

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

(Under Section 60 (5), of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IA 2995 of 2022

Barodia Kirtikumar Champaklal.

...Applicant

Versus

Mr. Jayesh Natvarlal Sanghrajka

...Respondent/ Resolution Professional

In the matter between

C.P. (IB) 1390 OF 2020

Beacon Trusteeship Limited

..... **Financial Creditor**

Versus

Radius Estates and Developers Private Limited

..... **Corporate Debtor**

Order Reserved on: 12.12.2022

Order Pronounced on: 13.01.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant:

Mr. Saurabh Bachhawat, Mr. Pulkit Sharma
i/b Mr. Prakash Purohit, Advocates.

For the Respondent:

Mr. Nausher Khohli a/w Devesh Juvekar, Ashish Parwani,
Dishat Mehta, Yash Jain, Honey Chandnai i/b Rajani
Associates.

ORDER

1. By way of this Application, the Applicant has claimed that he agreed to purchase two flats from the Corporate Debtor as per the provisional allotment letter dated 20th October, 2015. The Applicant was not aware about the pendency of Insolvency proceedings against the Corporate Debtor due to which he could not file the present Application within time. He submitted a claim with the Resolution Professional in Form CA on 19th September, 2022 after coming to know about the pendency of the Insolvency proceedings against the Corporate Debtor. In the claim, it was agitated by the Applicant that he had paid a sum of Rs. 3,96,000/- towards the cost of two flats to the Corporate Debtor and the payment was made by way of Cheque No. 120737, dated 22.09.2015 and Cheque No. 120738, dated 22.09.2015 and he was provisionally allotted Unit No. T2-A2 and T2-A3 in Zone A on 21st Floor. However, the Resolution Professional rejected the claim of the Applicant, which has necessitated the filing of the present Application before this Authority.
2. In the reply filed by the Resolution Professional, it has been stated that the allotment made in favour of the Applicant on 20th October 2015 was a provisional and tentative allotment. The provisional allotment letter relied upon by the Applicant does not form part of the record of the Corporate Debtor. Besides, the Impugned Claim was filed by the Applicant with the Resolution Professional on 19th September, 2022, whereas the CIRP commenced on 30th April, 2021 following which a public announcement inviting claims was made

on 8th May 2021. Therefore, the Impugned Claim of the Applicant is in grave violation of the regulations and provisions of the Code. The Resolution Professional has further stated that as per law no claim can be made or admitted after the Resolution Plan is approved by the COC. Since the Applicant was not vigilant enough in filing the claim within time, there is no equity in his favour and the Application filed by the Applicant deserves to be dismissed with costs.

3. We have heard the Counsels for the Parties and have gone through the records.
4. By way of this Application, the Applicant claims himself to be treated as a Home Buyer as there is a provisional allotment letter dated 20th October 2015 in respect of two flats issued by the Corporate Debtor, provisionally allotting him two 3BHK Apartments bearing No. T2 A-2 and T2-A3. The Applicant claims to have paid a sum of Rs. 1,98,000/- each towards the booking amount of the said flats. The perusal of the record reveals that apart from the provisional letter dated 20th October, 2015, the Applicant has not relied upon any other document showing that he had entered into any Buyer's Agreement with the Corporate Debtor or had made any further payment towards the cost of the two flats. As stated in the reply, the Resolution Professional has not found any record pertaining to the allotment of the said flats in favour of the applicant. It appears that the Applicant after paying a paltry sum of Rs. 1,98,000/- each in the year 2015 against the total cost of Rs. 9.76 crores of the flats kept sleeping over the matter. The Applicant neither made any further payment to the Corporate Debtor nor insisted upon getting a regular buyer's agreement

executed in his favour. In addition to this, even the present Application has been filed at a belated stage after the Resolution Plan was approved by the COC. Therefore, in our considered view, there seems to be no equity in favour of the Applicant and under the given circumstances, the Applicant cannot be treated as a Home Buyer being Allottee of two flats, as claimed by him specially when no record of any such allotment was found by the Resolution Professional in the records of the Corporate Debtor.

5. Resultantly, the above Interlocutory Application No. 2995 of 2022 is **dismissed** being devoid of any merit.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)