IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No. 07
New IA-767/2021
In
IB-1771(ND)/2018

IN THE MATTER OF:
Ms. Priyanshi Arora ....FINANCIAL CREDITOR
Vs.
M/s. Dream Procon Pvt. Ltd. ....RESPONDENT

SECTION
U/s 7 IBC code 2016 **Order delivered on 22.02.2021**

CORAM:
CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:
For the Noida Auhtority : Mr. Rachit Mittal, Advocate
For the Intervener/RP : Mr. Milan SIngh Negi, Advocate for RP

ORDER

IA-767/2021:-

Matter called. No representation on behalf of the Applicant. Counsel for the Resolution Professional is present. Matter stands adjourned for the presence of the Applicant.

List the matter on 19th April, 2021.

-Sd-
(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

-Sd-
(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

Mamta
Court-III

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, DELHI

BENCH III

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IA-3022/2020
In
IB -1771/ND/2018

Application under Section and 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

-

In the matter of

Priyanshi Arora ... Financial Creditor

Versus

Dream Procon Pvt. Ltd. ... Corporate Debtor

In The Matter of:

Mansi Brar ...Applicant

Order delivered on 22nd of February, 2021

CORAM:

CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

For Applicant: *Mr. Sunil Fernandes*, Mr. Darpan Sachdeva, Mr. *Prastut Dalvi, Mr. Shubham Sharma (Adovates)*.
For Intervener/RP: Mr. Milan Negi, (RP)

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ORDER

(Through Video Conferencing)

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. Under consideration is Application IA-3022/ND/2020 filed under Section 60 (5) of the Insolvency and Bankruptcy Code. 2016 (hereinafter referred as "IBC, 2016") read with Rule 11 of the NCLT Rules, by the Financial Creditor/Homebuyer (hereinafter referred as "Applicant") seeking certain directions and challenging certain decisions taken by the Resolution Professional, Mr. Nilesh Sharma ("RP") in the course of the CIRP initiated against the CD vide order of admission dated 06.09.2019 passed by this authority. The prayer sought by the applicant are as follows: -

A. Direct the Resolution Professional to place all the flats of the Applicant in Annexure B (i.e., transfer Unit Nos. C1 - 1102, C1 – 1201 and A1 - 705 from Annexure C to Annexure B) so that all six units of the Applicant (A2 - 101, A2 - 302, D1 - 1701, C1 - 1102, Cl - 12O1 and A1 - 705) are in Annexure B;

B. Direct the Resolution Professional to issue a clarification to Prospective Resolution Applicants that six completed apartment units (A2 - 101, A2 - 302, D1 - 1701, C1 - 1102, C1 - 1201 and A1 - 705) have to be provided to the Applicant without payment of any further consideration;

C. Direct the Resolution Professional to Withdraw the aggregate demand of Rs. 60,00,000 qua flat nos. A2-101, A2-302 and D1-1701 contained in the "summary of Receivables" issued by the Resolution Professional vide E-Mail dated 29.06.2020;

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D. Direct the Resolution Professional to initiate appropriate criminal proceedings against the officers/promoters/directors of the CD for committing fraud on the Applicant by indulging in double sale of apartment units;

E. Direct the Resolution Professional to make all consequential and necessary changes in the Evaluation Matrix and the Information Memorandum and or any other documents, which may be necessary to give effect to foregoing prayers;

2. The facts that compelled the applicant to file the present application are as follows: -

i. The CD and the Applicant entered into Two (2) similar Agreements/Memorandum of Understanding ("MoU") dated 20.04.2016 and 31.05.2016 for purchase of Six (6) apartment units in the Residential Project undertaken by the CD, "Victory Ace", at Plot No. GH-02, Sector 143, Noida, Uttar Pradesh. Those six units were namely- A2-101, A2-302, D1-1701, A1-705, C1-1102 and C1-1201. The purchase made was based on the assurances, guarantees and representations of the CD that the apartment units will be delivered on time without any encumbrances whatsoever. However, the CD failed to deliver the developed units on time or refund the amount paid by the Applicant. The claim of the Applicant, as admitted by the Resolution Professional, for the aforesaid 6 apartments is Rs. 2,04 88,767/- (Rupees Two Crore

