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

IA 1796(ND)/2024 in CP No.: IB 304(ND)/2022

In the matter of:
M/s GENESIS COMTRADE PRIVATE LIMITED
... Financial Creditor

VERSUS

M/s OPULENT INFRADEVELOPERS PVT. LTD
...Corporate Debtor

And in the matter of IA 1796(ND)/2024:
(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016)

MR. YOGESH KUMAR GUPTA & ANR
... Applicant

VERSUS

MR. DEVENDRA UMRAO
RESOLUTION PROFESSIONAL M/S. OPULENT INFRADEVELOPERS PVT. LTD
... Respondent

Pronounced on: 17.04.2025

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:
For Applicant : Adv. Vaibhav Mahajan, Adv. Harshita Aggarwal, Adv. Aditi Kumar in IA/1796/ND/2024

For RP : Adv. Gaurav Mitra, Adv. Abhishek Parmar

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, by Mr. Yogesh Kumar Gupta & Anr., ("**Applicant**") against M/s Bliss Equity Private Limited Mr. Devendra Umrao, "**Resolution Professional**" M/S. Opulent Infradevelopers Pvt. Ltd ("**Corporate Debtor**") seeking the following reliefs:

   "a) Condone the delay in filing claim and direct the Respondent to admit claim of the Applicants in the category of 'financial creditor in a class' corresponding to Unit No. 014 (Marriott Tower); and/or

   b) Direct the Respondent to restore electricity connection of Unit No. 014 (Marriott Tower); and/or

   c) Pass any other Order(s)/ Direction(s) which this Hon'ble Tribunal may deem fit and proper in the facts of the present matter."

2. A brief background of the **Corporate Debtor** is that the CIRP of the Corporate Debtor was commenced on 12.07.2022 by this Adjudicating Authority the Applicant was appointed as IRP and subsequently as confirmed as RP. Presently, a Resolution Plan submitted by Amtex Infrastructure has already been approved by the committee of creditors in its 8th meeting of creditors held on 08.07.2023 with 100 percent votes and same has been filed before this Bench by way of IA 4608/2023 which is pending for adjudication before this Tribunal.

3. Ld. Counsel for the Applicant has made the following submissions:

a) The Applicants are genuine allottees of residential flat no. 014, upper ground floor, Mariott tower, admeasuring 500 sq. ft., in the real estate project being developed by the corporate debtor under the name and style of 'Urbtech 168's Xaviers' situated at Sector 168, Noida ("Flat"), as evidenced by the Allotment Letter dated 01.06.2013. [@ pp. 28-47].

b) As per Annexure-B (Part-II & III) of the said allotment letter, the allotment was made against a total sale consideration of ₹32,22,500/- under a construction-linked payment plan. [@ p. 46].

c) The corporate debtor raised a demand letter dated 10.04.2018 acknowledging that the total receivable amount was ₹28,00,634/-, of which ₹26,46,191/- had already been received from the Applicants, and raising an additional construction-linked demand of ₹1,54,443/- [@ p. 48].

d) Subsequently, on 11.06.2018, within two months, the corporate debtor issued an outstanding statement demanding ₹12,82,538/- from the Applicants, which was contrary to the agreed payment plan. The said demand included components such as 5% of BSP, 25% of PLC, and 100% of car parking, EEC, FFC, IMFS, lease rent, and electrification charges—amounts which were payable only at the time of offer of possession as per the allotment letter. [@ pp. 46-47]. The actual total of these amounts was ₹5,27,500/-, however, an inflated demand was made, also including two-year AMC charges and other arbitrary amounts not part of the agreed sale price breakup.

e) The Applicants challenged the said demand dated 11.06.2018 before UP RERA and also claimed delayed possession charges under the RERA Act. UP RERA, vide its order dated 07.08.2019, quashed and set aside the said demand and directed the corporate debtor to raise a fresh demand letter in accordance with the order, provide occupation certificate, deliver possession of the flat, and register a conveyance deed in favour of the Applicants. It was also directed that any demand raised must be first adjusted against the delayed possession charges payable by the corporate debtor. The said order was passed prior to the commencement of CIRP and is binding on the corporate debtor / resolution professional. [operative para of translated RERA Order @ pp. 67-68].

