



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA, 1945

MSA NO. 5 OF 2023

AGAINST THE FINAL ORDER OF THE REAL ESTATE APPELLATE TRIBUNAL DATED
16.11.2022 IN REFA NO.47/2022

AGAINST THE ORDER OF THE KERALA REAL ESTATE REGULATORY AUTHORITY DATED
01.06.2022 IN SUO MOTU COMPLAINT NO.1576/K-RERA/2021

APPELLANT/APPELLANT IN REFA NO.47/2022:

GRACELAND FOUNDATION
GRACELAND, PAINGARAPPALLY P.O, MULANTHURUTHY -682314,
REPRESENTED BY ITS PARTNER, JACOB THOMAS, 23,
AMBADY RETREAT, CHILAVANNOOR, KADAVANTHRA, PIN - 682020
BY ADVS.
M.R.RAJENDRAN NAIR (SR.)
M.R.HARIRAJ
VISWAJITH C.K
ALINA ANNA KOSE
VIDYA A.K
AKHILA S.
MEGNA MARIYAM M.

RESPONDENTS/RESPONDENTS IN REFA NO.47/2022:

- 1 KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS SECRETARY, TC 25/1379, CRA D-112,
NEAR PENTECOSTAL CHURCH PLAMOODU,
CHARACHIRA ROAD, THIRUVANANTHAPURAM, PIN - 695003
- 2 GRACELAND FOUNDATION RESIDENTS WELFARE ASSOCIATION
REPRESENTED BY ITS SECRETARY, V.B SREEDHARAN,
PANGARAPILLY, MULANTHURUTY, PIN - 682314
- 3 ADDL.R3
MULANTHURUTHY GRAMA PANCHAYAT,
REPRESENTED BY THE SECRETARY,
MULANTHURUTHY GRAMA PANCHAYAT, MULANTHURUTHY P.O., ERNAKULAM
(IS SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENT NO.3 IN
MSA.NO.5 OF 2023, AS PER ORDER DATED 21.08.2023)
BY ADVS.
P.K.SURESH KUMAR (SR.) - R1
C.M.NAZAR -R1
JACOB MATHEW MANALIL - R2
PRIYA ELIZABETH BABU - R2
HRISHIKESH JAYASARMAN - R2



M.S.A. Nos. 5 & 7 of 2023

2

**MARTIN JOSE P -R3
P.PRIJITH - R3
THOMAS P.KURUVILLA -R3
R.GITESH -R3
AJAY BEN JOSE -R3
MANJUNATH MENON -R3
SACHIN JACOB AMBAT -R3
ANNA LINDA EDEN -R3
HARIKRISHNAN S. - R3**

THIS MISC. SECOND APPEAL ALONG WITH M.S.A.NO.7/2023 HAVING COME UP FOR ORDERS ON 01.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



M.S.A. Nos. 5 & 7 of 2023

3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA, 1945

MSA NO. 7 OF 2023

AGAINST THE FINAL ORDER OF THE REAL ESTATE APPELLATE TRIBUNAL DATED
16.11.2022 IN REFA NO.47/2022

AGAINST THE APPEAL AGAINST THE ORDER DATED 01.06.2022 OF THE KERALA
REAL ESTATE REGULATORY AUTHORITY IN SUO MOTU COMPLAINT NO.1576/K-
RERA/2021

APPELLANT/2ND (ADDL) RESPONDENT IN REFA NO.47/2022:

GRACELAND FOUNDATION RESIDENTS WELFARE ASSOCIATION
REPRESENTED BY ITS SECRETARY, V.B SREEDHARAN,
PANGARAPPILLY, MULANTHURUTHY, ERAKULAM DISTRICT,
PIN - 682314

BY ADVS.

