



IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 103

IA-743/2023

In

IB-440(ND)/2021

IN THE MATTER OF:

Mr. Anil Kaushal & Ors

.....FINANCIAL CREDITORS

Vs.

M/s. Logix Developers Pvt. Ltd.

.....CORPORATE DEBTOR

SECTION

U/s 7 of IBC, 2016

Order Pronounced on 13.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-743/2023
is **allowed** and **disposed of**.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-743/2023

In

(IB) – 440(ND)/2021

Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

Mr. ANIL KAUSHAL AND ORS.

..... Financial Creditors

VERSUS

M/s. LOGIX CITY DEVELOPERS PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF:

Ms. PREETI DAS

R/o H. No. 119, Sector 37,
District Gautam Budh Nagar,
Noida- 201301, Uttar Pradesh.

..... Applicant

VERSUS

Mr. MANOHAR LAL VIJ

Resolution Professional of M/s. Logix City Developers Private Limited

..... Respondent

Order Pronounced On: 13.07.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

**Ms. Preeti Das vs. Mr. Manohar Lal Vij, RP of M/s. Logix City Developers Pvt. Ltd.
IA-743/2023 In (IB) – 440(ND)/2021
Date of Order: 13.07.2023**



APPEARANCES:

For the Applicant : Mr. P Nagesh Sr. Adv., Mr. Dushyant Manocha, Ms. Ananaya Ghosh, Ms. Doel Bose, Ms. Mrinalini Mishra, Advs.

For the Respondent :

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an Application filed before this Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for seeking the following reliefs:

***“(a) Direct the Respondent/Resolution Professional to hand over the possession of Residential Flat No. SAT 2-1217 in Project Blossom Zest to the Applicant and take all necessary steps in furtherance of the same as required under law to ensure the lawful and peaceful possession of the Residential Flat in favour of the Applicant including but not limited to execution of the sale/sub-lease deed, in accordance with the terms of Flat Buyers Agreement dated 11th July 2012 and the Possession Letter dated 16th February 2019; and
(b) Pass such other orders and directions that may be deemed appropriate in the interest of justice and the facts and circumstances of the present case.”***

2. **Submissions of the Applicant:**

- i. It is admitted that the Applicant is a Financial Creditor to the Corporate Debtor by virtue of being a lawful allottee of the Residential Flat in Project Blossom Zest located on a plot of land admeasuring 1,00,090 Sq. Mt., bearing plot No. GH-02, Sector 143, Express Way Noida, Gautam Budh Nagar, Uttar Pradesh, India ("Plot") and the claim of the Applicant amounting to Rs. 29,65,309/- (Rupees Twenty Nine Lakh Sixty Five Thousand Three Hundred and Nine Only) stands admitted by the Resolution

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Professional. Further, the Applicant herein has made the entire payment with respect to the Residential Flat and has already been issued a no-objection certificate and a letter of possession by the Corporate Debtor in 2019.

- ii.** The Applicant, being an allottee of a Residential Flat in the Project Blossom Zest, filed its claim with the Resolution Professional on 7th November 2022 to the tune of Rs. 18,29,565/- (Rupees Eighteen Lakh Twenty Nine Thousand Five Hundred Sixty Five Only) along with interest @ 18% p.a. from the date of receipt of each of the respective payment/installments, with the Respondent. However, as is evident from the Claim Form submitted by the Applicant, the claim was filed without prejudice to the right of the Applicant to be granted delivery and possession of the Residential Flat booked in the Project Blossom Zest on account of the Possession Letter and the No Dues Certificate issued by the Corporate Debtor.
- iii.** Subsequent thereto, the Applicant was informed by the Resolution Professional/Respondent vide email dated 16th November 2022 that instead of handing over the possession of the Residential Flat to the Applicant, the Respondent has admitted the claim of the Applicant at Rs. 29,65,309/- with interest calculated @ 8% p.a. However, the Resolution Professional/Respondent completely neglected the rightful claim of the Applicant to be granted possession of the Residential Flat and its request for handing over of possession of the same in complete dereliction of its duties under the Code.
- iv.** In view of the above, the Applicant again wrote to Respondent via e-mail dated 05th December 2022, drawing the attention of the Resolution Professional to the provisions of the Code, wherein a Resolution Professional is duty bound to continue the business of the Corporate Debtor as a going concern, which would inter alia also include granting delivery and possession of the completed flats and request the Resolution Professional to handover the

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lawful possession of the Residential Flat to the Applicant forthwith within a period of ten (10) business days from the receipt of the present letter, failing which, the Applicant will be constrained to institute appropriate legal proceedings. Further, the Applicant also requested the Resolution Professional to place the letter before the committee of creditors of the Corporate Debtor ("Committee of Creditors") for their necessary action.

