

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 350 of 2020**

**IN THE MATTER OF:**

**Alok Sharma**  
**R/o 1402, Govardhan Apartment,**  
**Kaushambi, Ghaziabad**  
**Uttar Pradesh – 201 010**  
**Authorised Representative of**  
**Following Commercial space buyers:**

- (i) **Mr. Alok Sharma**  
**S/o Mr. Vinod Kumar Sharma**  
**R/o1402, Govardhan Apartments,**  
**Kaushambi, Ghaziabad – 201 010**
  
- (ii) **Mrs. Neelam Sharma**  
**W/o Mr. Vinod Kumar Sharma**  
**R/o1402, Govardhan Apartments,**  
**Kaushambi, Ghaziabad – 201 010**
  
- (iii) **Mrs.Rashmi Singh**  
**W/o Mr. Rakesh Singh**  
**R/o 7B(HIG) Green View Apartments,**  
**Sec-99, Noida, UP-201 303**  
**Through power of attorney holder namely Mr. Alok Sharma**
  
- (iv) **Mr. Ambika Prasad Yadav**  
**S/o Mr. late Jaskarn Yadav**  
**R/o B-1202, Apex Green Valley,**  
**Vaishali, Sector-9**  
**Ghaziabad, UP-201 010**  
**Through power of attorney holder namely Mr. Alok Sharma**
  
- (v) **Mr. Arun Kumar Yadav**  
**S/o A.P Yadav**  
**R/o B-1202, Apex Green Valley,**  
**Vaishali, Sector-9**  
**Ghaziabad, UP-201 010**  
**Through power of attorney holder namely Mr. Alok Sharma**

- (vi) **Mrs. Prabha Jain**  
**W/o Mr. NMD Jain**  
**R/o House No. 179, 1<sup>st</sup> Floor**  
**Jagriti Enclave, Delhi -110 092**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (vii) **Mrs. S.R Pandey**  
**S/o.Sarjoo Pandey**  
**Flat No. 19, SRM Apartment,**  
**Plot No. 106, IP Extn,**  
**Delhi – 110 092**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (viii) **Mrs. Soumya Pandey**  
**W/o Mr. Saurabh Pandey**  
**Flat No. 19, SRM Apartment,**  
**Plot No. 106, IP Extn,**  
**Delhi – 110 092**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (ix) **Mrs. Anju Sharma**  
**W/o Shrawan Kumar Sharma**  
**R/o E-11,Vaishali Colony,**  
**Nainital Road, Kath Godam,**  
**District- Nainital,**  
**Uttarkhand – 263 126**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (x) **Mrs. Neelima Jha**  
**W/o Mr. Prabhat Kumar Jha**  
**R/o 90/130, Satyam Vasundhara,**  
**Ghaziabad, UP-201 012**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (xi) **Mr. Rohit Rastogi**  
**Late Mr. Suresh Chand Rastogi**  
**R/o 86, Jagriti Enclave,**  
**Vikas Mark Extension,**  
**Delhi – 110092**  
**Through power of attorney holder namely Mr. Alok Sharma**
- (xii) **Mr. D.K.Pandey**

**S/o Late Mr. Chunni Lal Sharma  
R/oE-302, Alaknanda Apartments,  
Rampuri, Suryanagar,  
Ghaziabad – 201 011**

**Through power of attorney holder namely Mr. Alok Sharma  
.. Appellant**

**Versus**

**M/s.I P construction Pvt. Ltd  
Through Resolution Professional  
Anju Agarwal  
210, 1<sup>st</sup> Floor, Phool Singh Market  
Karkardooma, Main Vikas Marg,  
New Delhi – 110 092**

**.. Respondent**

**Present:**

**For Appellant: Ms. Varsha Banerjee and Ms. Smriti Dua, Advocates.  
For Respondents: Mr. Abhishek Anand & Mr. Karan Kohli for RP**

### **J U D G M E N T**

#### **DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The `Appeal` has been filed by the Appellant- `Mr. Alok Sharma authorized representative of the `allottees` /buyers of the commercial space in the real estate project, by the name of `CORAL BRIO` of the Corporate Debtor` (CD) under Section 61 (1) of the `Insolvency and Bankruptcy Code, 2016` (`Code`) against the impugned order dated 16.01.2020 passed by the National Company Law Tribunal, Principal Bench, New Delhi (Adjudicating Authority) whereby the `Adjudicating Authority` had dismissed the CA No. 2265 (PB)/2019 in CP (IB) No.593(PB)/2018.