JACOB MATHEW MANALIL
PRIYA ELIZABETH BABU
HRISHIKESH JAYASARMAN

RESPONDENTS/APPELLANT/1ST RESPONDENT IN REFA NO.47/2022:

- 1 GRACELAND FOUNDATION
GRACELAND, MULANTHURUTHY PANGARAPPILLY P.O.
REPRESENTED BY ITS PARTNER JACOB THOMAS, 23,
AMBADY RETREAT, CHILAVANNOOR, KADAVANTHRA, PIN - 682020
- 2 KERALA REAL ESTATE REGULATORY AUTHORITY
REPRESENTED BY ITS SECRETARY, 6TH FLOOR, TRINITY CENTRE,
TC NO. 14/4354, QPP CHAITHANYA EYE HOSPITAL,
KESAVADASAPURAN, PATTOM P. O, THIRUVANANTHAPURAM,
PIN - 695004
BY ADVS.
M.R.RAJENDRAN NAIR (SR.) -R1
M.R.HARIRAJ -R1
P.K.SURESH KUMAR (SR.) -R2
C.M.NAZAR -R2

THIS MISC. SECOND APPEAL ALONG WITH M.S.A.NO.5 OF 2023 HAVING
COME UP FOR ORDERS ON 01.12.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**“C.R.”****JUDGMENT****Dated this the 1st day of December, 2023**

M.S.A. No.5 of 2023 is one filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (“the Act, 2016” hereinafter) arises out of order in REFA No. 47/2022 on the files of the Real Estate Appellate Tribunal, Ernakulam dated 16.11.2022 which emerges from the order dated 01.06.2022 in *Suo Motu* Complaint No.1576/K-RERA/2021, on the files of the Real Estate Regulatory Authority. The appellant herein is Greeceland Foundation, the 1st respondent is the Kerala Real Estate Regulatory Authority and the 2nd respondent is the Greeceland Foundation Residents Welfare Association.

2. M.S.A. No.7 of 2023 is an appeal arising out of the same order at the instance of Greeceland Foundation Residents Welfare Association. The respondents are Greeceland Foundation and the Kerala Real Estate Regulatory Authority.



3. The parties in these appeals will be referred as promoter and allottees, hereinafter for convenience.

4. Heard the learned Senior counsel appearing for the appellant/promoter and the learned counsel appearing for the respondents/allottees.

5. Precisely on the facts of this case, in a *suo motu* proceedings initiated by the Real Estate Regulatory Authority, the Authority directed the promoter to apply for registration of the Real Estate Project "Graceland" located at Mulanthuruthy, Ernakulam District under Sec 3 of the Act, 2016 and as per Section 3(4) of Kerala Real Estate (Regulation and Development) Rules, 2018 (hereinafter referred as Rule, 2018 for easy reference), within 30 days on receipt of the order, through an application made online along with the required fee. Further penalty of Rupees 10,00,000/- (Ten Lakhs) also was imposed to be paid in the form of Demand Draft drawn in favour of Kerala Real Estate Regulatory Authority, payable at Thiruvananthapuram as provided under Section 59(1) of the Act, 2016.

6. Challenging the said verdict, the promoter filed REFA No. 47/2022 before the Real Estate Appellate Tribunal,



Ernakulam. The Appellate Tribunal allowed the appeal in part as under:

In the result, this appeal is allowed in part. Accordingly the second part of the impugned order of the K-RERA dated 1/6/2022 in the Suo Moto Complaint No.1576/K-RERA/2021 imposing penalty, is hereby set aside, leaving the said proceedings to be initiated at the right stage later, on proof of non-compliance of the directions made under Section 3 of the Act, but the first part of the order directing registration of the appellant's project Graceland Foundation under Section 3 of the Act, is confirmed. The parties will bear their respective costs of the appeal.

7. On hearing the matter, these appeals stand admitted by formulating the following substantial questions of law:

1. What are the effective dates on which the various Sections of the Real Estate (Regulation and Development) Act, 2016 came into force? and whether the Act is retroactive in operation?

2. What are the projects which would require registration as provided under Section 3 of the



Real Estate (Regulation and Development) Act, 2016?