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Four Lacs Eighty Eight Thousand Seven Hundred and Sixty Seven Only) under the category of Financial Creditor - "Homebuyer".

ii. The applicant is aggrieved from categorisation of the Homebuyers in two separate lists viz- Annexure B and C. It is submitted that the RP has grievously erred in failing to place all 6 units of the applicant in Annexure B rather than place 3 units in annexure B and 3 units in annexure C. The RP in his email to all creditors dated 20.06.2020 has for the first time segregated all homebuyers into two categories: **Annexure B-** Homebuyers (First Sale)- 345 units and **Annexure C-** Homebuyers having builder buyer in their favour in respect of units already allotted to Homebuyers in Annexure B previously (second sale)- 73 Units. It is further submitted that 3 units of the applicant namely, A2-101, A2-302 and D1-1701 find mention in Annexure B and rest three units namely, A1-705, C1-1102 and C1-1201 were placed in Annexure C.

iii. It is averred that the RP is wrong on facts as well as Law in seeking to make the aforesaid classification qua the Applicant herein. By virtue of the classification into Annexure B and C, the RP in effect seeks to nullify and void the valid, duly acknowledged, subsisting and binding agreements that are in force and executed

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between the applicant and the CD. The RP has no power to do so. He is virtually acting as a civil court and seeks to pass a declaratory decree against valid agreements, which is impermissible in law. The above classification is bad in law for being discriminatory and against the mandate of the I & B Code, 2016. The RP has to function within the parameters and four corners of the IBC. He cannot act as per his personal whims and fancies or personal subjective likes and

Dislikes. He is bound by all valid and subsisting agreements of the CD with the Applicant and cannot seek to exempt himself or operate in a manner in derogation or in breach of the valid subsisting agreements. Moreover, there is no qualitative difference between the claims of Homebuyers in Annexure B and C.

iv. It is further averred that the Applicant is a bona fide purchaser, for full and final consideration qua the 6 units. The Attention of this Hon'ble Tribunal is invited to the relevant clauses of the two MoUs. The Applicant initially paid an amount of Rs. 40 lacs towards the 3 units in MoU dated 20.04.2016/Annexure B and 40 Lacs towards the three units which are part of the MoU dated 31.05.2016/Annexure C of the List of Creditors. The CD had an option to "buyback" the said 6 units by paying the Applicant an

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amount of Rs. 2 Crores towards the 6 units. In furtherance to the intention to execute the buyback, the CD also gave the cheques for the full consideration amount. The buyback amount represents the entire sale consideration of the 6 units and after the buyback trigger date, no amount was due or payable by the Applicant herein to the CD and that the buyback amount represents the entire value of the sale consideration of the six flats that the Applicant was lawfully entitled to. On this ground, the Categorisation of the Applicant's claim of 6 units, which are subject matter of two identical MoUs and payments, cannot be made in two separate categories by the RP.

v. It is further averred that the Applicant has not acquired rights in the 3 units subject matter of Annexure C via a "second sale" or as a "subsequent purchaser". The Applicant has independent clear crystallised rights qua all 6 units. The Applicant's rights cannot be made subservient to anyone else's in the present facts and circumstances.

vi. It is submitted that the Applicant had no notice whatsoever of any previous sale made by the CD in respect of 3 units which are a part of Annexure C. The Applicant is a victim of fraud, forgery and cheating for which the Applicant expressly reserves her right to

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take recourse to such legal remedies as available under law. The Applicant cannot be put to a 'double jeopardy' of not only being cheated and defrauded but also finding a part of legitimate and lawfully subsisting claims, also acknowledged by the Resolution Professional, relegated to Annexure C. That the above circumstance points only towards wrong doing, fraud and malfeasance committed by the suspended officers of the CD whereas such Homebuyers are only hapless victims. In fact, the RP is under duty to launch appropriate criminal proceedings against the officers of the CD for committing fraud and other offences.

vii. It is further submitted that the illegal classification made by the RP seems to suggest as if the Homebuyers figuring in Annexure C are not entitled to an apartment unit or monetary compensation or to be treated in the same manner as those in Annexure B, in the Project, as and when completed or as an when there is a successful Resolution Plan by a successful Resolution Applicant. When all Homebuyers have made similar payments on similar terms (the Applicant in fact having paid full consideration unlike certain Homebuyers even in Annexure B), any further classification

