monitoring Committee meeting held on 18.08.2025 due to the non-filing of a claim before the Resolution Professional, was valid and warranted no interference. They contended that the Applicant's intention to pursue the claim had not been communicated to the Resolution Professional and that the claim could not be entertained at this belated stage. Accordingly, they submitted that the present Application lacked legal basis and that the reliefs sought, including restoration of possession and registration of the sale deed in the Applicant's name, were untenable in law.

16. The Applicant, in her rejoinder, controverted the objections raised by the Respondents and reiterated the maintainability of the I.A. She produced the

Marriage Certificate dated 30.10.2010 and the Death Certificate of her husband, Mr. Thomas Verghese, dated 22.01.2024, and submitted that they had no children and that she was his sole legal heir, competent to institute the present proceedings.

17. The Applicant contended that the I.A. was not barred by delay, as the cause of action arose upon the subsequent cancellation of Flat No. 4D, while her deceased husband continued to be reflected as an allottee at Sl. No. 18 in the Resolution Plan. She submitted that the Resolution Plan had not been fully implemented, particularly as registration of individual title deeds and provision of electricity connections remained pending. Relying on the minutes of the 3rd Project Monitoring Committee meeting and the payment of Adjudicating Authority Adjudicating Authority Rs.6,51,000/-, she contended that the amounts contemplated under the Resolution Plan had been demanded and received and that the Respondents' case that her claim stood rejected or undecided was untenable. It is further submitted that the judgments relied upon by the Respondents were distinguishable and had been misconstrued.

18. The Applicant further submitted that possession of Flat No. 4D had been handed over to her deceased husband in 2020 and continued with her thereafter. In support, she relied the nameboard displaying her husband's name, postal correspondence addressed to the flat, and KSEB and cooking-gas payment records. She contended that non-registration of the title deed or pendency of minor common-area works did not negate the fact of possession.

19. The Applicant alleged that the Respondents subsequently broke open Flat No. 4D and removed articles belonging to her, pursuant to which she lodged a complaint dated 25.08.2025, resulting in registration of FIR No. 604/2025 dated 27.08.2025 at Thrikkakara Police Station. She referred to the dismissal of the 2nd Respondent's anticipatory bail application in Crl.M.C. No. 2591/2025 on

03.10.2025 and the subsequent grant of conditional bail by the Hon'ble High Court of Kerala in B.A. No. 12750/2025 dated 24.10.2025. She further submitted that the 2nd and 3rd Respondents and Mr. Sreejesh K.S. were arrested in connection with the incident and subsequently released on bail.

20. The Applicant relied upon the written statement dated 26.08.2025 submitted by the 3rd Respondent before the Circle Inspector, Thrikkakara Police Station, contending that it recorded communications with her deceased husband and thereafter with her, verification of her identity and relationship with him, and removal of his belongings from Flat No. 4D during the finishing works. She submitted that the removal of more than 25 cartons in vehicle No. KL-07-BU-280, and their subsequent seizure/recovery during the police investigation, corroborated her case regarding possession and occupation of the flat.

21. The Applicant further contended that the payments reflected in the bank statements, including the payment of ₹6,51,000/-,and additional amount of Rs. 6000/- had not been satisfactorily explained by the Respondents. She submitted that the payments were made during her husband's lifetime and were connected with Flat No. 4D under the Resolution Plan, and that there was no evidence that he had exercised any exit option. She also contended that the Respondents had failed to produce the relevant payment records, Project Escrow Account details, or other material demonstrating compliance with Clause 5.1.2 of the Resolution Plan. Referring to the alleged discrepancy between the amount payable by Mr. Arul Das and the aggregate deposits reflected in his bank account, she submitted that his role could not be treated as that of a mere third-party claimant and that his impleadment, if necessary, would assist in determining the nature of the payments.

22. The Applicant lastly contended that the Respondents' stand regarding possession was inconsistent with Annexure A-14, annexed with Rejoinder in IA

(IBC) 369/KOB/2025 and the circumstances surrounding removal of the belongings. It is submitted that the relevant averments and payment transactions had not been specifically controverted or satisfactorily explained and alleged that the subsequent cancellation of the allotment, viewed in the context of the Respondents' conduct, was intended to defeat her claim over Flat No. 4D and facilitate its disposal to a third party

23. In the above circumstances, the Applicant submitted that the objections raised in the reply affidavit were devoid of merit and sought rejection of the same with costs.