3. Whether the Real Estate Regulatory Authority is legally justified in ordering registration of the promoter's project, which was allegedly completed on 07/04/2017 and where there is a deemed Occupancy with effect from 22/04/2017, when the Real Estate Regulatory Authority itself was constituted only by G.O.(P) No. 65/2019/LSGD dated 05/10/2019 and public notice thereof was given only on 26/12/2019 and the Real Estate Regulatory Authority was launched only 01.01.2020?

4. What is the manner in which the Real Estate Regulatory Authority can impose penalty by way of cost for non-registration of real estate project by invoking the power under Section 59(1) of the Real Estate (Regulation and Development) Act, 2016?

8. On perusal of the order issued by the Real Estate Regulatory Authority, which led to filing of REFA No.47/2022 the same would go to show that the authority found that at the time of commencement of Section 3 of the Act, 2016 with effect from 01.05.2017, the real estate project at the instance of the promoter herein was an on going project and



therefore the same would require registration. The said finding was upheld by the Appellate Tribunal also. According to the promoter, the promoter produced completion certificate before the Panchayat as on 07.04.2022. But, no action taken by the panchayat pursuant to filing of completion certificate. Accordingly, as provided under Section 25(3) of the Kerala Panchayat Raj Act, a deemed occupancy certificate was obtained by the promoter on expiry of fifteen days from 07.04.2022. If so, the deemed occupancy certificate came into force with effect from 22.04.2022 before the coming into force of Section 3 of the Act, 2016 from 01.05.2017 and therefore a project which was completed by the promoter prior to the enactment of the Act, 2016, is not an ongoing project and therefore the Act, 2016 has no application to the project in question. Therefore, the said project does not require registration under Section 3 of the Act, 2016.

9. *Per contra*, the learned counsel for the allottees argued that completion certificate dealt under Section 3 of the Act, 2016, in fact, is occupancy certificate issued by the local authorities in Kerala. Referring to the definition of



“completion certificate” as provided under Section 2(q) of the Act, 2016, he also argued that the completion certificate for which the learned counsel for the promoter given much emphasis is not at all a completion certificate either in its form or content and the same is a fabricated document arose out of collusion between the promoter and the Panchayat. In this connection, the learned counsel placed Appendix-H format under the Kerala Panchayat Building Rules, 2011 to compare the same with Appendix-H format used for Annexure.A1 completion certificate. He also argued that a completion certificate as contemplated under the Act, 2016 can only be issued by the local authority and a completion certificate prepared by an Architect and placed before the Panchayat by the promoter, now produced as Annexure.A1 is not a completion certificate dealt under Section 2(q) of the Act, 2016 and therefore the same has no significance in this case and in such view of the matter, the deemed occupancy certificate as contended by the promoter also could not be found.

10. While addressing the first and second substantial questions of law on par with the arguments rendered, first of



all, I would like to refer, when the Act, 2016 came into force. It is discernible that the Act, 2016 was published in the Gazette of India on three different dates. The first one, Ext.Part II, Section 1 was notified and published in the Gazette of India on 26/03/2016. Sections 2, 20 to 39, 41 to 58, 71 to 78, 81 to 92 (w.e.f. 01/05/2016) were notified and published in the Gazette of India as per S.O.1544(E), dt. 26/04/2016 and Sections 3 to 19, 40, 59 to 70, 79 to 80 (w.e.f. 01/05/2017) were notified and published as per S.O. 1216(E), dt. 19/04/2017. Therefore, Section 1 came into force with effect from 26.03.2016. Sections 2, 20 to 39, 41 to 58, 71 to 78, 81 to 92 came into force with effect from 01.05.2016 and Sections 3 to 19, 40, 59 to 70, 79 to 80 came into force with effect from 01.05.2017.

