

N THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 1396/MB/2020

Under Section 7 of the I&B Code, 2016

*In the matter of*

Mr. Anup Jain & Ors.

11, Keshav Nagar near Jain Temple,

Udaipur, Rajasthan- 313001

.... Petitioner

vs.

M/s. Udaipur Entertainment World  
Private Limited

Shop No. 13, Mrud Kishore building,

near Dattapada Subway, opposite S.

V. Road, Borivali (E), Mumbai- 400092

.... Corporate Debtor

Order Pronounced on: 16.04.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Vikram Nankani, Adv. Prachi Wazalwar

For the Corporate Debtor: Adv. Madan Godse

*Per: Suchitra Kanuparthi, Member (Judicial)*

ORDER

1. Mr. Anup Jain & Ors. (hereinafter called 'Petitioners') has sought the Corporate Insolvency Resolution Process of M/s. Udaipur Entertainment World Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 34,76,19,780/- as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioners submits that the Petitioner No. 1, i.e., Mr. Anup Jain and the Corporate Debtor entered into an 'Agreement to Sell' dated 19.12.2012 wherein the Petitioner paid a sum of ₹32,00,000/- to the Corporate Debtor for buying the flat which was proposed to be delivered within 48 months plus 12 months grace period from the date of execution of this Agreement, subject to the *force majeure* conditions. Pursuant to the said agreement, the Corporate Debtor failed to provide the peaceful possession of the said flat to the Petitioner. There are more than 200 such Petitioners who have not been handed over the possession of the said flats till date. Through this Petition, 25 of such Petitioners have decided to initiate CIRP against the Corporate Debtor under Section 7 of the Code.

3. The Counsel for the Petitioners further submits that previously an application dated 17.05.2018, bearing Complaint Case No. 67/2018, before the Consumer Disputes Redressal Commission, Rajasthan, was preferred by some of the Co-Petitioners herein in which the Hon'ble court declared that "*Sale deed be also executed in favor of the complainant on payment of rest of the sale price. The complainant is also entitled for interest at the rate of 24% p.a. on the paid amount from 12.12.2015 till the possession of the property is handed over to the complainant.*" Even after such order, till date, neither the possession has been handed over nor the monies so invested by such 25 Petitioners to the tune of ₹34,00,00,000/- (approx.) has been returned.

4. The Counsel for the Petitioner submits that in the month of December 2019, a Writ Petition No. 18091/ 2019 was preferred before the Hon'ble Rajasthan High Court, but the Petitioners chose to withdraw it and that they would approach NCLT and hence, this Petition has been filed by

the Petitioners.

5. The Petitioner has annexed the following documents to the Petition in support of his contentions:

- a. Charts containing details of transactions of all Petitioners
- b. Relevant orders of Hon'ble High Court of Rajasthan and Consumer Court
- c. Copy of Agreements
- d. Copy of Allotment Letters
- e. Debt Confirmations issued by the Corporate Debtor

Contentions of the Corporate Debtor:

6. The Counsel for the Corporate Debtor submits that the Corporate Debtor undertook the project at Udaipur to construct multi storied residential tower of group housing flats in the year of 2012. The Corporate Debtor obtained construction permission from UIT Udaipur in September, 2012. Further, the Corporate Debtor obtained sanction of project loan of ₹55 crores and mortgage loan of ₹40 crores for the project in the year of 2013.

7. The Counsel for the Corporate Debtor then submits that in the year 2016, a case was registered by CBI against the husband of shareholder of holding company of the Corporate Debtor and the CBI issued communication dated 20.03.2017 to the Sub-Registrar of Udaipur prohibiting them from registering any to documents in respect of the Project. Due to the communication made by CBI, fresh registration of new flats became impossible and hugely affected the said project of housing flats.

8. In pursuance of the said project, the Corporate Debtor started inviting the proposed buyers to book the flats in the said project. Thereafter, the proposed buyers entered into an Agreement to Sell with

the Corporate Debtor for purchase of the flat/s in the said project. As per the said Agreement to Sell, the Corporate Debtor agreed to give possession of the flats to the buyers within 48 months plus grace period of 12 months from the date of execution of the agreement, subject to *force majeure* conditions. However, due to the many reasons beyond the control of the Corporate Debtor like the registration of the case by CBI; COVID situation in 2020; pendency of matter before the Hon'ble High Court of Rajasthan, the project could not get completed though the Corporate Debtor had arranged for the acquisition of land, obtained permission to construct and got the loans sanctioned for the said project.