2. The twelve 'commercial space buyers' as seems from the details are the individual as depicted below:

Mr. Alok Sharma  
S/o Mr. Vinod Kumar Sharma  
R/o1402, Govardhan Apartments,  
Kaushambi, Ghaziabad – 201 010

Mrs. Neelam Sharma  
W/o Mr. Vinod Kumar Sharma  
R/o1402, Govardhan Apartments,  
Kaushambi, Ghaziabad – 201 010

Mrs.Rashmi Singh  
W/o Mr. Rakesh Singh  
R/o 7B(HIG) Green View Apartments,  
Sec-99, Noida, UP-201 303  
Through power of attorney holder namely Mr. Alok Sharma

Mr. Ambika Prasad Yadav  
S/o Mr. late Jaskarn Yadav  
R/o B-1202, Apex Green Valley,  
Vaishali, Sector-9  
Ghaziabad, UP-201 010  
Through power of attorney holder namely Mr. Alok Sharma

Mr. Arun Kumar Yadav  
S/o A.P Yadav  
R/o B-1202, Apex Green Valley,  
Vaishali, Sector-9  
Ghaziabad, UP-201 010  
Through power of attorney holder namely Mr. Alok Sharma

Mrs. Prabha Jain  
W/o Mr. NMD Jain  
R/o House No. 179, 1<sup>st</sup> Floor  
Jagrati Enclave, Delhi -110 092  
Through power of attorney holder namely Mr. Alok Sharma

Mrs. S.R Pandey  
S/o.Sarjoo Pandey  
Flat No. 19, SRM Apartment,  
Plot No. 106, IP Extn,  
Delhi – 110 092

Through power of attorney holder namely Mr. Alok Sharma

Mrs. Soumya Pandey  
W/o Mr. Saurabh Pandey  
Flat No. 19, SRM Apartment,  
Plot No. 106, IP Extn,  
Delhi – 110 092

Through power of attorney holder namely Mr. Alok Sharma

Mrs. Anju Sharma  
W/o Shrawan Kumar Sharma  
R/o E-11, Vaishali Colony,  
Nainital Road, Kath Godam,  
District- Nainital,  
Uttarkhand – 263 126

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Mrs. Neelima Jha  
W/o Mr. Prabhat Kumar Jha  
R/o 90/130, Satyam Vasundhara,  
Ghaziabad, UP-201 012

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Mr. Rohit Rastogi  
Late Mr. Suresh Chand Rastogi  
R/o 86, Jagriti Enclave,  
Vikas Mark Extension,  
Delhi – 110092

Through power of attorney holder namely Mr. Alok Sharma

Mr. D.K.Pandey  
S/o Late Mr. Chunni Lal Sharma  
R/oE-302, Alaknanda Apartments,  
Rampuri, Suryanagar,  
Ghaziabad – 201 011

Through power of attorney holder namely Mr. Alok Sharma

3. The submission made by the learned counsel for the Appellant/ pleadings and written submission available on record are stated herein below in a summarized manner:

a. The allottees have invested in the project in the year 2013 and Corporate Debtor (CD)/Respondent have given them possession in 2015 and these allottees were continuously paying electricity and parking charges to the CD. The CD went into CIRP vide order dated 11.01.2019 and Ms. Anju Agarwal was appointed as 'Interim Resolution Professional' (IRP). The table reflecting the name of the allottees, date of allotment, unit number, amount paid and possession year is depicted below as appearing at page 17 and 18 appeal paper book.