11. Regarding the question; whether the Act, 2016 is retroactive in operation, in ***M/s Newtech Promoters and Developers Pvt. Ltd v. State of UP and Others [MANU/SC/1056/2021 : (2021) 9 SCR 909]***, the Apex Court held that application of the Act is retroactive in character and it cannot be said to be violative of either Art. 14 or 19(1)(g). Intention of the legislature by necessary



implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. Projects already completed or to which the completion certificate has been granted are not under its fold. At the same time, it would apply after getting the on-going projects and future projects registered u/s. 3 to prospectively follow the mandate of the Act. In the said decision, the Apex Court also considered the meaning of “retroactive statute” and held that retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights. The statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing. It was held further that the clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and



transparent manner so that the interest of the consumers in the real estate sector is protected by all means. Therefore, the Act, 2016 is retroactive in operation.

12. After the implementation of Section 3 of the Act, 2016 prior registration of real estate project with Real Estate Regulatory Authority is mandatory. Section 3(1) of the Act, 2016 provides as under:

3. Prior registration of real estate project with Real Estate Regulatory Authority-(1) *No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:



Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

13. Thus, it is clear that all projects that are on going on the date of commencement of the Act, 2016, as on 01.05.2017 and for which the completion certificates have not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three days from the date of commencement of this Act i.e. from 01.05.2017. So the cardinal aspect which would govern mandatory registration is whether the completion certificate has been issued on or before 01.05.2017 in relation to a project in dispute. It is not in dispute that Section 2(q) of the Act, 2016 deals with completion certificate. "Completion certificate" means the completion certificate, or such other certificate, by whatever name



called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.

14. Indubitably, the completion certificate contemplated under Section 2(q) of the Act, 2016 must be one issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan as approved by the competent authority under the local laws.

15. Coming back to Annexure.A1, as rightly pointed out by the learned counsel for the allottees, the same is shown as Appendix-H [see Rule 12 (2)(1) and 13(i)]. But Appendix-H in terms of Rule 25(2) of the Kerala Panchayat Building Rules, 2011 prior to its amendment with effect from 2019 is totally a different one from Annexure.A1 completion certificate, to which heavy reliance was given by the learned Senior counsel appearing for the promoter. It is relevant to note further that, in Annexure.A1 completion certificate, nothing shown with regard to the permit granted for the purpose of construction. Thus, Annexure.A1, with



nomenclature “completion certificate”, prepared by a licensed Architect and placed by the promoter before the Mulanthuruthy Grama Panchayat, could not be held as a completion certificate as defined under Section 2(q) of the Act, 2016 and therefore the same cannot be given any emphasis to hold that the construction of the project was completed on or before 01.05.2019. It is to be made clear that “completion certificate” as defined under Section 2(q) of the Act, 2016 is the “occupancy certificate” issued by the local authorities in Kerala.

16. It is to be noted that as per the order dated 21.08.2023, my learned predecessor *suo motu* impleaded Mulanthuruthy Grama Panchayat as additional respondent No.3 in M.S.A. No.5 of 2023 and accordingly, the Panchayat filed a statement.

17. It is in this context, as pointed out by the learned counsel for the allottees, the counter affidavit filed by the promoter before the Kerala Real Estate Regulatory Authority in complaint No.151/2021 assumes significance, since the promoter admitted the date of issuance of occupancy certificate in paragraph No.2 as under:



2. *It is submitted that the complaint so made before the RERA is not maintainable. The Kerala Real Estate Regulatory Authority General Regulations 2020 came into force on 11th June 2020 ie. the date of its notification. **The Project was completed way back in 2019. First set of occupancy certificate for 56 units was received on 22/05/2017 and the second set of occupancy certificate for 16 units was received on 09/08/2019.** True copy of one of the occupancy certificates dated 22/05/2017 & 09/08/2019 issued by the Mulanthuruthy Panchayat are produced herewith and marked as Annexure A1 & Annexure A2.*

18. As per the admitted case herein above extracted, the case of the promoter was that he got occupancy certificates for 56 units with effect from 22.05.2017 and 16 units with effect from 09.08.2019. Annexures.A1 and A2 produced herein are the copies of such occupancy certificates bearing the said dates.