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in two sets is disingenuous and causes great prejudice to the Applicant.

viii. The applicant also quoted the judgment of the Principal bench namely, **Mansi Brar Fernandes vs Gayatri Infra Planner Pvt. Ltd. (CP/IB/752/PB/2019).** In this order the claim of the Applicant has been upheld on the similar facts.

ix. Another grievance of the applicant is with respect to the evaluation matrix floated by the RP, which states that the prospective resolution applicants have to treat the "Homebuyers" in Annexure C as unsecured financial creditors, and may only be refunded their dues with interest. The treatment of the Applicant as a "Homebuyer" in Annexure C /Second Sale is highly discriminatory and encourages; prospective resolution applicants to file plans with only the possibility of receiving pittance in lieu of their invested hard-earned monies and the Resolution Professional has even precluded them from being adjusted in the unsold inventory. Evaluation Matrix reserves a maximum of 30 points for Homebuyers in Annexure B, while treatment of homebuyers in Annexure C can secure a maximum of 10 points only, laying bare the gross discrimination between the two classes. All proposed Resolution Plans will be adjudged as per the Evaluation Matrix.

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x. It is submitted that the applicant is called upon to make payments of sums vide email dated 29.06.2020 that stand already paid. In the List 3 the amount allegedly still payable by the applicant to the CD aggregates to Rs. 60,00,000/- for the Three Annexure B units (namely A2-101, A-302 and D1-1701). The said impugned statement/summary is wholly erroneous and illegal on the ground that the said statement of fact goes absolutely contrary to the monetary amount of claim admitted by the office of the IRP and RP. Moreover, the monetary amount of the claim admitted (in List of Creditors issued on various dates and including the Information Memorandum updated up to 20.04.2020) is Rs. 2,04,89,767 in respect of six (6) apartment units, namely - A2-101, A2-302, D1-1701, A1-705, C1-1102 and C1-1201. Therefore, the admitted claim amount (inclusive of interest) in respect of the three flats now in List 3 will be Rs. 1,02,44,384. The total sale consideration for the said three flats is Rs. 1,00,00,000.

xi. It is averred that the Applicant has been presented with the said "receivables" for the first time, based on alleged internal computations of a Company, which has demonstrably indulged in various malpractices, fraud and cheating. The list also pertains to “Non-Allottees” and the Applicant fails to understand how she can

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be categorized as such. Furthermore, it is pertinent to note that the classification now sought to be drawn up by the Resolution Professional is unknown to Insolvency law and does not find any basis in the Insolvency and Bankruptcy code, 2016 wherein "allottees under a real estate project", as a single class, have been regarded as financial creditors vide Explanation to Section 5(8)(f).

xii. The applicant placed its reliance on Hon'ble NCLAT judgment namely, **Binani Industries Ltd. & Ors. Vs. Bank of Baroda & Ors. (14.11.2018)**. It was held by the Appellate authority that creditors comprising a single class have to be treated equally and any resolution plan discriminating against similarly placed creditors is liable to fail.

xiii. The applicant wrote email dated 01.07.2020 to resolution professional with respect to the grievance and also met the RP through counsel, however, there is no response from the side of the RP, hence, the applicant left with only one recourse and that is to approach this Tribunal.

3. The Resolution Professional filed *reply* in response to the application and argued the following points:-

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i. It is submitted by the RP that during the CIR process, on verification based on *additional information* it was found by the RP that large numbers of flats were agreed to be sold by the Corporate Debtor/ its promoters to more than one buyer. In effect, the same flat was sold to two homebuyers on different dates, in fact in some cases, the same flat was even sold to a third homebuyer. In view of such circumstances, it was incumbent upon the RP to look into the fact that the interest of the homebuyers/financial creditors of the first sale was different from those to whom the same flat was subsequently sold. Being so, the RP verified/revised the claims and an updated list of creditors based on the information received up to 17.06.2020 was made on 19.06.2020. The said list was based on recognition of a new class of financial creditors i.e., those had builder buyer agreement with the corporate debtor in respect of flats, which had already been sold earlier.

ii. It is further submitted that after verification, the list was again updated on 07.09.2020 and the claim of the applicant was admitted to the tune of 81,87,591.00. The said revision is not reduction of the admitted amount, rather it is open for the

