

by post on 10/11/2020

To,
Mr. Nilesch Sharma,
Resolution Professional,
Dream Procon Private Limited
D-54, 1st Floor, Defence Colony,
New Delhi- 110024

NOIDA/GH/3866, date: 06.11.2020

Sub: Regarding Representation dated 23.10.2020 on behalf of RP of Dream Procon Pvt Ltd in terms of order dated 21.10.2020 passed by Hon'ble NCLT.

Sir,

Please take reference of your representation dated 23.10.2020 sent through email which enumerates that the Corporate Debtor is developing/ erecting a housing project in the name of 'Victory Ace' on area of 6,00,000 sq. ft. of FSI which has been carved out of the total area of plot no. GH-02, Sector 143, Noida admeasuring 1,00,080.98 sq. mtrs. allotted and leased by Noida to Logix City Developers Pvt. Ltd. Based on a JDA (Joint Development Agreement) dated 8.3.2013 between Logix City Developers Pvt. Ltd. and the Corporate Debtor, to which New Okhla Industrial Development Authority (hereinafter referred to as "**NOIDA**") is not a party, the rights to undertake the development, marketing and sale of 6,00,000 sq ft FSI over the land leased by Noida to Logix was transferred by Logix to the Corporate Debtor. Certain clauses of the said JDA have been reproduced in your



representation and based on those clauses you have made a request to NOIDA to participate in the CIRP of the Corporate Debtor.

The facts which are necessary to be mentioned while deciding the present representation are as under:-

1. NOIDA allotted Plot no. GH-02, Sector 143, Noida and a registered lease-deed was executed on 08.06.2011 in favour of M/s Logix City Developers Pvt. Ltd. for an area of 1,00,080.98 sq. mtrs. for a period of 90 years commencing from 08.06.2011. The said lease was registered at Bahi No.1, zild no. 2537, pages 251-286 at S.no. 4971 dated 08.06.2011 with the office of Sub-Registrar-I, Noida. The lease-deed between the Lessor Noida and the Lessee M/s Logix City Developers Pvt. Ltd forms the legal and mutually agreed basis of all the transactions to be carried out regarding the leased plot.

2. The allottee lessee vide his request letter dated 18.11.2017 made a request to the NOIDA Authority to sub-divide the said plot between the allottee and its subsidiaries. The said request was approved by the competent authority and the sub-division was done as follows:

- a. GH-02/ 143 in favour of M/s Logix City Developers Pvt. Ltd.,
area 73,633.98 sq. mtrs.



- b. GH-02A/ 143 in favour of M/s Docile Buildtech Pvt. Ltd., area 13,961 sq. mtrs. The sub-lease of the said sub-divided plot has already been registered on 30.10.2018.
- c. GH-02B/ 143 in favour of M/s Arable Builders Pvt. Ltd., area 12,486 sq. mtrs. The said subsidiary has failed in getting the sub-lease deed executed, therefore a final letter has been issued to the allottee on 03.11.2020 complying with the conditions within 15 days of issuance of the letter otherwise the said grant of permission for sub-division shall be treated as cancelled and the sub-divided area shall be treated as the part of the original plot allotted to the Logix.

3. The lease-deed defines and mentions the rights, liabilities, compliances, etc of the Lessor and the Lessee. Some of the relevant portions of the lease-deed executed between Noida and M/s Logix City Developers Pvt. Ltd. are-

“EXECUTION OF SUB LEASE DEED

- 1. After the approval of the lay-out plan of the Lessor, the lessee shall have the option to sub-lease portions of land earmarked for group housing, subject to minimum plot size of 10,000 sq. mtrs. and adherence to the planning norms of the Lessor, after prior approval from the Lessor.*
- 2. The Lessee shall sub-lease an area only once the area development work such as internal-roads, sewerage, drainage, culverts, water-supply, electricity distribution/*



transmission lines, street-lighting, etc in that area is in progress.

3. The Lessee shall have to execute the sub-lease deed in favour of the Sub Lessee in the form and format as prescribed by the Lessor.
4. On execution of such sub-lease deed(s), the sub-lessee(s) will be bound to comply with the provisions of payment of proportionate share of the lease premium, lease rent and all other charges payable to the Lessor in the proportionate share of the land area so sub-leased. Any default on the part of such sub-lessee to fully implement the terms and conditions of the lease deed/ sub-lease deed/ scheme shall not be automatically considered as a default of Lessee. The Lessor shall be entitled to take any action against the sub-lessee as well, including cancellation of the sub-lease and forfeiture of the premium etc. as per the terms and conditions of brochure of the scheme.
5. The Lessee/ sub-lessee(s) shall have to fulfil the following conditions before the execution of the sub-lease(s) of the flats in favour of the individual allottee(s):
 - i. Lessee/ sub-lessee(s) shall submit the temporary occupancy (completion) certificate/ occupancy (completion) certification of the constructed flats on the allotted plot from the building cell of the this as mentioned in clause- CONSTRUCTION of this document.
 - ii. Lessee/ sub-lessee(s) shall submit "No Dues Certificate" in accordance with the payment schedule specified in the lease deed/ sub-lease deed from the accounts department (Residential) of the LESSOR.
 - iii. Rs. 1000/- shall be paid as processing fee in each case of SUB-LEASE in addition to other documents prescribed by the LESSOR.