Brief facts of the case in IA(IBC)/105/KOB/2026:

24. The above Interlocutory Application has been filed by the respondent in IA(IBC)/369/KOB/2025 challenging its maintainability, as Respondent No. 1 had failed to produce a legal heir certificate or other documentary evidence establishing her legal right to institute the Application or claim any interest in Flat No. 4D, which stood allotted in the name of her deceased husband. It was contended that the absence of such proof rendered the Application a misjoinder and an abuse of the process of law, causing prejudice and harassment to Respondents in the main application. Despite being afforded sufficient opportunity, Respondent No. 1 herein i.e applicant in the main application, had failed to establish her alleged legal entitlement.

25. The applicant herein, i.e Respondent No.1 in the main application submitted that the Resolution Plan expressly covered only those allottees whose claims had been admitted and recorded in the Information Memorandum. As the name of Mr. Thomas Verghese was not included in the admitted claims reflected therein, the Applicant herein could not seek to enforce a claim outside the scope of the approved Resolution Plan. It is further submitted that entertaining the

present I.A. , would amount to reopening or modifying the Resolution Plan after its approval. The applicant further submitted that Respondent No. 1 herein had herself communicated by email dated 23.07.2025 to the erstwhile Resolution Professional that she was unable to produce documents establishing that her deceased husband had filed a claim during the CIRP, allegedly due to a pending property dispute. It was contended that this material fact had not been disclosed in the present Application.

26. The Respondent No. 1 herein, in her reply, submitted that the present I.A. was not maintainable either on facts or in law and had become infructuous in view of the subsequent order dated 27.02.2026, wherein the SRA had expressed willingness to settle the matter subject to production of the Legal Heir Certificate. She further submitted that, being aggrieved by the order dated 12.02.2026, she had preferred Company Appeal (AT)(CH) No. 174/2026 before the Hon'ble NCLAT, which was closed on 30.03.2026 after taking note of the order dated 27.02.2026. Accordingly, Respondent No. 1 contended that the Applicant could not resile from the position recorded in the said proceedings or approbate and reprobate by relying upon the documents and orders passed by this Tribunal while simultaneously denying her deceased husband's claim and payments under the Resolution Plan.

27. Respondent No. 1 herein further submitted that the present I.A. was intended to obscure irregularities in the implementation of the Resolution Plan, particularly the alleged failure to appoint an Escrow Agent, establish the mandated Escrow Account and receive payments from home buyers through the prescribed mechanism. Relying upon Annexure A-14 annexed with Rejoinder filed in IA(IBC)/369/KOB/2025, she contended that the SRA had acknowledged his communication with her deceased husband as a home buyer and their possession of Flat No. 4D prior to commencement of the CIRP. She also relied

upon Annexure A-1, annexed with IA(IBC)/369/KOB/2025 wherein her deceased husband's name appeared against Flat No. 4D, and upon the bank statements to contend that the balance amount payable under the Resolution Plan had been received from him. According to Respondent No. 1, the fact that the allotment was cancelled only after considerable delay, following receipt of electricity installation charges and commencement of maintenance payments, further supported her claim.

28. In view of the above and the subsequent orders passed by this Tribunal, Respondent No. 1 submitted that the present I.A. was devoid of merit and amounted to an abuse of the process of this Tribunal. She therefore sought dismissal of the I.A. in limine with exemplary costs.

ANALYSIS AND FINDINGS

29. The IA(IBC)/369/KOB/2025 has been filed by the allottee, Ms. Sakhy Thomas, claiming to be the wife of the original allottee, Late Mr. Thomas Varghese, and asserting that she is his sole surviving legal heir. By way of the present application, she has sought certain reliefs against the Respondents. However, Respondent No. 3 has filed a separate application bearing IA (IBC)/105/KOB/2026, challenging the maintainability of the present application on the ground that the Applicant lacks the requisite locus standi to maintain the same, contending that she was not the legally wedded wife of the deceased allottee.

30. Having considered the rival submissions and the nature of the controversy involved, we deem it fair, judicious and appropriate to decide both these applications by way of this common order.