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Applicant/financial creditor to place on record further information and record to substantiate its claim.

iii. It is submitted that the Financial Creditors of Subsequent Sale had although made payment/part-payments towards purchase of a Flat, however there was already a Builder Buyer Agreement/ Allotment Letter/ Receipt / MOU in respect of the same flat, whereby the same flat was earlier allotted to a Financial Creditor / Homebuyer. Being so, there are two set of Claimants / Financial Creditors for the same flat / unit, this demonstrates that the interests of these two sets of Financial Creditors shall be *diverse.* Being so, these two classes of Financial Creditors / Homebuyers has been created so as to enable the respective class to cast its vote keeping in view their own interest. This ensures just and reasonable treatment to each class of Financial Creditor. Furthermore, the same flat cannot be earmarked for the two buyers, therefore, the interest and right of the homebuyers (first sale) and the homebuyers (subsequent sale) shall vary and therefore there was a requirement for creating a different class.

iv. The applicant prayed for the transfer of three units from annexure C (subsequent sale) to annexure B (first sale). It is submitted by the RP that this prayer is highly untenable as these

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units are the ones which have been already sold/allotted to some other financial creditors/homebuyers prior to the sale/allotment to the applicant. Moreover, in case the financial creditors' homebuyers of subsequent sale are merged with the first sale, there shall be certain financial creditors/homebuyers claiming the same flat/unit as contractual buyers. This shall lead to chaos in the insolvency resolution process of the corporate debtor.

v. Another relief sought by the applicant is to provide the six complete apartments/units without payment of any further consideration. In response to this it is submitted by the RP that as per MoUs (dated 20.04.2016, 20.04.2017 and 20.04.2018) and MoUs (dated 31.05.2016, 20.06.2017 and 20.06.2018), the sale consideration in each MOU is Rupees One Crore. Being so, the total amount payable by the Applicant to the Corporate Debtor was Rupees Two Crores for purchase of the aforesaid six flats. Admittedly, the said MoUs record that the payment of Rupees Forty Lakh each, working out to Rupees Eighty Lakh has been made by the Applicant. The said fact is duly acknowledged and admitted by the Applicant in the instant application. Therefore, it becomes clear and beyond doubt that only part payments have been made by the Applicant qua purchase / allotment of the said

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aforesaid flats. Therefore, the plea/question of non-payment of the balance amount, as may be applicable, does not arise in the first place.

vi. It is averred that the Applicant has however referred to the option of buy-back available to the Corporate Debtor under the respective MOUs and has attempted to establish that the buy-back amount in each case was Rupees One Crore, working out to a total of Rupees Two Crores, for which post-dated cheques were also issued by the Corporate Debtor to the Applicant and therefore the consideration of Rupees Two Crores ought to be considered to have been paid by the Applicant. Such submission is primarily ill founded and not maintainable because the Resolution Professional's rights and duties are limited to the collating and verifying the claim, the Resolution Professional in no manner can decide or consider that the entire amount of Rupees two Crores has been paid, when the amount has never been received by the Corporate. It must be noted that the RP is duty bound to be fair and impartial, when the amount has not been received by the corporate debtor, there arises no occasion to deem that the amounts have been received.

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vii. It is further averred that mere dishonour of the cheques Issued by the Corporate Debtor towards buy-back of the said flats shall not entitle the Applicant to not pay the remaining payment towards purchase / allotment of the said flat, especially when the Corporate Debtor is undergoing CIRP due to lack of funds. Even otherwise, the Resolution Professional is not the appropriate authority to consider the buy back and dishonour of cheques in a manner to forgo the payment of remaining consideration, especially when the Corporate Debtor is running short of funds and all the stakeholders are in efforts for a meaningful and successful resolution of the same.

viii. It is submitted that as far as contention for initiation of criminal proceedings against the officers/promoters/ directors is concerned, the Resolution Professional shall take appropriate steps as per the law. The applicant is also not barred by law to institute the criminal proceeding against the said persons.