S. No	Name of the Allottee	Date of Allotment	Unit Number	Amounts Paid	Possession Since
1.	Alok Sharma and Mrs. Neelam Sharma	31.03.2013	FF-22	Rs.24,31,000	2015
2.	Mrs. Rashmi Singh	22.01.2013	FF-16	Rs. 21,45,408/-	2015
3.	Mr. Arun Kumar Yadav	22.01.2013	FF-17	Rs. 21,45,991/-	2015

4.	Mr. Ambika Prasad Yadav	22.01.2013	FF-18	Rs. 21,45,992/-	2015
5.	Mrs. Prabha Jain	14.02.2013	FF-19	Rs. 21,48,144/-	2015
6.	Mr. SR Pandey & Ms Saumya Pandey	12.02.2013	FF-20	Rs. 24,15,303/-	2015
7.	Mr Shrawan Sharma & Mrs Anju Sharma	14.05.2013	FF-21	Rs. 21,44,759/-	2015
8.	Mrs. Neelima Jha	09.09.2014	FF-05	Rs. 25,00,000/-	2015
9.	Mr. Rohit Rastogi	26.02.2015	FF-24	Rs. 30,00,000/-	2015
10.	Mr. DK Pandey	15.04.2013	GF-07	Rs. 39,59,830/-	2015

The following allottees also made payment towards execution of Sale Deed:

S. No	Name	Date of payment	Registration Amount Paid
1.	Mr. Arun Kumar Yadav, FF-17	30.07.2015	Rs 1,92,000/-
2.	Mrs. Prabha Jain, FF-19	29.07.2015	Rs 1,46,372/-
3.	Mr. SR Pandey & Mrs. Saumya Pandey, FF-20	30.07.2015	Rs 1,66,243/-

- b. The Appellant has stated that since they have paid the monies and allotment issues, the allottees were given possession of their respective units in 2015 without completion of fit -out works, only functional lifts, maintenance facilities etc. Such allottees also spent monies from their own pockets in completing the remaining works of their respective units and requested the CD to executed the sale deed in their favour. It is the case of the Appellant that they have written numerous email and letters to the CD between 2015-2018 highlighting the day to day

- difficulty etc. including non-registration of the sale deed (appearing at page 46 to page 90 of the Appeal paper book where emails are their).
- c. The Ld counsel for the Appellant has stated that not only they have released all the payment in respect of commercial spaces but even a few of the allottees have in fact also paid the registration charges for execution of the sale deed since 2015. The Allottees learnt about the CIRP of the CD and as soon as they learnt, they approach the IRP have correspondence with him also (appearing at Annexure 2 of the Appeal paper book). It was stated by the Appellant that the allottees were allowed possession in these units in 2015 without completion of certain auxiliary works and for which the allottees were repeatedly following up with the CD apart from registration issue. The Ld counsel for the Appellant has also stated that they have raised this issue in the meeting of the CoC of the CD for registration (appearing at Annexure A-3 of the Appeal paper book).
- d. The ld counsel of the Appellant has also stated that the RP used to maintain silence over the pendency of non-registration of sale deed in favour of such allottees without disputing that they were not in possession since 2015. It has also been stated by the Ld counsel of the Appellant that the Allottees of the commercial space have a mere 11.70% voting share as compared to Union Bank of India which has 45.15% voting share in the CoC. They have also alleged ulterior motive of the Bank to cause irreparable loss to the valuable rights of the allottees herein causing impediments to ensure that the sale deed is



not executed in favour of the allottees. The CoC in its 7<sup>th</sup> meeting held that the decision of execution of sale deed be left to be decided by the Successful Resolution Applicant.

e. Aggrieved with all these, they approached the Adjudicating Authority and the Adjudicating Authority has dismissed their application. Aggrieved with this, they have approached this Tribunal seeking the following reliefs as stated below:

- Allow the Appeal;
- Set aside the impugned order dated 16.01.2020 dismissing CA No. 2265(PB) of 2019 in CP(IB) No.593 of 2018;
- Pass appropriate directions to the RP to ensure that sale deeds are executed in favour of the allottees herein; etc.