31. The Corporate Debtor, M/s. Nucleus Premium Properties Pvt. Ltd., was admitted into the Corporate Insolvency Resolution Process under Section 7 of

the Code, pursuant to the order dated 18.11.2021 passed in C.P. (I.B.)/1/KOB/2021. Mr. K.P. Dileep was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional . Upon completion of the process prescribed under the Code, the Resolution Plan submitted by Respondent No. 3 was approved by the Committee of Creditors and, subsequently, by this Adjudicating Authority vide order dated 09.02.2024.

32. It is an admitted position that the original allottee, Late Mr. Thomas Varghese, did not submit any claim before the Resolution Professional during his lifetime. However, it is equally undisputed that Late Mr. Thomas Varghese was a genuine allottee under the agreement dated 12.06.2015, executed in respect of the apartment, and had already paid an amount of Rs.38,10,428 (Rupees Thirty Eight Lakhs Ten Thousand Four Hundred and Twenty Eight Only/-) towards the sale consideration. The balance amount of Rs. 6,51,000/- (Rupees Six Lakhs Fifty One Thousand only /-), which was reflected as outstanding against the name of Late Mr. Thomas Varghese in the Resolution Plan, is also stated to have been subsequently paid by the Applicant. It is further undisputed that Late Mr. Thomas Varghese was an officer of the Indian Foreign Service (IFS) and was serving abroad. Significantly, his name finds specific acknowledgment in the Resolution Plan submitted by Respondent No. 3. The relevant extract of the Resolution Plan is reproduced herein below.

Allotted & Claim Admitted						
Sl No	UNIT NO	Name of Allottee	Status of Claim	Receivables	Cost of Construction	Payable Amount
A	B	C	D	E	F	G (Higher of E&F)
8	1A	Santhosh Kumar	No Claim	-	47,250	47,250
1	1B	Arul Das	Claim Admitted	-	3,15,000	3,15,000
2	1C	Sidharth	Claim Admitted	9,28,929	4,20,000	9,28,929
9	1D	Sreekumar Balakrishnan	No Claim	-	-	-
3	1E	Sreejith	Claim Admitted	3,91,956	-	3,91,956
10	2A	Gibu Kurian	No Claim	-	-	-
11	2B	Girish Kumar	No Claim	-	31,500	31,500
12	2C	Deepthi Ranjith	No Claim	-	36,750	36,750
13	2D	Manoj Ambatt	No Claim	-	5,77,500	5,77,500
4	2E	Dr.Abdu Rahman	Claim Admitted	4,15,882	4,41,000	4,41,000
14	3A	Kabeer	No Claim	-	-	-
5	3B	Khadeeja	Claim Admitted	-	3,15,000	3,15,000
6	3C	Thomas Francis	Claim Admitted	3,48,675	3,78,000	3,78,000
15	3D	Reshmi	No Claim	-	-	-
16	3E	Sherafudheen	No Claim	-	-	-
17	4A	C A Chako	No Claim	1,60,708	6,82,500	6,82,500
7	4B&C	Arun Karthik	Claim Admitted	41,195	4,56,750	4,56,750
18	4D	Thomas Varghese	No Claim	3,76,178	6,51,000	6,51,000
19	4E	Sujatha/Swetha	No Claim	-	-	-

The amount of Rs. 6,51,000/- has been shown as due and payable against the name of Mr. Thomas Varghese

33. It is the case of the Applicant that she became aware of the takeover of the project by Respondent No. 3 only upon her return to India and the amount of Rs. 6,51,000/-is having been acknowledged against the name of Mr. Thomas Varghese in the Resolution Plan. The Applicant further contends that the aforesaid amount had already been deposited/paid to Mr. Sajikumar K.P. through Mr. Arul Das. In support of her contention, the Applicant has placed on record her statement of account as Annexure A2 in Application filed in IA (IBC) 369/KOB/2025, which reflects the corresponding deposit and withdrawal entries in the names of Mr. Thomas Varghese and Mr. Sajikumar K.P respectively.

34. There is no material on record to suggest that the statement of account so produced by the Applicant is fabricated or otherwise not genuine. Even

Respondent No. 3 has failed to place on record any personal affidavit of its Managing Director, Mr.Sajikumar K.P, categorically denying receipt of the amount of Rs. 6,51,000/- as reflected in Annexure A2 appended to the application. In the said Annexure, Columns 1, 10, 11, 36, 45 and 56 reflect the amounts deposited by Thomas Varghese into the bank account of Arul Das, which were subsequently transferred to the bank account of Saji Kumar, Respondent No. 3, as reflected in Columns 6, 13, 18, 25, 29, 34, 41, 46, 49, 53, 58 and 63.

