



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-4171/2021

In

Company Petition No. (IB)-2130(ND) 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

..... Applicant/Operational Creditor

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

..... Respondent/Corporate Debtor

AND

IN THE MATTER OF:-

Mr. Ankur Narang & Others

.....Applicant

Versus

Mr. Nilesh Sharma

Resolution Professional of Today Homes

and Infrastructure Private Limited

.....Respondent No. 1

&

M/s Today Home and Infrastructure Private Limited

Through Resolution Professional Mr. Nilesh Sharma

.....Respondent No. 2

&

Mr. Rajiv Goel (President)

Consortium of Canary Greens Buyers Welfare Association,

Callidora Flat Owners Welfare Association and Royal.

Elegancia Apartment Buyers Association

(Resolution Applicant).

.....Respondent No. 3

Pronounced on 01.08.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Mr. Arun Saxena, Mr. Rahul Singh, Advocates in IA 4171/2021

For the Respondent :



ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by 25 Applicants having similar cause of action. The claim of the Applicants herein is based on an order dated 31.01.2017 passed by the National Consumer Redressal Commission. The Applicants herein are allottees of residential flats in a project, namely Canary Greens, which is being developed in Sector 73 Gurgaon. Each of the Applicants was allotted one residential flat in the said project. Since, the possession of the flats were not offered to them within the stipulated time, the Applicants approached the Consumer Commission by way of filing individual complaints. The NCDRC vide order dated 31.01.2017 disposed of all the complaints with the following directions:-

i. *The opposite party shall refund the entire amount received from the complainants, including the payment, if any, made by the predecessor in interest, including service tax and VAT, along with compensation in the form of simple interest @10% per annum from the date of each payment till the date on which the entire amount, in terms of this order along with compensation in the form of interest is actually refunded to them, by way of demand draft/pay order:*

ii. *The opposite party shall pay Rs. 10000/- as the cost of litigation in each complaint.*

iii. *The payment, in terms of this order shall be made within three months from today.*

Subsequently, the Applicants filed the Execution Petition and received compensation in terms of order dated 31.01.2017 with simple interest @10% from 31.01.2017 till the Insolvency Commencement date of the Corporate Debtor i.e. 31.10.2019. However, it is submitted that the principal amount is yet to be recovered from the Corporate Debtor.

2. The Applicant No. 1, i.e. Mr. Ankur Nanag submitted that the claim in Form CA dated 11.11.2019 was filed for Rs. 63,81,534/- as a Financial Creditor in Class A in respect of CIRP of Respondent No. 2 and the claim was admitted by the RP. The claims of the remaining 24 Applicants were also admitted and details are mentioned in the table below:-

Sr. No.	Name of the Applicants	Claim Admitted by RP
1.	Mr. Achal Sangal	Rs. 49,91,326/-



2.	Mr. Rajesh Kumar Gutpa	Rs. 54,82,873/-
3.	Mr. Ankit Agarwal	Rs. 63,81,513/-
4.	Mr. Rajesh Kumar	Rs. 58,07,596/-
5.	Mr. Bibhuti Ranjan Pradhan	Rs. 43,82,041/-
6.	Mr. Ashish Raizda	Rs. 64,07,859/-
7.	Mr. Adhish Kapoor	Rs. 48,65,724/-
8.	Mr. Satish Kumar Verma	Rs. 64,70,456/-
9.	Mr. Amit Khanna	Rs. 52,80,049/-
10.	Mr. Rajat Mehta	Rs. 63,36,940/-
11.	Smt. Shashi Bala Mehrotra	Rs. 58,10,545.54/-
12.	Mr. Aseem Sachdeva	Rs. 61,99,457/-
13.	Mr. Anand Mohan Tewari	Rs. 52,68,184/-
14.	Ms. Manasi Gupta	Rs. 66,54,193/-
15.	Mr. Pradeep Agrawal	Rs. 49,91,326/-
16.	Ms. Sangeeta Lahoti	Rs. 57,84,809/-
17.	Mr. Vijay Pal Singh Rathore	Rs. 67,07,277/-
18.	Mr. Vipin Aggarwal	Rs. 63,92,453/-
19.	Mr. Sunil Puri	Rs. 60,87,393/-
20.	Ms. Rukmani Gupta	Rs. 63,20,105/-
21.	Mr. Ashish Sethi	Rs. 57,88,322/-
22.	Mr. Tribhawan Nath Bhan	Rs. 62,32,410/-
23.	Ms. Manju Gupta	Rs. 62,32,410-
24.	Mr. Bharat Madan	Rs. 50,42,808/-

3. The Applicant herein have filed the present application broadly seeking two reliefs:-



i. To direct the CoC/RP to consider the objections of Applicants herein and obtain revised/amended Resolution Plan from the Resolution Applicant in compliance with order dated 31.07.2017 passed by Hon'ble NCDRC.

ii. To direct the CoC/RP to notify the Resolution Applicant to amend the detrimental clauses i.e. Clause 9.2.2 B (iii) of the Resolution Plan to secure interest of the Applicants and in compliance with order dated 31.01.2017 passed by Hon'ble NCDRC.

4. The Applicants have submitted that they have filed their claims only for the outstanding/principal amount. The Resolution Plan is not acceptable because the amount of compensation has been deducted from the principal amount and further interest also has been deducted from the principal amount which are the legitimate claims of the Applicant. (Para 21 & 22 of the application).