4. The Adjudicating Authority, while passing the impugned order dated 16.01.2020 has observed the followings:

**CA-2265(PB)/2019:-**

It is an application filed by the class of creditors seeking relief as follows:-

**2.** to issue necessary directions to the Resolution Professional to execute duly registered Sale Deed, of the respective commercial spaces, as per Annexure-A, in favour of the Applicants herein, after taking the balance amounts remaining to be paid by the applicants herein;

2. Now this corporate debtor is undergoing through Corporate Insolvency Resolution Process, in the CIRP period the resolution professional is not expected to create rights in favour of somebody indeed to maintain status quo until resolution plan is approved or liquidation is recorded, that being the job assigned to the RP, this class of creditors cannot ask a relief for execution of the registered sale deed in favour of the applicants, whereby this application is dismissed as misconceived.

5. The submission made by the learned counsel for the Respondent/pleadings and Written Submission available on record are stated herein below in a summarized manner:

a. The ld counsel for the Respondent/RP has raised the issue that the Appeal is barred by limitation. The impugned order was pronounced on 16.01.2020 and the period of 30 days expired on 15.02.2020 and the Appellant has approached this Tribunal on 20.02.2020 which is beyond the period of 30 days as prescribed under Section 61 of the Code. The Appellant has failed to file the application for condonation

of delay and hence the Appeal is liable to be dismissed without hearing on merit as the same is barred by period of limitation.

- b. The Ld counsel for the Respondent has also submitted that CD is the owner of the commercial space. However, he has accepted the fact that the CD had handed over the possession of the Commercial space to the Appellant and only sale deed was pending for execution by the CD in favour of allottees prior to the commencement of CIRP. He has also cited Section 54 of the Transfer of Property Act, 1882 defining sale which is a transfer of ownership in exchange of price paid or so and transfer of ownership of a particular assets, the execution of sale deed is a *sine qua non* requisite and has cited the judgment of Hon'ble Apex Court in Narandas Karsondas Vs. S.A.Kamtam and Anr., (1977) 3 SCC 247 wherein it has been held that "a contract of sale does not of itself create any interest in, or charge on, the property etc".
- c. The Ld counsel has also stated that CoC has approved the Resolution Plan which is binding on the Appellants and at the same he has confirmed that it is yet to be approved by the Adjudicating Authority. The Ld counsel has also stated that the Appellant being minority Dissenting Financial Creditors do not have any locus standi to challenge the Resolution Plan as approved by the majority of the CoC which is affectedly sought to be done through the instant appeal and has cited the judgment of Hon'ble Apex Court in K.Sashidhar V. Indian Overseas Bank & Ors., (2019) 12 SCC 150.

- d. The Execution of sale deed shall be in violation to moratorium in terms of Section 14 of the Code. Apart from the other issues raised that the appeals have filed without authorization from the class of creditors and execution of sale deed amongst to preferential treatment etc.
6. We have carefully gone through the pleadings of both the parties and extant provisions of the Code and we are having the following observations:
- a. It is not in dispute even by the Respondent that the Appellants /allottees are not in possession of their respective units since 2015.
  - b. It is also not in dispute that the exchange of letters /emails are not there between the CD and the Appellants including the issue of registration of the units. No doubt, the Appellants were raising the issues like certain fit ins, parking area in basement, toilets, fire safety/fire alarm/springle issue, maintenance issue etc. raised with the CD apart from the issue of registration of property and completion certificate (appearing at page 45 to 114 of the Appeal paper book).
  - c. What the issue has been raised by the Respondent/RP is that the appeal is barred by limitation as the same has not been filed within the prescribed period of 30 days as per Section 61(2) of the Code:-
    - i. The impugned order was pronounced on 16.01.2020.
    - ii. The period of 30 days expired on 15.02.2020.
    - iii. The Appellant has approached this Appellate Tribunal on 20.02.2020.

iv. The Respondent has cited the judgments of Hon'ble Apex Court as well as this Tribunal, which is given below:

- V.Nagarajan V. SKS Ispat and Power Ltd & Ors., Civil Appeal No. 3327 of 2020, where the Hon'ble Apex Court has opined as follows:

*“21.The answer to the two issues set out in Section C of the judgement- (i) when will the clock for calculating the limitation period run for proceedings under the IBC; and (ii) is the annexation of a certified copy mandatory for an appeal to the NCLAT against an order passed under the IBC – must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section*