35. Therefore, although Respondent No. 3 has taken the defense that it has not received any such amount, such a bare contention, in the absence of any cogent evidence to rebut the authenticity and evidentiary value of Annexure A2, cannot be accepted. The original allottee, Mr. Thomas Varghese, had, in toto, paid an amount of Rs. 44,61,428/- (Forty Four Lakhs Sixty One Thousand Four Hundred And Twenty Eight Rupees Only/-), [Rs.38,10,428.7 (Thirty Eight Lakhs Ten Thousand Four Hundred and Twenty Eight) towards the sale consideration and an amount of Rs.6,51,000/-(Six Lakhs Fifty One Thousand only/-) stands acknowledged as payable in the resolution plan].

36. The defence taken by Respondent No. 3, placing reliance upon the judgment of the Hon'ble Supreme Court of India in the case of Ghanashyam Mishra, would not come to its rescue in the given facts and circumstances of the present case.

37. Further, there is no material on record to establish that Respondent No. 3 had lawfully taken possession of the apartment. On the contrary, the Applicant has alleged that Respondent No. 3 forcibly took possession of the apartment on 25-08-2025, pursuant to which the Applicant lodged an FIR at Police Station, Thrikkakara, on 27-08-2025. It is further brought to our notice that one of the Managing Partners of Respondent No. 3 was arrested in connection with the

aforesaid proceedings, which subsequently came up for consideration before the Hon'ble High Court of Kerala.

38. It would be appropriate to observe that, as a Successful Resolution Applicant, Respondent No. 3 undoubtedly enjoys certain privileges, rights and protections and is also entitled to the concessions and benefits flowing from the Resolution Plan and the orders passed by this Adjudicating Authority under the provisions of the Code. However, such privileges and protections cannot be construed as conferring upon the Successful Resolution Applicant an unrestricted right to forcibly dispossess an allottee or any person who had been put in possession of the apartment by the Corporate Debtor prior to the initiation of the CIRP. If Respondent No. 3 was aggrieved by any act or conduct of the Applicant or the original allottee, it was incumbent upon Respondent No. 3 to seek appropriate remedies before the competent forum, including this Adjudicating Authority, in accordance with law.

39. The issue also came up for consideration in *KCL Infra Projects Ltd. v. Devvrat Developers Pvt. Ltd. & Ors.*, (2025) ibclaw.in 1969 (NCLT, Indore Bench), the Adjudicating Authority considered applications filed by homebuyers who had purchased 16 flats under registered sale agreements, paid the consideration and obtained physical possession prior to commencement of CIRP. Despite the approval of the Resolution Plan, the Successful Resolution Applicant attempted to forcibly dispossess them by invoking an earlier order granting police assistance for eviction of unauthorised occupants. The Adjudicating Authority observed that flats in respect of which possession had already been handed over to homebuyers prior to the Insolvency Commencement Date remain excluded from the assets of the Corporate Debtor and cannot be taken over by the Resolution Professional or treated as assets available for resolution. Relying upon Regulation

46A of the IBBI (Liquidation Process) Regulations, 2016, and the decisions in *Puneet Kaur v. KV Developers Pvt. Ltd.*, *Pradip Kumar Chaudhary v. Dagcon (India) Pvt. Ltd.* and *Alok Sharma v. I.P. Construction Pvt. Ltd.*, the Adjudicating Authority held that the peaceful possession and enjoyment of the applicants, together with the supply of essential amenities, must not be disturbed pending adjudication of the allegations concerning preferential, undervalued, fraudulent or extortionate transactions (PUFE). Accordingly, it directed the SRA not to disturb their possession and clarified that the earlier order granting police assistance for eviction would not apply to those homebuyers until the PUFE application was decided. The relevant portion of the judgment is reproduced hereinbelow";

> ***49.*** *The Hon'ble NCLAT in the matter of* ***Puneet Kaur and Ors. Vs. KV Developers Private Limited and Ors. [Company Appeal (AT) (Insolvency) Nos. 390, 391, 392, 393 and 394 of 2022 Decided On: 01.06.2022],*** *in which the following was held:*
>
> "*…In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority*

may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan."