f) In compliance with the RERA order, the corporate debtor issued a possession letter dated 22.10.2021, and the Applicants were compelled to take possession of the flat on 01.11.2021 on an "as-is-where-is" basis, without an occupation certificate. However, no delayed possession charges were paid and no new demand letter was issued. [@ p. 69].

g) The corporate debtor was admitted into CIRP vide order dated 12.07.2022, and the public announcement was made on 16.07.2022. The Committee of Creditors approved the resolution plan on 08.07.2023. However, approval of the resolution plan is still pending before this Hon'ble Adjudicating Authority in IA/4608/2023.

h) The Applicants were not aware of the CIRP proceedings and, in the absence of payment of delayed possession charges, filed a

contempt/non-compliance petition before UP RERA. Vide Order dated 26.08.2022, UP RERA directed issuance of a recovery certificate against the corporate debtor under Section 40 of the RERA Act and instructed the District Collector to execute the same. However, since the corporate debtor had already entered CIRP, no amount could be recovered through these proceedings. [@ p. 77].

i) The Applicants became aware of the CIRP only on 25.09.2023 when their electricity connection was disconnected by the resolution professional. Initially, they filed their claim inadvertently in Form-B instead of Form-CA, which was not considered as it was sent to the wrong email ID. They thereafter filed a revised claim in Form-CA via email dated 05.03.2024 to the designated email ID of the resolution professional. However, the resolution professional rejected the claim solely on the ground of delay, resulting in the present application being filed. [Form-B @ pp. 87-91, Form-CA @ pp. 93-103, RP's rejection @ p. 105].

j) The resolution professional, in its reply, has already verified that the Applicants are undisputed allottees of the flat in question and are in physical possession of the unit. [RP's Reply @ paras 31 & 36-39]. Admittedly, the resolution plan has not yet been approved by this Hon'ble Adjudicating Authority.

k) Therefore, it is submitted that the present belated claim of a genuine homebuyer may be condoned and accepted, as it is squarely covered by the judgment of Hon'ble NCLAT in **Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors., Company Appeal (AT) (Ins.) No. 390**

of 2022, wherein it has been held that extinguishment of the homebuyer's claim shall only occur after approval of the resolution plan by the Adjudicating Authority and that claims of homebuyers reflected in the records of the corporate debtor must be dealt with appropriately in the resolution plan.

l) In September 2023, post commencement of CIRP, the resolution professional disconnected the electricity connection of the Applicants and has filed an outstanding statement dated 28.05.2024 as Annexure A [RP's Reply @ p. 20], which is identical to the outstanding statement dated 11.06.2018 issued by the erstwhile management of the corporate debtor, which has already been quashed and set aside by UP RERA vide order dated 07.08.2019.

m) It is reiterated that the resolution professional cannot raise any demand contrary to the allotment letter or the UP RERA order and, in the absence of an occupation certificate for the tower, no such demand is legally enforceable. The project consists of five towers, of which four have received occupation certificates. It is only the Mariott Tower, in which the Applicants' flat is located, that still lacks an occupation certificate. Therefore, no payment is due from the Applicants until a valid offer of possession is made post receipt of occupation certificate.

n) Further, the resolution professional is bound by the UP RERA's direction that any such demand must first be adjusted from the delayed possession charges payable to the Applicants, which they have also claimed in Form-CA to the extent of approximately ₹11

lakhs. It is submitted that the resolution professional has also included ₹7 lakhs purely as interest, without any adjudication or presence of an interest clause.

o) It is a settled position of law that a resolution professional does not have adjudicatory powers and is only tasked with collation of claims. It is also submitted that the electricity connection in question is a prepaid meter which requires recharge payments in advance by the Applicants themselves. Electricity, being an essential service, cannot be denied to the Applicants for their residential flat.

p) It is also submitted that the issues regarding amounts receivable under various heads from allottees and payment of delayed possession charges to allottees will be dealt with by the resolution applicant under the resolution plan. The resolution professional cannot unilaterally make such decisions or impose demands on the allottees without the express approval of the Committee of Creditors, which is not the case herein.

q) Finally, it is submitted that no fresh maintenance charges have been levied by the resolution professional and that the same outdated 2018 pre-CIRP outstanding statement, which has already been quashed by UP RERA, has simply been reproduced, and the demands made therein have already been adjudged null and void.