*420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.”*

- Mr. Rursharan Singh Vs. The State Trading Corporation of India Ltd., CA(AT)(Ins) No. 853 of 2019, this Tribunal has observed as follows:

*“8. The argument that free copy was not served on the Appellant is not relevant. IBC does not have provision to serve free copies. Even if one is to rely on Section 421 (3) of the Companies Act, 2013, there is Judgment in the matter of "Sagufa Ahmad and Ors. Vs. Upper Assan Plywood Products Pvt. Ltd". passed by the Hon'ble Supreme Court of India in Civil Appeal Nos. 3007-3008 of 2020 which would be relevant. If the Appellant did not rely on supply of free copy and applied for certified copy and filed Appeal based on certified copy then the Appellant cannot rely on Section 421 (3) of the Companies Act, 2013, to count limitation.*

*9. Under Section 61 of IBC, the Appeal has to be filed within 30 days. This Tribunal may allow an Appeal to be filed after the expiry of said Period of 30 days if it is satisfied that there was sufficient cause for not filing the Appeal in time but such period shall not exceed 15 days. Thus the Period of Appeal is 30 days and the Delay which this Tribunal can condone is only of 15 days over and above Page | 6 I.A. No. 2596 of 2019 In Company Appeal (AT) (Insolvency) No. 853 of 2019 the Period of Appeal. For reasons discussed above (See Paragraph 7), even if limitation was to be counted from 07th June, 2019 as mentioned above, the Appeal filed on 13.08.2019 must be said to be barred by limitation as it was not filed within 30 days plus 15 days of knowledge.”*

- v. In this context, we are also citing the provision of Section 61(2) of the Code as enumerated below:

*“Section 61 (2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”*

- vi. Based on the above analogy itself, the Appeal will be barred by limitation, if it is filed after 45 days which would have ended on 02.03.2020 whereas the Appeal has been filed on 20.02.2020. This reflects that this Tribunal has a power to grant extension upto 45 days.
- vii. From the contents of the impugned order dated 16.01.2020 came to the knowledge of the Appellant on 21.01.2020 when it was uploaded on the website of NCLT, New Delhi. Accordingly, the present appeal is within limitation. That even in the recent judgment of Nagarajan Vs. SKS Ispat and Power Ltd. & ors. Civil Appeal No. 3327 of 2020 relied upon by the Respondent, the Hon'ble Supreme Court opined:
- “21. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause.”*
- viii. Based on the elaboration, it is imperative on the Tribunal to consider sympathetically and to help the weaker who are the buyers under the Real Estate Project and hence, the Appeal filed within 45 days seems to be in order.
- d. What the Respondent/RP has pointed out that the CD is the owner of the 'Commercial Space' and has accepted that the possession was with the Appellants admittedly. The Appellants are allottees of commercial space in 'Coral Brio'. Although the CD had handed over the possession of Commercial space to the Appellants, admittedly, no sale deed was



executed by the CD in favour of allottees prior to the commencement of CIRP.

- e. What has been submitted by the Respondent /RP that *it is settled position of law that a mere agreement to sell or possession over a property does not amount to ownership of that property. Section 54 of the Transfer of Property Act, 1882 defines sale as “Sale” is a transfer of Ownership in exchange for a price paid or promised or part-paid and part-promised. Further a joint reading of Sections 47, 48 and 49 of the Registration acts, 1908 makes it clear that the instrument which purports to transfer title of the property is required to be registered. The title does not pass till the registration is affected. Therefore, for transfer of ownership of a particular asset, the execution of Sale deed is a sine qua non requisite. For this reliance can be placed upon the Hon’ble Supreme Court judgment in Narandas Karsonda Vs. S.A.Kamtam and Anr., (1997) 3 SCc 247:*

*“A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in s. 54 of the Transfer of Property Act. See Rambaran Prasad v. Ram Mohit Hazra 1967 1 SCR 293. C) The fiduciary character of the personal obligation created by a contract for sale is recognised in section 3 of the Specific Relief Act, 1963 and in section 91 of the Trusts Act. The personal obligation created by a contract of sale is de- scribed in section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the*