50. *In the matter of "**Pradip Kumar Chaudhary vs. Dagcon (India) (P) Ltd, 2020 SCC online NCLAT 860**, the Hon'ble NCLAT have held that properties where possession has already been granted to the allottees fall outside the scope of the Corporate Debtor's assets. Consequently, the Moratorium under Section 14 of the IBC does not apply, and there is no legal bar on executing sale deeds in such cases – even during the CIRP. In "**Alok Sharma and Ors. Vs. M/s I.P. Construction Pvt. Ltd [Comp. App (AT) (INS) No. 350 of 2020]**, the Hon'ble NCLAT has reaffirmed that flats already allotted and handed over to third parties are excluded from the assets of the Corporate Debtor.*

51. *The Hon'ble Supreme Court in their judgment in **"Bikram Chatterjee & Ors. Vs. union of India & Ors. [2019 SCC SC 901],**have held that home buyers cannot be defrauded or deprived of their flats which were developed using their own funds. Once possession has been granted their interest must be protected.*

52. *The Hon'ble Supreme Court in the **Committee of Creditor of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors (2019) ibclaw.in**, has held that while the commercial wisdom of the CoC is paramount and the resolution plan, once approved, is binding on all stake holders under Section 31 of the IBC, the rights of allottees/home buyers, cannot be disregarded in violation of the law. Further, in **"JP Kensignton Bolevert Apartment Welfare Association Vs. NBCC India Limited (2022) 1 SCC 401**" the Hon'ble Supreme Court have specifically protected the rights of the home buyers/allottees holding that once consideration is paid, their equitable ownership cannot be ignored and the Successful Resolution Applicant is obliged to honour the commitments, subject to adjustment of balances, if any.*

40. The material placed on record along with the rejoinder, as well as the details of the legal proceedings and actions initiated by the Applicant against Respondent No. 3, speak for themselves and prima facie indicate an alleged misuse of the process of the Code by Respondent No. 3. Such acts, if established, cannot be acknowledged, condoned or given any sanction by this Adjudicating Authority. We must also make it clear that the approval of the resolution plan, at no point of time, authorized Respondent No. 3 to forcibly take possession of any property from an allottee or any other person. The authorities concerned, dealing with the criminal proceedings arising out of the aforesaid allegations, shall be at

liberty to take appropriate action against the persons responsible, strictly in accordance with law and on the basis of the evidence available before them.

41. The approved Resolution Plan itself contains specific provisions dealing with the rights and entitlements of persons who have failed or omitted to submit their claims before the Resolution Professional. The relevant provisions of the approved Resolution Plan are reproduced hereinbelow: -

5.8.4 Payment Schedule

Tranche	Amount Payable	Payment Milestone
Tranche 1	50% of the Total Payable by Individual Allottee	within 3 months from the Order of the NCLT approving Resolution Plan
Tranche 2	Balance 50% of the Total Payable by Individual Allottee	within 1 month from the Date the Project Monitoring Committee Certifies that 50% of the Construction is Completed

Tranche	Grace Period	Interest during Grace Period	Consequence of Non-payment even after Grace Period
Tranche 1	One Month from the last date of Payment Milestone	Interest will be charged for the delayed period as per the SBI Cash Credit Rate	Even after the Grace Period if any Allottee defaulted on his payment of any of the Tranches, then his allottment will be Cancelled.
Tranche 2			
Tranche 3			The Apartment will become the Saleable Inventory of the Resolution Applicant
Tranche 4			50% of the amount paid by the allottee till the previous Tranche, if any, will be refunded after the sale of the relevant Apartment by the Resolution Applicant.
Tranche 5			There will not be any further claim against the Coporate Debtor or the Resolution Applicant by such Allottee who had defaulted on payments

42. A perusal of the aforesaid provisions makes it evident that the resolution plan itself acknowledges and deals with the rights of allottees who have not submitted their claims before the Resolution Professional. In the present case, there is material on record to indicate that the amount shown as due and payable against the name of Mr. Thomas Varghese stood paid to Respondent No. 3. In such circumstances, the rights and entitlements of the original allottee, Mr. Thomas Varghese, in respect of the apartment cannot be defeated merely on the ground

that he had not filed a claim before the Resolution Professional. Upon the demise of the former original allottee, his lawful legal heir's step into his shoes and succeed to his rights and obligations arising out of the allotment agreement, subject to the applicable law of succession and any testamentary disposition or lawful partition, if any. Consequently, the rights of the original allottee to retain the allotment, obtain possession and seek conveyance of the subject apartment devolve upon his lawful legal heirs, subject to the terms of the Resolution Plan and applicable law.