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TRANSFER OF PLOT

Without obtaining the completion certificate the lessee/ sub-lessee shall have the right to sub-divide the allotted plot into suitable smaller plots as per the planning norms of the LESSOR and to transfer the same to the interested parties with the prior approval of the LESSOR on payment of transfer charges and policy prevailing on the date of transfer. However, the area of each of such sub-divided plot should not be less than 10,000 sq. mtrs. However, individual flat will be transferable with prior approval of the LESSOR as per the following conditions:-

- (i) The dues of the LESSOR towards the cost of the land shall be paid in accordance with the payment schedule specified in the Lease Deed/ sub-lease deed before executing of sub-lease deed of the flat
- (ii) The lease deed/ sub-lease deed has been duly executed.
- (iii) Transfer of the flat will be allowed only after obtaining the temporary occupancy/ completion certificate for the respective phase by the Lessee/ sub-lessee.
- (iv) The sub-lessee of the individual flat undertakes to put to use the premises for the residential use only.
- (v) First sale of the flat to an individual allottee shall be through a sub-lease/ lease deed to be executed on the request of the lessee/ sub-lessee to the LESSOR in writing. No transfer charges will be payable in case of first sale. However, on subsequent sale, transfer charges shall be applicable on the prevailing rates as fixed by the LESSOR.
- (vi) Rs. 1000/- shall be paid as the processing fee in each case of sale of flat in addition to the applicable transfer charges.



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CANCELLATION OF LEASE DEED

In addition to the other specific clauses relating to cancellation, the LESSOR will be free to exercise its right of cancellation of allotment/ lease/ sub-lease in the case of:-

- 1. Allotment being obtained through misrepresentation/suppression of material facts, misstatement and/or fraud.*
- 2. Any violation of directions issued or rules and regulation framed by any authority or by any statutory body.*
- 3. Default on the part of the lessee/ sub-lessee for breach/violation of the terms and conditions of the registration/allotment/lease/sub-lease and/or non-deposit of allotment amount.*
- 4. If at the same time of such cancellation, the plot is occupied by the Lessee/sub-lessee, the amount equivalent to 25% of the total premium of the plot shall be forfeited and possession of the plot will be resumed by the LESSOR with structure(s) thereon, if any, and the lessee/sub-lessee will have no right to claim any compensation thereof. The balance, if any, shall be refunded without any interest and no separate notice shall be given in this regard.*
- 5. If the allotment is cancelled on the ground mentioned in para 1 above, the entire amount deposited by the lessee/sub-lessee, till the date of cancellation shall be forfeited by the LESSOR and no claim whatsoever shall be entertained in this regard.*

OTHER CLAUSES

- 1. ...*



12. *The Lessee/ sub-lessee shall not be allowed change his role, otherwise the Lease/ sub-lease shall be cancelled and entire money deposited shall be forfeited.*

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At the outset, it must be affirmed that the said JDA dated 8.3.2013 between Logix City Developers Pvt. Ltd. and the Corporate Debtor, which was executed in concealment from the Lessor NOIDA and to which the Lessor NOIDA is not a party, is barred by the provisions of the lease deed and hence is *non est* in law. The clauses of the JDA are in contravention and in utter disregard to the provisions of the lease-deed and have been entered into with a mala-fide and fraudulent intention to defraud public money. Any carving out of land without the explicit consent of the Lessor NOIDA is frivolous and mischievous. It is for the first time that the said JDA has come to the knowledge of the NOIDA by way of the present representation.

It is further to be mentioned that the NOIDA does not recognize Corporate Debtor as it is neither the Lessee nor the sub-lessee of the allotted plot. The JDA illegally seeks to transcend and change the basic framework and the legal position of the original lease-deed, which is the only valid legal and agreed upon framework between the lessor and the Lessee. The JDA cannot bind the NOIDA or the terms of the lease.

Further, it is to be clarified that all approvals, occupancy/ completion certificates can be obtained only by the legally recognised lessee/ sub-



lessees. The rights granted to the lessee could not have been divided, bartered or sold as has been done in the present JDA. No transactions with regard to the leased property could have been entered into without due permission and explicit consent of NOIDA.

On the perusal of the provisions of the JDA, it is evident that there is explicit selling of land under the garb of the said agreement without any authorisation of NOIDA. The Joint Development Agreement dated 08.03.2013 which was entered into between Logix City Developers Pvt. Ltd. and the Corporate Debtor has various clauses which are in gross violation of the terms and conditions of the lease deed.

The corporate debtor cannot be said to be in a legal possession of the property as the development agreement it entered into with Logix City Developers Pvt. Ltd. was *non est* in law. Since JDA is *non est* in law, all the agreements which have been entered into on the basis of such a JDA are *void ab initio*. It is needless to mention here that the NOIDA reserves its rights to avail any remedies as available to it under law.

It is therefore requested that since the corporate debtor has no legal rights in the present property, therefore the same cannot be included / regarded as the asset of the Corporate Debtor. Further, NOIDA has no contractual relationship with the Corporate Debtor and thereby is not a creditor of the Corporate Debtor, therefore, the question of participation of NOIDA in the CIRP of the Corporate Debtor as a Creditor does not arise.