4. The applicant also filed the *rejoinder* in response to the reply filed by the RP and following contentions raised: -

i. It is submitted that the RP is totally misconceived when he says that the CD has received only part-payment. The RP is bound by all the contracts and agreements already signed by the CD as RP

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stands in the shoes of the CD and CD has acknowledged and accepted the liability towards the Applicant. Furthermore, the RP cannot 'cherry-pick' the clauses of the MoU as per his convenience. For instance, accepting clause 4 of MoUs regarding the payment and ignoring the clause 5 of MoUs which lays down the Buy-Back scheme. Moreover, after the date on which the Buy-Back was triggered, nothing was due and payable by the applicant to the CD. The Financial Creditor is entitled to receive his flats or monetary compensation and/or voting rights similar to those home-buyers in Annexure-B. No discrimination is permissible.

ii. It is further submitted that the 'Summary of Receivables' prepared by the RP is egregiously wrong and deserves to be set aside. The RP has impermissibly contradicted himself. He inexplicably downgraded the claims of the Applicant on 07.09.2020. The RP had initially admitted the Applicant's claim to the extent of Rs. 2,04,88,767/- in the List of Creditors dated 20.04.2020, List of Creditors updated up to 17.06.2020 and the Information Memorandum dated 20.04.2020. Shockingly, no justifiable cause or reason is given by the RP to reduce the amount of admitted claim to Rs. 81,87,591/- on 07.09.2020, after that the instant Application was filed on 20.07.2020. The

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reasonable inference one can draw is that the RP has acted out of *mala-fides* and vindictiveness, thereby disentitling himself to continue as the RP. The basis of raising a demand for the first time in the "Summary of Receivables" is not clear/supplied.

iii. It is averred that the Applicant has at every turn disclosed to the RP that the amount actually paid to the CD is Rs. 80,00,000/- under the 2 MoUs. The Applicant had never claimed to have paid an amount of Rs. 2,00,00,000/- to the CD. Therefore, the downgrade dated 07.09.2020 to the monetary admitted claim of the Applicant is a clear counterblast by the RP to the instant Application dated 20.07.2020 filed by the Applicant. The RP has reviewed his own Order accepting the monetary claim of the Applicant at Rs. 2,04,88,767/-. The aforesaid would clearly indicate that the downgrade made by the RP is due to an alleged "change of opinion" which is impermissible under law to say the least, or is actuated by malice and ulterior motives which appears to be the case.

iv. It is further averred that the RP errs grievously in applying this nomenclature "Second/Subsequent Sale". It is pertinent to note that the Applicant does not derive its right, title or interest in the said 3 Flats via Shri Sahil Dhawan [Flat C1 — 1102], Shri Shankar

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Lal Singhania [Flat C1 — 1201] and Shri Amit Garg [AI — 705] — the so-called allottees of the said flats prior to the Applicant herein. There is no transaction or connection between the Applicant and the aforementioned individuals. The only transaction that the Applicant had is with the CD, this payment later crystallised/matured into full payment in terms of Clauses 8 and 14 of the MoUs when the CD failed to exercise the buy-back clauses.

v. It is submitted that the RP, though acknowledges receipt of money from the Applicant and also acknowledges that Applicant is a Financial Creditor in terms of Section 5(8) of the Code, yet has placed the Applicant in Annexure C sub-class which hardly enjoys voting rights equivalent to the so-called "First Buyers", which is illegal and impermissible. The Applicant, by virtue of carving out of Annexure C will stand severely prejudiced in any prospective Resolution Plan.

vi. It is further submitted that there are enough Vacant Flats in the inventory where the applicant can be adjusted as according to RP no claim has been filed till 17.06.2020 against 172 flats. The last date to file the claims before the IRP was 24.10.2019. If the RP has not received claims against 135 units at such an advanced stage of the CIRP (7 Prospective Resolutions Applicants have

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been shortlisted and are in the process of submitting their Resolution Plans), it is safe to assume that the said 'homebuyers' are only proxies of the suspended Directors/Promoters propped up to corner a share in the completed Project. The RP ought to close the Claims process and consider the above flats to be unsold inventory subject to genuine homebuyers moving this Hon'ble Tribunal and obtaining necessary Orders.

vii. It is humbly submitted by the applicant that it is not insisting on the same 3 flats which have been allegedly allotted to someone else prior in time. Subject to satisfaction, based on a comprehensive due diligence, the RP can allot alternative flats from the unsold inventory of equivalent location and size to the Applicant. Alternatively, the RP ought to treat the applicant on the same footing and give the applicant entitlement to the same amount (in case monetary refund).