4. In reply to the contentions raised by the Ld. Counsel for the Applicant, the Ld. Counsel for the Respondent has putforth the following submissions:

a) The claim of the Applicant in Form CA cannot be admitted as the Applicants are already in possession of their allotted unit since the year 2021.

b) The Respondent received the claim from the Applicants on 05.03.2024 and responded to the same on 07.03.2024, stating that the Resolution Plan had already been approved by the Committee of Creditors in its eighth meeting held on 08.07.2023 and the same is pending approval before this Tribunal.

c) The Respondent submitted that he has strictly verified the claim of the Applicants in accordance with Regulation 14 of the IBBI (CIRP) Regulations, 2016 on the basis of the records of the Corporate Debtor. Upon perusal of the Form CA submitted on 05.03.2024, and from the records of the Corporate Debtor as well as the Applicants' own submission in the said form, it is evident that the Applicants have been in possession of their respective units since 2021 and have been enjoying peaceful possession since then.

d) Accordingly, the Respondent, vide email dated 29.03.2024, further informed the Applicants that their claim had been filed after substantial delay. Furthermore, since the Applicants are in possession of their respective unit and only seek registration of sale deed in their favour—which presently cannot be executed due to the lack of an Occupancy Certificate for the said 'Mariott Tower', which is a statutory prerequisite—the same shall be taken care of by the Successful Resolution Applicant after approval of the Resolution Plan by this Tribunal. Hence, the claim for registration of the sale deed cannot be admitted and treated at par with other homebuyers. (Refer Pg 105–106 of the Application)

e) The Respondent further placed reliance on the recent judgment dated 19.04.2024 of the Hon'ble NCLAT in the case of *Pooja Mehra v. Nilesh Sharma (RP for Dream Procon Pvt. Ltd.)*, where the Hon'ble Appellate Tribunal, while examining the validity of the homebuyer's claim, dismissed an appeal for condonation of delay of 552 days in filing a claim and, in Para 103 of the said judgment, held that, "The Appellant was sleeping over his rights. A person who sleeps over his rights ought not be given any indulgence." The Hon'ble NCLAT emphasized that the objective of the IBC is to ensure economic rehabilitation of the corporate debtor and hence adherence to timelines is crucial to prevent delayed claims.

f) The Respondent submitted that the Applicants are claiming interest of Rs. 11,72,535/- for delay in delivery of possession from 31.11.2016 till 01.11.2021, based on the order of UP RERA dated 07.08.2019. However, as per Section 3(10) of the IBC, a "creditor" includes a decree-holder. Thus, by virtue of the RERA order, the Applicants may be deemed decree-holders for claiming such interest, but this does not bring them within the category of 'creditors in class' i.e., allottees, as indicated in their Form CA.

g) The Respondent submitted that the project of the Corporate Debtor comprises five towers, out of which Occupancy Certificates for all except Tower 'Mariott' had already been issued by NOIDA prior to commencement of CIRP. The project is being maintained as a going concern.

h) The Applicant, in late 2023, approached the maintenance office at the project site and informed that he has been in possession of the unit since 2021. He requested installation of an electric meter. The maintenance agency requested a possession certificate and a No Dues Certificate. Upon

receiving only the possession certificate, the agency installed and activated the electricity meter on the assurance that the No Dues Certificate would be submitted within two days. However, the Applicants failed to furnish the No Dues Certificate.

i) Upon reviewing the records, the Respondent found that the Applicant had not made complete payment toward the agreed sale consideration as well as pending maintenance dues. Therefore, the Applicants were advised to clear their dues for uninterrupted electricity supply. (Annexure A of Reply)

j) The Respondent stated that the maintenance agency collects maintenance from all homebuyers in possession of their units to ensure the Corporate Debtor remains a going concern. Thus, if the Applicants are in peaceful possession since 2021, they are required to submit the No Dues Certificate, including payment of maintenance charges, as per other similarly placed allottees. However, the Applicants categorically stated to the Respondent's representative that they are unwilling to pay maintenance charges unless the sale deed is executed in their favour.

k) The Respondent further submitted that the Applicants have approached the Hon'ble RERA under Section 63 of the RERA Act after the imposition of moratorium by this Hon'ble Tribunal on 26.08.2022. As per the settled legal position, any civil proceedings instituted after the commencement of CIRP are barred during the moratorium period, and any judgment, decree, or order passed therein cannot be executed. (Refer Pg 70–78 of the Application)

5. We have heard the learned counsels appearing for both the parties at length and have carefully considered the submissions made on their behalf. After a

thorough examination of the case, including the arguments advanced by both sides and the evidence presented, it is an admitted position that the Applicants have been in possession of their respective units since the year 2021 and have continued to enjoy peaceful possession thereof.