*owner- ship of property, but not amounting to, an interest or easement therein”.*

*Further, it is also necessary to place reliance upon judgment passed by Hon’ble Supreme Court in Suraj lamp and Industries Pvt. Ltd. Vs. State of Haryana and Ors. AIR 2012 206:*

*“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”*

Even relying on the above concept what has been provided by the Respondent/RP there is a need to look at Section 14 of the Code which is depicted below:

**“Section 14: Moratorium.**

*14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

*(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;*

*(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.*

*[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is*

*no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

*(3) The provisions of sub-section (1) shall not apply to — 3*  
*[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;] (b) a surety in a contract of guarantee to a corporate debtor.] (4) The order of moratorium shall have effect from the date of such order till the completion of the*

*corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

From the above, it is clear **that ‘moratorium’** is applicable under Section 14(1)(b) of the Code is on **transferring of any assets** of the CD.

- f. Let us see in this case **whether under real estate project whether Revenue from sale of such constructed spaces/houses will be considered under the caption “Asset” sale or will it be considered as “Revenue from operations” under Schedule -III, Part-II of the Companies Act, 2013 ?**

Here, it is observed that in case of real estate company, such constructed spaces/houses as and when sold its sale price goes to the heading **‘Revenue from operations’ of the profit and loss accounts of the Company being part of its commercial operation. If this houses / constructed spaces belongs to a company which is not in real estate business and is an industrial company/manufacturing company then the impact of sale from such houses will appear in the ‘Balance Sheet’ of the Company as**

**per Schedule-III Part-I-(II Assets) of the Companies Act, 2013 and any sale of this house by this industrial company, if it results into a profit or loss on the sale of such assets, then it will reflect to the extent of profit or loss on sale of this assets only in the profit and loss account under the heading “ other income “ and the cost value of the assets will be reduced from the assets side of the ‘Balance Sheet’.** For a clarity, let us see the following examples:

- i. In case of a real estate company - (Ram & Mohan Company), if House No. ‘A’ is sold to Mr. ‘X’ at a value of Rs. 20 lacs, the cost of construction of Rs. 15 lakhs then in the profit and loss account of the ‘Ram & Mohan Company’, sale of House will come in the income side of the profit and loss accounts as Rs. 20 lakhs-Revenue from operations. The materials etc. consumed will appear at Rs. 15 lakhs in the Part-II - profit and loss account of the same year under caption (Expenses-IV) if both start and completion of the house ‘A’ is in the same year. Otherwise, if it is completed in the previous year’s then these costs of this house which will be appearing in the “ inventory” will get reduced.
- ii. If ‘Ram & Mohan Company’ is an industrial Company then the profit and loss account will reflect an income of Rs. 5 lakhs in the profit and loss account (under the heading - Part II – other income) and the value of the assets

appearing at Rs.15 lakhs in the books in the assets side of the Balance Sheet will be reduced.

- iii. In the short and the summary, the houses so constructed is the business of the real estate company and the value of sale of those houses will always appear in the credit side of the profit and loss accounts as “Revenue from operations”. Hence, this is not an asset, in case of real estate company as it is recurrent business activity for the company & it is its business for continuation of its operation as a going concern even during CIRP.
- g. Hence, we are unable to sustain the views of Respondent/RP that these houses registration will violate ‘Moratorium’ under Section 14 of the Code.
- h. The Registration of all these houses is the ‘procedural requirements’, in case of ‘Real Estate Company’ where the Appellants are already in possession of these spaces from 2015 whereas CIRP was initiated on 11.02.2019.
- i. Even the Hon’ble Apex Court in Bikram Chatterjee & ors. Vs. Union of India & Ors. 2019 SCC SC 901 has held vide para 8 and 173 as follows:  

*“8.... The facts of the instant case project that Noida and Greater Noida have allotted huge plots to the builders by charging a sum of approximately 10 percent and in most of the cases, thereafter no money has been paid. The large number of projects which have come up not only in Noida*