43. Now, the question that arises for consideration is whether the Applicant has the locus standi to maintain Application IA (IBC)/369/KOB/2025.The Applicant claims to be the legally wedded wife of the deceased allottee. However, it is brought to our notice that proceedings concerning the determination of the legal heirs and succession to the estate of Late Mr. Thomas Varghese are pending before the Hon'ble High Court of Delhi, wherein the present Applicant is also arrayed as one of the Respondents. Therefore, at this stage, the question of the Applicant's exclusive entitlement to represent the estate of the deceased allottee cannot be conclusively determined by this Adjudicating Authority.

44. Nevertheless, where a dispute or uncertainty exists amongst the legal heirs of a deceased allottee, or where the entitlement to the estate or any part thereof is yet to be determined by the competent court, a third party cannot be permitted to take advantage of such a situation. Respondent No. 3, notwithstanding its status as the Successful Resolution Applicant, is under an obligation to implement the Resolution Plan in its letter and spirit. However, insofar as the inter se dispute amongst the family members or legal heirs of the deceased allottee, Late Mr. Thomas Varghese, is concerned, Respondent No. 3 is a third party and has no right to take advantage of such dispute to defeat or

indefinitely withhold the legitimate rights and entitlements of the actual legal heirs of the deceased allottee.

45. Respondent No. 3, therefore, cannot be permitted to deny the allotment or withhold possession of the apartment from the rightful legal heirs of the deceased allottee merely by citing the pending dispute amongst them. The entitlement to the estate of the deceased, including the apartment in question, is a matter to be determined by the competent court.

46. It is evident that the Successful Resolution Applicant, shortly before filing the present Application, forcibly dispossessed the occupant from the subject apartment. In these summary proceedings, this Adjudicating Authority cannot delve into the merits of the allegations concerning the alleged second marriage or the rival claims to succession and entitlement to the apartment, particularly when succession proceedings are pending before the Hon'ble High Court of Delhi. Nevertheless, the Successful Resolution Applicant cannot be permitted to retain possession obtained through forcible dispossession. Accordingly, the Successful Resolution Applicant is liable to restore possession of the apartment to the person from whom such possession was forcibly taken, without prejudice to the rights and contentions of the rival claimants in the pending succession proceedings. The legal heirs of the original allottee or the person in occupation, as the case may be, shall continue to be liable for the applicable maintenance charges and other recurring dues in respect of the apartment until their respective rights are determined by the competent Court. However, all expenses, charges and costs arising out of the illegal dispossession, from the date of such dispossession until restoration of possession, shall be borne by Respondent No.3.

47. It is clarified that the directions contained in this Order shall not confer any independent right, title or interest upon the Applicant or the occupant in respect of the subject apartment. The question of ownership, entitlement and succession

to the subject apartment shall remain entirely open and shall be determined by the competent Court in the pending succession proceedings. The present directions are confined solely to restoration of possession and shall not prejudice the rights and contentions of any of the parties in such proceeding.

48. Upon adjudication of the succession proceedings before the appropriate court Respondent No. 3 shall execute the Sale Deed in accordance with the directions contained in the order passed therein.

49. In the light of the aforesaid circumstances and the findings recorded hereinabove, no further orders are called for in respect of the prayers sought in **I.A. (IBC)/105/KOB/2026**, as the same have become infructuous.

50. In view of the foregoing discussion, **IA(IBC)/369/KOB/2025 CP(IBC)/01/KOB/2021 & IA(IBC)/105/KOB/2026 in IA(IBC)/369/KOB/2025 in CP(IBC)/01/KOB/2021 are disposed of accordingly.**

51. The Registry is further directed to send e-mail copies of this order to the parties and their learned counsel for information and to take necessary steps.

52. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

53. File be consigned to records.

Sd /-
RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd /-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 20th day of November , 2026.

As*