19. In this connection, the deemed occupancy certificates canvassed by the learned counsel for the promoter also assumes significance. It is true that Section



25 of the Kerala Panchayat Building Rules, 2011 deals with issuance of occupancy certificate on production of completion certificate by the promoter. Section 25(1) of the Act provides that, every owner shall, on completion of the development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him, to the Secretary in the form in Appendix E.

20. The second proviso to Section 25(3) is that, if no such occupancy certificate is issued within fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him. According to the learned counsel for the allottees, in this matter, no completion certificate within the mandate of Section 25 of the Kerala Panchayat Building Rules, 2011 had been placed before the Panchayat and Annexure.A1 completion certificate does not even contain the number and details of the permit granted for the said construction. That apart, as per the occupancy certificates produced before this Court as well as before the Real Estate Regulatory Authority, occupancy certificates



were issued by the Panchayat in relation to project in dispute only on 22.05.2017 and 09.08.2019.

21. In this matter, it is specifically clear that occupancy certificates issued by the Panchayat in relation to the project in dispute is only after 01.05.2017. Now the question is how far the promoter would rely on the deemed occupancy certificate on the assertion that the promoter got deemed occupancy with effect from 22.04.2017? In this connection, it is worthwhile to refer Annexure.A1 completion certificate along with the statement filed by the Panchayat before this Court. As per Annexure.A1 in Appendix-H form is one in deviation from the Kerala Panchayat Building Rules, 2011. Most significantly, the same does not show the completion was effected in relation to what construction referring the permit/building permit number and the date of issuance of the said permit. It is interesting to note further that the promoter would contend that the same was accepted by the Panchayat on 07.04.2017, but it appears that though there is date on the upper left corner of the Annexure.A1, no seal seen affixed therein. On the bottom on the left side, though the Secretary, Mulanthuruthy Grama



Panchayat signed as true copy, the date was not stated therein. Most importantly, in the statement submitted by the Panchayat it is submitted that, *though application was submitted for the construction of a building having a total built up area of 4501.47 square meters in the property having an extent of 94.90 Are in Resurvey Number 499/5 covered by Document No. 1984/14, 831/98, building permit no. A2-63/8036/15 dated 08/06/2015 was issued only for the construction of a building with a total built up area of 3359.97 square meters. The Senior Town Planner by order dated 08/11/2016 permitted to construct an additional plinth area of 2427.01 square meter to the existing plinth area of 3359.97 square meter by including it in Group A2. Based on the order of the Senior Town Planner dated 08/11/2016, the Respondent No.3, issued building permit no. A2-144/3982/16 dated 02/12/2016 for the construction of a building in the category of Lodging House having a built up area of 5786.98 square meter. Subsequent to the submission of the completion certificate and completion plan vide letter dated 07/04/2017, building number was given to 40 units in Type A having an area of 53.13 square*



meters and to 16 units in Type B having an area of 90.07 square meters on 20/05/2017. Office Block has been allotted with 4 building numbers, (i) building with building no. 9/213 C1 has a floor area of 194.15 square meter, (ii) building with building no. 9/213 C2 has a floor area of 933.01 square meter, (iii) building with building no. 9/213 C3 has a floor area of 308.35 square meter and (iv) building with building no. 9/213 BH has a floor area of 170.9 square meter. It is submitted that by letter dated 22/05/2017 ownership certificate was also issued.

22. Overall scrutiny of the materials with reference to Annexure.A1 completion certificate, it is discernible that loading house having a total built up area of 5786.98 square metres was permitted to be constructed with effect from 02.12.2016 and according to the promoter the said construction was completed on 07.04.2017, exactly within four months. Since, Annexure.A1 completion certificate (though not occupancy certificate) and its genesis is in the midst of doubts the deemed occupancy certificate also cannot be believed where the Panchayat categorically stated issuance of occupancy certificate to the project only on



22.05.2017 and 09.08.2019, and this fact is admitted by the promoter as could be read out from counter affidavit filed before the Authority, as extracted herein above.