*and Greater Noida, but most of them have not been completed by the builders/promoters and they have siphoned buyers' money in large scale. No action has been taken by the Noida and Greater Noida Authorities against builders for cancellation of leases due to violation to fulfil their obligation. Bankers have financed to builder certain loan on the condition to invest in the projects, but they have also permitted the money to be used as for other purposes as apparent from the report of the Forensic Audit in the instant case which had been submitted by Auditors - Mr. Pawan Kumar Aggarwal and Mr. Ravinder Bhatia. The facts which are projected in the Forensic Auditor Report speaks for itself.”*

*“173. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home buyers as money of home buyers has been diverted due to the inaction of Officials of Noida/ Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/ leased land/ projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in projects. Homebuyers money has been diverted fraudulently, thus, fraud cannot be perpetuated against*



*them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida Authorities have to issue the Completion/ Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part- completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month.”*

- j. This Tribunal has also held in Flat Buyer’s Association Winter Hills - 77 Gurgaon Vs. Umang Realtech Pvt. Ltd. through the Resolution Professional - CA(AT) (Ins) No. 926 of 2019 which notes as under:

*“2. During the pendency of the appeal, the Company was kept as a going concern out of investment made by the Promoters of ‘Umang Realtech Private Limited’ but under the supervision of the ‘Interim Resolution Professional.*

*3. It is submitted that many of the apartments/ flats have been completed, possession has been given, Sale Deed(s) have been executed in favour of number of allottees including Mr. Ajay Singh and Ms. Rachna Singh by the ‘Corporate Debtor’ through the ‘Interim Resolution Professional’. However, certain work is yet to be completed such as electrical connection, supply of water etc. which can be done only after necessary permission*

*of the Competent Authority for which applications have been moved and are pending consideration before such Authorities.”*

All this suggests that the CIRP be positive to save the allottees and not to work as a detriment to the allottees to save the Object of the ‘Code’.

k. The Hon’ble Apex Court in Pioneer Urban Land and Infrastructure Limited and Anr Vs. Union of India and Ors.(2019) 8 SCC 416 has held that:

*“72. In Bank of India v. Vijay Transport [Bank of India v. Vijay Transport, 1988 Supp SCC 47 : AIR 1988 SC 151], the Court was dealing with the contention that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. For the said purpose, reliance was placed on R.L. Arora (2) v. State of U.P. [R.L. Arora (2) v. State of U.P., (1964) 6 SCR 784 : AIR 1964 SC 1230] . Dealing with the said aspect, the Court has observed thus: (Vijay Transport case [Bank of India v. Vijay Transport, 1988 Supp SCC 47 : AIR 1988 SC 151]*

, SCC p. 51, para 11) “11. ... It may be that in interpreting the words of the provision of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting. In other words, while the setting of the words may sometimes be necessary for the interpretation of the words of the statute, but that has not been ruled by this Court to be the only and the surest method of interpretation.”

1. All the above also suggests that the rights of home buyers cannot be affected adversely in the ‘Corporate Insolvency Resolution Process’ and their interest is to be appropriately preserved and protected within the parameters of the I & B Code, 2016.
- m. Hence, in view of the above observations, this ‘Appellate Tribunal’ is not in a position to sustain the order of the ‘Adjudicating Authority’ and accordingly, this ‘Tribunal’ sets aside the impugned order dated 16.01.2020, dismissing CA No.2265/(PB)/2019 in CP(IB) 593 of 2018 and directs the ‘Resolution Professional’ to execute the sale deed after collecting ‘Dues and Costs’, if any, remaining unpaid, including the ‘Costs of Registration’, ‘Penalty’ and ‘other incidental Costs’, till date, etc.

The instant `Appeal' is allowed with the above observations. Pending application, if any, stands disposed of. Interim order, if any, passed by this `Tribunal' stands vacated.

No order as to costs.

**[Justice M.Venugopal]**  
**Member (Judicial)**

**(Dr. Ashok Kumar Mishra)**  
**Member(Technical)**

**17<sup>th</sup>June, 2022**

**New Delhi**

***Raushan.K***