9. The Counsel for the Corporate Debtor further submits that as per Clause 25 of the Agreement to Sell, it was mutually agreed between the Petitioners and the Corporate Debtor that the Corporate Debtor shall be entitled for reasonable extension of time for delivery of possession of the flats if the said project is delayed due to any matters, issues relating to approvals, permissions, notices, notifications by the competent authority became subject matter of any suit/ writ. It is further submitted that due to *force majeure* and the construction of the said project became the subject matter of the suit, therefore, the Corporate Debtor was entitled for reasonable extension of time for handing over the possession of the flats. Since the Corporate Debtor is entitled to extension of time for completion of the said project, no amount has become due and payable to Petitioners.

10. It is further submitted that interest was awarded by the Consumer Disputes Redressal Commission of Rajasthan only in one of the matters between one of the Petitioners and the Corporate Debtor. However, no such order was passed in respect of the other Petitioners and therefore, no interest is due or payable by the Corporate Debtor to other Petitioners. The other Petitioners, in the absence of any order, are governed only by the above said Agreement between the Corporate Debtor and Petitioners. Hence, the interest claimed in the present Petition is disputed.

11. The Counsel for the Corporate Debtor submits that the Petition be

dismissed due to the above mentioned facts and the extension of two years be granted to complete the construction and hand over the possession of the flats to the Petitioners.

Rejoinder by Petitioners to the Reply of the Corporate Debtor:

12. The Counsel for the Petitioners submits that the Corporate Debtor was directed by the Hon'ble Consumer Court to handover the possession of the flats within 30 days of such order. The flats were never handed over by the said Corporate Debtor to the Petitioners. Moreover, the Corporate Debtor has not completed the project till date and the premises are uninhabitable. The Corporate Debtor was also directed to pay interest to the tune of 24% on the invested sum and till date, no payments have been received.

13. The Counsel for the Petitioners further submits that the Petitioners have invested monies from 2012 onwards and today, the prices of real estate projects are much higher. Even if the Petitioners are offered monies against their investment, the Petitioners will be in huge losses. If the Corporate Debtor is admitted under CIRP then their prospects of the said project to be taken by a real estate entity who can deliver the flats along with final permissions from civic bodies.

14. It is submitted that the Petitioners had formed a federation (unregistered) for filing Writ Petition before the Hon'ble High Court of Rajasthan. The Hon'ble High Court of Rajasthan has found merit in their Petition and thus, asked the Corporate Debtor to immediately issue debt confirmation notes to all the home buyers. Only after the indulgence of the Hon'ble High Court of Rajasthan, the Corporate Debtor had issued and acknowledged the debts of the home buyers. The Petitioners are hopeful of getting their flats/ homes after successful completion of construction and registry of final sale deeds. The Counsel for the Petitioners thus prays for the admission of the Petition.

Findings:

15. The Bench notes that the Petitioners entered into an 'Agreement to Sell' dated 19.12.2012 with the Corporate Debtor wherein the Petitioners paid a sum of Rs. 32,00,000/- each to the Corporate Debtor for purchasing the flats which were to be delivered within 48 months plus 12 months grace period from the date of execution of this Agreement, subject to the *force majeure* conditions. However, the Corporate Debtor not only failed to hand over the possession of the flats till date but also failed to return the monies invested by the Petitioners to the tune of Rs. 34,76,19,780/-.