23. Therefore, the third question of law is answered holding that deemed occupancy certificate as canvassed with effect from 27.04.2017 cannot be believed and the same cannot be held as a completion certificate as defined under Section 2(q) of the Act, 2016. Therefore, in the project in dispute where evidently and admittedly completion certificate was issued after 01.05.2017 would require registration.

24. Addressing the fourth substantial question of law, in this case, Annexures.A4 and A6 are notifications issued by the Kerala Real Estate Regulatory Authority. Annexure.A4 was issued stating that real estate projects that have obtained occupancy certificates do not require registration under RERA and the original real estate projects should be registered within three months from 01.02.2020, without mentioning the cut of date as 01.05.2017. As per Annexure.A6, the authority issued public notice stating that the constitution of RERA in the state got delayed and the



Authority was officially launched only on 01/01/2020. Hence, with due regard to the practical concerns on processing of registration of ongoing projects, the date of official launching of K-RERA (01/01/2020) was considered as the 'date of commencement of the Act' for the purpose of first proviso to section 3(1) and for section 3(2)(b) of the Act. Accordingly, the Authority has issued public notice dated 27/12/2019.

25. In fact, Real Estate Regulatory Authority [RERA] has no right or power to issue either Annexure.A4 or Annexure.A6 to declare the date of commencement of Section 3 of the Act, 2016 as against the mandate of the Act, 2016. Therefore, the effective dates on which various Sections of the Act, 2016 came into force, to be as held in paragraph No.10 herein above. Therefore, Annexure.A4 and Annexure.A6 are held as non-est and the same have no legal effect as against the mandate of the Act, 2016.

26. The fourth question of law herein arises for consideration, since, there is lack of clarity as regards to the mode in which the mandate of Sections 59(1) of the Act to be complied by the Kerala Real Estate Authority.

27. It is submitted by the learned standing counsel



appearing for the Real Estate Regulatory Authority that initially as per the order in *suo motu* Complaint No.1576/K-RERA/2021 dated 01.06.2022, the Kerala Real Estate Regulatory Authority directed the promoter to apply for registration of the Real Estate Project "Graceland" located at Mulanthuruthy, Ernakulam District under Sec 3 of the Act, 2016 and as per Section 3(4) of the Rules, 2018, within 30 days on receipt of the order, through an application made online along with the required fee. Simultaneously, penalty of Rs.10,00,000/- (Rupees Ten Lakhs) also was imposed. But, the Appellate Tribunal interfered the said order in REFA No.47/2022 and set aside the imposition of penalty leaving the said proceedings to be initiated at the right stage later, on proof of non compliance of the directions made under Section 3 of the Act. He also submitted that since the Appellate Tribunal modified the same and thereby relegated imposition of cost at a later stage, the Real Estate Regulatory Authority is in dilemma how to implement Section 59(1) of the Act, 2016. As such, the procedure to be laid down with clarity.

28. In this connection, I am inclined to refer the two



contingencies met under Sections 59(1) and (2) of the Act, 2016. For clarity, Sections 59(1) and (2) of the Act are extracted as under:

59. Punishment for non-registration under Section 3.- (1) *If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.*

(2) *If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of Section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.*

29. The first part of Section 59, i.e. sub section (1) of Section 59 of the Act, 2016 deals with the imposition of penalty on the promoter if the promoter contravenes the provisions of Section 3 of the Act. The second part dealt under Section 59(2) of the Act provides that, if any



promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of Section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both. Thus, Section 59(2) deals with prosecution and Section 59(1) deals with imposition of penalty, if the promoter contravenes the provisions of Section 3 of the Act, 2016.

30. As pointed out by the learned Standing Counsel for the Kerala Real Estate Regulatory Authority that, Section 38 of the Act, 2016 deals with powers of the Authority and the Authority shall have powers to impose penalty or interest, in regard to any contravention of the obligation cast upon the promoters, the allottees and the real estate agents, under this Act or the Rule and the regulations made thereunder.

31. Further, Section 38(2) of the Act, 2016 provides that the Real Estate Regulatory Authority shall be guided



by the principles of natural justice and, subject to the other provisions of the Act, 2016 and the Rules made thereunder, the Authority shall have powers to regulate its own procedure.