viii. The applicant also referred to the relevant para of Hon'ble NCLAT judgment namely, **Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd through IRP & Ors.** The relevant para is as follows:

> ***"22. Further, a 'secured creditor' such as 'financial institutions/ banks' cannot provide with the asset (flat/apartment) by preference over the allottees***

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(unsecured financial creditors) for whom the project has been approved. Their claims are to be satisfied by providing the flat/apartment. *While satisfying the allottees, one or other allottee may agree to opt for another flat/apartment or one tower if not allotted to any other. In such case their agreements can be modified by the interim resolution professional/resolution professional with the counter signature of the promoter and the allottees, so that the allottees (financial creditors), who are on rent or paying interest to banks may like to get earlier possession and are relieved from paying rent or interest to banks."*

ix. It is further submitted that the RP is duty bound to interpret the transaction between the Applicant and the CD and cannot choose to not exercise jurisdiction as conferred by the Code, whenever convenient. The Regulations clearly lay down the law on verification of claims filed by creditors by the RP. Rule 8A (2) pertains to creditors in a class and excerpted hereinunder for reference: -

"(2) the existence of debt due to a creditor in a class may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents, including any-

(i) agreement for sale;

(ii) letter of allotment;

(iii) receipt of payment made; or

(iv) such other document, evidencing existence of debt"

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It is submitted that the RP is required to conduct a comprehensive enquiry and only verify the claims. Once the amounts are received and contract clauses are clear, then RP is bound by it and cannot deviate from it. Hence, on the above-mentioned grounds prayed for allowing the prayers sought.

FINDINGS: -

5. The first relief sought by the applicant is to place the units mentioned in the Annexure C (namely, C1 - 1102, C1 – 1201 and A1 – 705) in Annexure B. We have gone through the submissions made by the respective counsels. The Annexure B consist of the Financial Creditors that were allotted the fresh apartments/units and in the Annexure C those Financial Creditor/Homebuyers are placed, who were allotted the same units at the subsequent sale. In other words, the apartment was sold earlier to some other person. The purpose of such segregation is to ensure just and reasonable treatment to each class of Financial Creditor, the same flat cannot be earmarked for the two buyers, because the interest and right of the homebuyers (first sale) and the homebuyers (subsequent sale) shall vary, due to which it was required to create different class to allot the voting rights correctly, so that the CIR process goes smoothly. Thus, we have verified from the record and found that the Units namely, C1 - 1102, C1 – 1201 and A1 – 705 were already sold

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to someone prior to the allotment of the said Units to the Applicant. Therefore, the RP has rightly made the Annexure B and C for Financial Creditors/Homebuyers. This is in consonance with the well-known proposition of law that like should be treated alike, not the unlike should be treated alike.

6. Another Relief sought by the Applicant is to provide all the units without any further payment or admit an amount equal to the cost of the Units/Apartments. From the records and Book of Account of the Corporate Debtor it was found that the Applicant has paid only an amount of Rs. 80 lakhs against the six units/Apartments, hence, the RP has rightly admitted the claim of the applicant which is based on Books of Account of the CD. Therefore, balance amount has be paid by the applicant, as was agreed in the initial agreement, which he did not pay. Further, the plea of buy-back taken by the applicant has no legal basis, because the applicant has never paid the full consideration, so the first agreement was never concluded. Therefore, the plea of buy back is primarily ill founded and not maintainable because the Resolution Professional's rights and duties are limited to the collating and verifying the claim, the Resolution Professional in no manner can decide or consider that the entire amount of Rupees two Crores has been paid, when the amount has never been received by the Corporate. It must be

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noted that the RP is duty bound to be fair and impartial, when the amount has not been received by the corporate debtor, there arises no occasion to deem that the amounts have been received.

7. As far as the relief regarding the direction to RP to initiate criminal proceedings against the officers of CD for committing fraud is concerned, the Applicant is at liberty to file the appropriate application before the concerned police authorities.

8. In view of the observation made above, the application is devoid of merits and stands rejected. However, there is no order for payment of costs.

9. The order is pronounced through video conferencing.

— Sd —

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

— Sd —

(CH. MOHD SHARIEF TAR0IQ)
MEMBER (JUDICIAL)

Court-III
22.2.2021