16. The relevant clauses of the said Agreement are extracted below:

24. That the SELLER shall, under normal conditions, complete the

Complex, as per the plans designs and specifications seen and accepted by the ALLOTTEE(S) with such additions, alterations, deletions and modifications in the layout and building plans including the number of floors, as the SELLER may consider necessary or may be required by any Competent Authority to be made in them or any of them while sanctioning the building plans or at any time thereafter. The ALLOTTEE(S) agrees that no future consent of the ALLOTTEE(S) shall be required for these purposes. Alterations may be inter-alia involve all or any of the changes in the Complex such as change in position of the Complex, change in its dimensions, change in its area or change in its number or change in the height of the Complex. However, in case of any major alteration / modification resulting in change in the Super Built Up Area of the Demised Premises by 10% either way any time during the construction of said Complex, the SELLER shall intimate to the Applicant in writing the changes thereof. In case, as a result of the above mentioned alternations, there is either a reduction or increase in the Super Built Up Area of the Demised Premises or its location, no claim, monetary or otherwise, will be raised or accepted except that the agreed rate per sq. ft and other charges will be applicable for the revised area i.e., at the same rate at which the Demised Premises was allotted and accordingly, as a consequence of such reduction or increase in Super Built Up Area, the ALLOTTEE(S) shall be entitled to refund without interest only the extra price and other pro-rata charges recovered or shall be liable to pay to the SELLER additional price and other proportionate charges without interest, as the case may be. However, the ALLOTTEE(S) shall be liable to pay interest over the additional price once the period for payment of the same as communicated by the SELLER has expired.

25. That the possession of the Demised Premises is proposed to be delivered by the **SELLER** to the **ALLOTTEE(S)** within 48 months plus 12 months grace period from the date of execution of this Agreement, subject to force majeure conditions. If the completion of the said Complex is delayed by reason of non-availability of steel and / or cement or other building materials, or water supply or electric power or as a result of any legislation, order or rule of regulation made or issued by the Government or any other Authority or if the competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for

the Complex or if any matters, issues relating to such approvals, permissions, notices, notifications by the Competent Authority(ies) became subject matter of any suit / writ before a competent court or due to force majeure conditions such as slow down, strike or due to a dispute with the construction agency employed by the **SELLER**, lock out or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the **SELLER**, the **SELLER** shall be entitled to reasonable extension of time for delivery of possession of the Demised Premises. The **SELLER** as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the **SELLER** so warrant, the **SELLER** may suspend the project for such period as it might consider expedient. In case the **SELLER** is unable to complete the project on account of any law passed by the legislature or any other government agency, in that event the **SELLER** if so advised, shall be entitled to challenge the validity, applicability and / or efficacy of such legislation, rule, order and / or bylaw by instituting appropriate proceedings before court(s), tribunal(s) or authorities. In such situation, the amounts paid by the **ALLOTTEE(S)** shall continue to remain with the **SELLER** and **ALLOTTEE(S)** shall not be entitled to initiate any proceedings against the **SELLER** for delay in execution of the project. It is specifically agreed that this Agreement shall remain in abeyance till final determination of such matters / cases by appropriate court(s) / tribunal(s) / authorities. In case, the **SELLER** succeeds in its challenged to be impugned legislation / rule / order and / or bylaw, in that event, this Agreement shall be revived. In case, the **SELLER** is unsuccessful in its challenge to the impugned legislation / rule / bylaw, or is otherwise unable to deliver the Demised Premises to the **ALLOTTEE(S)**, in that event the **SELLER**, at its sole discretion, shall refund the amount without any interest or compensation and in such reasonable manner, as may be decided by the **SELLER** the amounts paid by the **ALLOTTEE(S)**. The decision of the **SELLER** in this regard shall be final and binding on the **ALLOTTEE(S)**.

17. With the mere reading of the above mentioned clauses, it has



become crystal clear to the Bench that the Corporate Debtor has clearly defaulted in handing over the possession of the flats to the Petitioners within the mentioned period of the said Agreement and also, defaulted in returning the monies of the petitioners when failed to give possession of the flats. The Bench has no hesitation in concluding that there is a debt and that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.

18. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in repaying the financial assistance availed. The order of the Consumer Redressal Forum, Rajasthan, directing the Corporate Debtor to deliver the flats, payment of interest and execution of Sale Deed in favor of Petitioner further confirm the admitted position of debt and default by the Corporate Debtor. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

- (I) (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Neehal Mahamulal Pathan, having office at Plot No. 27, R. S. No. 825, Sahjeevan Parisar, near TPM Church, behind Circuit House, Kolhapur, Maharashtra- 416003; having Registration No. IBBI/IPA-001/IP/P-01561/2018-19/12406 as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

19. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-

Chandra Bhan Singh  
Member (Technical)

Sd/-

Suchitra Kanuparthi  
Member (Judicial)