32. Here, the orders passed by the Kerala Real Estate Regulatory Authority as well as the Real Estate Appellate Tribunal under challenge do not depict the intent and spirit of the provision. Therefore, it is necessary to revisit the same. The Real Estate Regulatory Authority imposed penalty with direction to register the real estate project without providing a breathing time to comply the order. Whereas, the Appellate Tribunal found that penalty shall be considered at a later stage.

33. Considering the mandate of Section 59(1) read with Section 38 of the Act, 2016, it is held that, while invoking power under Section 59(1) of the Act, 2016 by following the principles of natural justice, mainly, by hearing the otherside (includes submission of oral and written materials before the Authority), if the Real Estate Regulatory Authority is of opinion that the project in



dispute is an on going project which would require registration under Section 3 of the Act, 2016, the Authority shall make an order directing the promoter to register the project, within a period of one month from the date of the order and in the event of failure to comply the order within thirty days, there from, by the same order itself, the Authority has to impose penalty by quantifying the same with direction to pay the same for non compliance of registration as directed.

34. In view of the discussions, M.S.A. No. 5 of 2023 is found to be meritless and is accordingly dismissed.

35. M.S.A. No. 7 of 2023 stands allowed in part. Accordingly, the order of the Appellate Tribunal holding that imposition of penalty to be initiated at the right stage later, shall stand set aside. Resultantly, the promoter herein is directed to apply for registration as directed by the Real Estate Regulatory Authority, within a period of thirty days from today. On failure to do so, within thirty days, the promoter shall pay the penalty of Rs.10,00,000/- (Rupees Ten Lakh Only) as directed by the Real Estate



Regulatory Authority, without fail.

Holding so, the Kerala Real Estate Regulatory Authority is directed here after, to pass order under Section 59(1) of the Act, 2016, following the procedure herein above illustrated.

Sd/-

**A. BADHARUDEEN
JUDGE**

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**APPENDIX OF MSA 5/2023**

PETITIONER'S ANNEXURES :

- Annexure A1 A TRUE COPY OF THE COMPLETION CERTIFICATE SUBMITTED BY THE APPELLANT
- Annexure A2 A TRUE COPY OF THE TAX RECEIPT NUMBER 6067011003065 WITH RESPECT TO DOOR NO. 9/213/C1 ISSUED BY THE MULANTHURUTHY GRAMA PANCHAYATH
- Annexure A3 A TRUE COPY OF PUBLIC NOTICE DATED 26/12/2019 ISSUED BY THE KERALA REAL ESTATE REGULATORY AUTHORITY
- Annexure A4 A TRUE COPY OF PUBLIC NOTICE DATED 27/12/2019 ISSUED BY THE KERALA REAL ESTATE REGULATORY AUTHORITY
- Annexure A5 TRUE COPY OF THE PUBLIC NOTICE NO. K-RERA/T3/102/2020 DATED 22/02/2020
- Annexure A6 A TRUE COPY OF PUBLIC NOTICE NO. K-RERA/T3/102/2020 DATED 17/09/2020 ISSUED BY THE KERALA REAL ESTATE REGULATORY AUTHORITY
- Annexure A7 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 28/06/2021
- Annexure A8 TRUE COPY OF THE REPLY DATED 12/07/2021
- Annexure A9 A TRUE COPY OF PUBLIC NOTICE NO. 3271/K-RERA/2021 DATED 22/12/2021
- Annexure A10 TRUE COPY OF SHOW CAUSE NOTICE NO.K-RERA/T3/1576/2021 DATED 22/01/2022
- Annexure A11 TRUE COPY OF REPLY DATED 17/02/2022
- Annexure A12 TRUE COPY OF NOTICE NO. K-RERA/T1/1576/2021 DATED 23/02/2022
- Annexure A13 A TRUE COPY OF THE ORDER DATED 12/04/2022 ISSUED BY THE KERALA REAL ESTATE APPELLATE TRIBUNAL IN REFA 47/2022
- Annexure A14 A TRUE COPY OF THE NOTICE DATED 29/04/2022
- Annexure A15 A TRUE COPY OF THE STATEMENT DATED 09/05/2022 FILED BY THE APPELLANT BEFORE THE 1ST RESPONDENT
- Annexure A16 TRUE COPY TAX ASSESSMENT RECEIPTS DATED 22/05/2017 ISSUED BY MULANTHURUTHY GRAMA PANCHAYATH, WITH RESPECT TO 12 UNITS INCLUDED IN THE GRACELAND FOUNDATION PROJECT WHERE IN PROPERTY TAX WAS REMITTED BY LATE MR. GEORGE KURIAN, PARTNER OF THE APPELLANT FOUNDATION
- Annexure A17 TRUE COPY OF TAX ASSESSMENT RECEIPTS DATED 22/05/2017 ISSUED BY MULANTHURUTHY GRAMA