5. The Resolution Professional/Respondent has filed a reply affidavit to the present application raising various contentions, which are as follows:-

i. The Application is not maintainable because the CoC against whom prayers have been sought for has not been impleaded as a party and therefore, the application should be dismissed as not maintainable on the ground of non-joinder of parties.

ii. The Applicants who are a minority group of Home Buyers have no locus to challenge the Resolution Plan.

iii. The Application has become infructuous because of the reasons that the Resolution Professional has already admitted the claim of the Applicants and thus no cause of action survives.

iv. The Resolution Professional has taken into account the claims of the Applicants in the Resolution Plan and appropriate provision has been made in Clause 9.2.2(B)(iii) of the Resolution Plan.

v. The Resolution Plan once approved by the CoC is not subject to judicial intervention.

6. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional and perused the records. As is evident from the pleadings and submissions made by the Learned Counsel appearing for the Applicant, the claim of the Applicants are based on the order dated 31.01.2017 passed by Hon'ble NCDRC. The Applicants have submitted that they have filed claims before the IRP in Form CA as Financial Creditors in Class A for the amount due as on the date of Insolvency Commencement date. The claims of the



Applicants were provisionally admitted by Mr. Deepak Bansal, IRP. However, Mr. Nilesh Sharma who was subsequently confirmed as the Resolution Professional and replaced Mr. Deepak Bansal was informed by the Applicants vide email dated 21.05.2020 that their claim amount needs to be recalculated and therefore the claims are being shifted provisionally from the admitted category. (Para 9 & 10 of the application).

7. The Resolution Professional informed the Applicants that the interest received by the Applicants on the amount received from the Corporate Debtor for the period from January, 2018 to 31.10.2019 will not be considered. The Resolution Professional sent another email dated 26.05.2020 and asked the Applicants to revise their claims. The Applicants replied stating that the claims have been calculated properly basing on the order passed by the NCDRC.
8. Learned Counsel for the Resolution Professional has raised a preliminary objection as to the maintainability of the application on the ground of non-joinder of parties inasmuch as the CoC has not been arrayed as a party even though reliefs have been claimed against it.
9. With regard to the merits of the matter, Learned Counsel submitted that the Applicants herein are 25 Home Buyers out of a total of approximately 1500 Home Buyers. The total claims of the Home Buyers against the Corporate Debtor amounts to Rs. 1110.20 crores as against the admitted claims of the Applicants which is Rs. 14 crores approximately. Relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of *"Jaypee Kensington Boulevard Apartments Welfare Association and Others Versus NBCC (India) Limited and Others reported in 2021 SCC Online SC 253*, wherein it has been held that the *"divergence views within a class may exist but the vote being only of a class, disentitles any individual members of a class to seek interference of proceedings under the Code."* The Learned Counsel submitted that the Applicants who are merely 25 Home Buyers out of a total class approximately 1500 Home Buyers cannot raise objections to the Resolution Plan, particularly when the Home Buyers as a class have voted in the Resolution Plan submitted by the Respondent No. 3 through their Authorized Representative. The Learned Counsel further submitted that the Resolution Plan has already been approved by the CoC through e-voting which was concluded on 17.08.2021 and was approved with 96.93% majority. Therefore, the Commercial Wisdom of the CoC cannot be questioned and the decision of the majority of Home Buyers in class who were represented through



Authorized Representative in CoC in terms of Section 25A(3)(A) of the Code having voted in favour of the Resolution Plan. Thus, the present Applicants have no locus-standi to question the same. Learned Counsel further submitted that the claims of the Applicants have been duly taken into account in the Resolution Plan and adequate provisions have been made therein.

10. As far as prayer (b) of the application is concerned, it is pertinent to refer to clause 9.2.2 B (iii), which are reproduced as under: -

9.2.2 B

Claim of Financial Creditors in class for project at Sector 73 Gurgaon in the project namely Callidora, Canary and Royal and Project at Sector Omega I, Greater Noida namely Kings Park, for claims where refunds are ordered as per the order of NCRDC/ SCRDC/ RERA/Other Authorities.

(iii)The Hon'ble court/authorities have already ordered for refund and therefore they are not entitled for booked apartment/shops/units and their units will be treated as cancelled. The resolution applicant will settle the admitted claims of such financial creditors in class by refunding the total admitted principal amount paid by them (net of taxes) after deduction of all amounts already refunded/paid to them, Principal amount will not include amount paid towards taxes, late payment fees, interest of penalty. All refund made to such allottee till effective date will be treated as refund towards principal amount."

To compensate such allottees towards additional cost including legal cost incurred by them, Resolution applicant propose to pay 35% of the additional amount realized by the resolution applicant on sale of units booked by such allottee. The additional amount realized will be the difference between the value received by the RA on sale of such units and the value of the unit as per BBA Agreement.

In case the units are not resold and the same are still with corporate debtor as unsold inventory, on the request of such creditors made within 30 days from effective date, Resolution Applicant will have option to restore their booking, provided such financial creditors refunds all amount received by them towards cancellation of booking, pay total due installments till the date of resolution and comply with other terms including for timely payments of future demands, as applicable on financial creditors in same class (cases of-booking are not cancelled as stated in above clauses).



To further compensate allottee in this category, in case of allotment of units, the total amount already refunded to such allottee on effective date will be received back in 6 equal monthly installments without any interest. The allottee need to pay due installments if pending and further dues installments based on completion stage within 15 days of demand notice. "

The said clause was part of the plan, and the plan was duly approved by the members of CoC with a whopping majority of 96.93%. A resolution plan providing a lesser amount than admitted does not make it illegal. Hence, there is no reason for this Tribunal to direct the Resolution Applicant to amend Clause 9.2.2 B (iii) of the Resolution Plan.

- 11.** We agree with the submissions made by the Learned Counsel for the Resolution Professional and we are of the considered view that the commercial wisdom of the CoC as has been held by the Hon'ble Supreme Court in various judgments cannot be called in question. Moreover the Resolution Plan makes adequate provisions for consideration of the claims of the Applicants. Therefore, we are not inclined to entertain the present application.

Accordingly, IA-4171/2021 stands **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)