

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

IA No. 1545 of 2021

IN

CP (IB) 1633/MB/C-I/2019

Under Section 60(5) of the Code r/w Rule 11 of the
NCLT Rules.

In the Application of

Santosh Digambar Honkarpe ...Applicant

Versus

**Mr. Manoj Kumar Agarwal,
Resolution Professional of “D.S. Kulkarni
Developers Ltd.”**

...Respondent/Resolution Professional

In the matter of

Bank of Maharashtra

...Petitioner

Versus

D.S. Kulkarni Developers Ltd.

...Corporate Debtor

Order Delivered on : 23.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Adv. Shirin Merchant, Advocate

For the Respondent : Sr. Adv. Vikram Nankani a/w Adv.

Shyam Kapadia

ORDER

Per Coram:

1. The present application is moved by the Applicant who is a homebuyer seeking a direction to the Resolution Applicant to

incorporate a detailed provision securing rights of the Applicant to receive vacant and peaceful possession of flats, either directly from the Resolution Applicant or in a specified manner from DSK Global.

2. The Applicant herein is a homebuyer who have executed flat booking agreement with the Corporate Debtor in the Project under the name and style of 'DSK Anandghan'. The Corporate Debtor herein, had acquired Development rights from the land owner namely DSK Global Education and Research Ltd, in respect of the land on which the building consisting of a number of units was to be constructed. It is submitted that the Applicant, similar to other flat purchasers have entered into a tripartite flat booking agreement between himself as Purchaser, DS Kulkarni Developers Ltd. (the Corporate Debtor) as consenting Party and another DSK Global Education and Research Ltd (the land owner) as the vendor.
3. It is submitted that the Applicant and similarly placed flat purchasers have filed their claims before the Resolution Professional in the capacity of a Financial Creditor, which was rejected by Resolution Professional. The same was disputed and is pending before this Court in IA No. 1329/2020.

4. It is pertinent to note that there is no CIRP in respect of DSK Global. The Applicants submits that proposed Resolution Plan were circulated among all stakeholders and called for objections if any. Accordingly, it is submitted that on perusal of the PRPs, it was noted that the Resolution Applicant had included the clause directing the balance unpaid flat purchase consideration to be deposited with the Resolution Applicant. However, the Resolution Applicant has failed to specify the procedure of handing over of the flats especially for home buyers having tripartite flat booking agreements.
5. It is pertinent to note that a detailed clause specifying the procedure of handing over of flat to homebuyers/Applicants, especially, where the land is owned by a third party named DSK Global and the development rights are bestowed with the Corporate Debtor, is necessary to safeguard the interests of the Applicant and other similarly placed flat purchasers. The Applicant and other flat purchasers who have spent their hard-earned money for the construction of their flat and will further continue to pay to the Resolution Applicants, must be assured with the handing over of vacant and peaceful possession of the flat after completion of the Project as per terms of the PRP.

6. Therefore, the Applicant and other flat purchasers, being dissatisfied with the PRP, filed their objections on 29.06.2021 through 'Anandghan Griharachana Sahakari Sanstha Maryadit', a co-operative housing society of which Applicants are members. The Flat Purchasers while agreeing to deposit the balance consideration to the Resolution Applicant are requesting for incorporation of a detailed provision securing rights of the Flat Purchasers to receive vacant and peaceful possession of the flats, either directly from the Resolution Applicant or in a specified manner from DSK Global.
7. It is submitted that both the land owner and the developer are jointly and severally responsible and liable to discharge their obligations towards the home buyers, as promoters and developers thereof.
8. It is submitted that on 29.06.2021, the Resolution Professional conducted the 22nd CoC meeting, wherein certain objections raised in respect of the PRP were discussed. However, the RP rejected flat purchaser's objection stating that since Resolution Plan is only to the extent of the Corporate Debtor and not DSK Global, therefore, any provision directing the DSK Global will be considered outside their scope.

9. Finally, the Applicant submits that the RP must ensure that the flats are constructed and vacant and peaceful possession is handed over to them.
10. At the outset, the Ld. Senior Counsel Mr. Vikram Nankani for the Respondent/Resolution Professional submits that DSK Global Education and Research Limited is a separate legal entity and provision securing rights of the Flat Purchasers to receive vacant and peaceful possession of the flats cannot be made in the Resolution Plan of the Corporate Debtor.
11. He further contends that the said Tri-partite agreement referred to by the Applicant clearly demonstrate that said agreement was executed between DSK Global Education and Research Limited, Mr. Santosh Digambar Honkarpe and M/s D.S. Kulkarni Developers Limited i.e. the Corporate Debtor as the Developer.
12. It is submitted that the Corporate Debtor i.e. the developer under the tripartite agreement acquired development rights from DSK Global. Further, it is clearly mentioned in the Agreement that the entire consideration of the said allotted flat shall be received by DSK Global from the purchasers.
13. The Resolution Professional submits that clause 13.7 of the Resolution Plan clearly provide that Development Agreement

executed between the Corporate Debtor and DSK Global shall be binding on the Resolution Applicant.

“13.7. The obligations of the Corporate Debtor to handover the flats in terms of the Development Agreement dated 31" December 2013 in respect of land at Kirkatwadi, Tuluka Haveli, Pune (Project Anandghan) to DSK Global Education and Research Limited shall remain valid and binding on the Resolution Applicant. The flats to be handed over to DSK Global Education and Research Limited will be handed over within the timelines as stipulated for the project Anandghan as stated in Clause 7.3.12 hereinabove. The financial institutions/ lenders having charge in the flats to be handed over to DSK Global Education and Research Limited, shall have the right to enforce the same under the terms of the facility documents entered with DSK Global Education and Research Limited and the Corporate Debtor. DSK Global Education and Research Limited shall not claim any compensation for any delay in respect of the delivery of the flats. The rights of the Corporate Debtor to the properties at Kirkatwadi, Tuluka Haveli, Pune will continue to remain in full force and effect and the Corporate

Debtor will be entitled to complete the development thereof and receive monies from the Home Buyers and shall sell of all Unsold Areas and retain the sale proceeds thereof for its own use and benefit.”

Findings:

14. Upon perusal of the records, it is observed that the Resolution Plan provides for appropriate treatment to the homebuyer in the '**DSK Anandghan**' project under clause 13.7 of the Resolution Plan (supra). Therefore, the grievance of the home buyers has already been taken care in resolution plan. The obligation of the Corporate Debtor to handover the flats in terms of the Development Agreement dated 31.12.2013 is stipulated in the plan. Therefore, in view of above observation IA 1545 of 2021 is **disposed of**.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

23.06.2023

SAM

Sd/-

H.V. SUBBA RAO

Member (Judicial)