PNCHAYATHWITH RESPECT TO THE CLUB HOUSE INCLUDED IN THE GRACELAND FOUNDATION PROJECT, WHERE IN PROPERTY TAX WAS REMITTED BY LATE MR.GEORGE KURIAN, PARTNER OF THE APPELLANT FOUNDATION

Annexure A18 TRUE COPY OF THE OCCUPANCY CERTIFICATE DATED 22/05/2017 ISSUED WITH RESPECT TO ALL THE 56 UNITS IN THE PROJECT

RESPONDENTS ANNEXURES :

Annexure.R2(A) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NO.9/213/BE

Annexure.R2(B) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NO.9/213/E

Annexure.R2(C) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NO.9/213/F

Annexure.R2(E) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NO.9/213/BD

Annexure.R2(F) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NO.9/213/U

Annexure.R2(G) TRUE COPY OF OCCUPANCY CERTIFICATE ISSUED BY THE MULANTHURUTHY PANCHAYATH FOR BUILDING NOS.9/213/A1 TO 9/213/A16

Annexure.R2(H) TRUE COPY OF BUILDING PERMIT DATED 02/12/2016 ISSUED BY THE MULANTHURUTHY PANCHAYAT

Annexure.R3(a) TRUE COPY OF THE STATEMENT OBTAINED FROM THE SECRETARY OF THE 3RD RESPONDENT

**APPENDIX OF MSA 7/2023**

PETITIONER'S ANNEXURES :

- Annexure A1 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BEFORE K-RERA ON BEHALF OF THE 1ST RESPONDENT /PROMOTERS OF THE PROJECT IN THE COMPLAINT FILED BEFORE KRERA BY THE APPELLANT
- Annexure A2 TRUE COPY OF BUILDING PERMIT NO. A2-144/3982A016 DATED 02-12-2016, GRANTED BY MULANTHURUTHY PANCHAYATH PRODUCED BEFORE THE APPELLATE TRIBUNAL BY THE APPELLANT
- Annexure A3 TRUE COPY OF THE APPLICATION/LETTER DATED 14TH JANUARY 2020, 38 ADDRESSED TO THE 1ST RESPONDENT BY THE SECRETARY OF THE APPELLANT ASSOCIATION
- Annexure A4 TRUE COPY OF THE REPLY LETTER DATED 20TH JANUARY 2020, ISSUED BY SHRI. JACOB THOMAS, THE PERSON REPRESENTING THE 1ST RESPONDENT HEREIN/ PROMOTERS
- Annexure A5 TRUE COPY OF THE ORDER DATED 12-04-2022 PASSED BY THE KERALA REAL ESTATE APPELLATE TRIBUNAL IN REFA NO. 29 OF 2022 FILED BY THE PROMOTERS ,1ST RESPONDENT
- Annexure A6 TRUE COPY OF THE APPEAL, REFA NO.47 OF 2022, FILED BY THE 47-92 PROMOTERS THE 1ST RESPONDENT

RESPONDENTS' ANNEXURES : NIL