6. The Resolution Professional has verified the claims submitted on 05.03.2024 in accordance with Regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and duly responded vide communication dated 07.03.2024. Upon scrutiny of the documents submitted by the Applicants themselves, it is evident that the possession of the allotted units was handed over and accepted in the year 2021. In further correspondence dated 29.03.2024, the RP informed the Applicants that their claim had been filed after substantial delay and pertained not to delivery of possession, but solely to the execution of the sale deed, which is currently not feasible owing to the absence of an Occupancy Certificate for the Mariott Tower—a statutory prerequisite.

7. The crux of the Applicants' claim being the registration of sale deed does not fall within the ambit of a 'financial debt' under Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016, particularly where possession has already been delivered. The concept of a 'debt' within the meaning of Section 5(8)(f) read with Section 3(11) of the Code mandates the existence of a liability or obligation in respect of a claim which is due and payable. In the present case, since possession stands delivered, there exists no surviving financial obligation entitling the Applicants to a payment or refund.

8. The Applicants have further relied upon an order dated 07.08.2019 passed by the Hon'ble UP RERA, claiming an amount of Rs. 11,72,535/- towards

interest for delayed possession. While it is true that the said order confers upon them the status of decree-holders as per Section 3(10) of the IBC, the debt arising therefrom is not a financial debt within the meaning of Section 5(8)(f). Consequently, they cannot be classified as 'creditors in class' under the Code.

9. We also find substance in the submission of the RP that the claim for delayed interest is based on a decree passed prior to the commencement of Corporate Insolvency Resolution Process (CIRP), but was sought to be enforced only after the commencement of CIRP and during the moratorium imposed by this Tribunal on 26.08.2022. It is well-settled that no proceedings for execution of a decree can be instituted or continued during the moratorium period under Section 14 of the IBC.

10. Additionally, the claim regarding disconnection of electricity is not germane to the CIRP and does not constitute a claim against the corporate debtor under the Code. The Applicants themselves approached the maintenance office in 2023 seeking electricity supply, and the same was offered conditional upon production of a 'no dues' certificate. Despite being in possession since 2021, the Applicants failed to produce the requisite documents or clear the dues. Their contention that payment shall be made only upon execution of the sale deed cannot be accepted, as maintenance charges are essential to keep the project a going concern and are required to be paid by all occupants uniformly.

11. The reliance placed by the Applicants on the decision in "Puneet Kaur v. K.V. Developers" is entirely misplaced. In the facts of the present case, possession has been delivered and the Applicants are in enjoyment of their units since

01.11.2021. Hence, the foundational requirement for classification as a financial creditor—being unpaid dues on account of undelivered possession—does not exist. Furthermore, the Hon'ble NCLAT in "Pooja Mehra v. Nilesh Sharma", vide judgment dated 19.04.2024, has emphatically held that claims filed belatedly, after substantial lapse of time, especially in cases where the allottee has been in possession, cannot be entertained so as to defeat the object and timeline of the CIRP under the IBC.

12. For the foregoing reasons, we find no merit in the present application. The Applicants, having taken possession of their units since 2021, do not fall within the class of financial creditors under Section 5(8)(f) of the IBC. Their claim for interest based on a RERA order, though enforceable in a civil forum, does not translate into a financial debt under the Code. Moreover, the reliefs sought with respect to sale deed execution and restoration of electricity are beyond the purview of this Tribunal during CIRP.

Accordingly, the application bearing **IA No. 1796(ND)/2024** in CP IB 304(ND)/2022 stands **dismissed.**

-sd-

(DR. SANJEEV RANJAN)

MEMBER (TECHNICAL)

-sd-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)