- v. Till the date of filing of the present application, the Applicant has neither received any response nor the rightful possession of the Residential Flat. It is in public knowledge that the construction of the block/tower where the Residential Flat is located in Project Blossom Zest, i.e., SAT-2, is already completed as on date. Possession of the residential flats in SAT-2 has also been granted to almost all the allottees of SAT-2 except only a few like the Applicant herein. Therefore, despite the SAT-2 being ready for complete occupation and having been allowed for occupancy, the Applicant is denied its right to possession of the Residential Flat without providing any reason whatsoever. In fact, denial of the rightful possession is against the scheme and intent of the Code. Accordingly, the Applicant, being aggrieved by the inaction of the Resolution Professional, is approaching this Tribunal.
- vi. In the present case, it is an undisputed fact that the primary business of the Corporate Debtor relates to the real estate business and it is the duty of the Resolution Professional to continue the business operations and activities of the Corporate Debtor as a going concern basis as per the mandate of the Code which would inter alia include the construction and handing over of possession of the flats, especially in cases such as that of the Applicant wherein the Possession Letter and No Dues Certificate already stands issued.
- vii. Reliance in this regard is placed upon the law laid down by the Hon'ble National Company Law Appellate Tribunal, New Delhi ("NCLAT") in **Alok Sharma v. IP construction (P) Ltd.**, 2022 SCC

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OnLine NCLAT 246 wherein the Hon'ble NCLAT recognized that handing over the possession and executing sale deeds for the transfer of ownership pursuant thereto, is a business activity which is in furtherance of maintaining the operations of the corporate debtor as a going concern during the CIRP and is adopted as a matter of routine practice by the Resolution Professionals all over the country while maintaining the Corporate Debtors as a going concern.

- viii.** It is most respectfully submitted that the Resolution Professional's decision to not hand over the possession of the Residential Flat to the Applicant is not only an aberration in view of the desired objective of the Code but also contrary to the legislative intent of the Code and in violation of the law laid down by the Hon'ble NCLAT. In fact, besides the Resolution Professional, it was equally incumbent upon the Committee of Creditors to duly instruct the Resolution Professional to hand over possession of the completed residential flats to the allottees to ensure that a holistic resolution of the Corporate Debtor is undertaken.

3. Submissions of the Respondent:

- i.** Pursuant to the public announcement issued by the Respondent for the invitation of claim, the Applicant had submitted its claim in FORM CA for Rs. 18,29,565/- along with interest @ 18%, which was verified and admitted to the tune of Rs. 29,65,309/-, wherein interest component was calculated at 8% p.a., in accordance with the Code and the name of the Applicant reflected in the list of class of Financial Creditors of the Corporate Debtor. The Applicant was duly intimated about the admission of claim vide email dated 16.11.2022, which is filed along with the application.
- ii.** In the third meeting of the Committee of Creditors (CoC) held on 12.12.2022, on the query of Authorized Representative of home buyers, the Respondent had informed that the Respondent is

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maintaining the status quo and is not giving physical possession of the flat for the following reasons:

- i. Transaction audit is under process and it would not be appropriate to transfer the possession and later question very allotment of the flat on account of avoidance transaction under the Code;
- ii. There is no guarantee for the continuous supply of electricity as no electricity connection has been sanctioned and installed at project site;
- iii. No funds available to complete remaining capital work necessary to hand over the physical possession;
- iii.** Further, the Respondent had informed the members that the CoC may approve policy for transfer and for handing over the physical possession to the allottees, however, the members after some discussion deferred the matter. Accordingly, the Answering Respondent continues to maintain status quo.
- iv. ISSUES IN HANDING OVER THE POSSESSION TO THE ALLOTTEES AND EXECUTION OF SALE DEED**

A. NON AVAILABILITY OF ELECTRICITY AT THE PROJECT SITE

There is no electricity connection from DISCOM at the Project Site. In order to give temporary relief to resident Home buyers, suspended management started supplying electricity to the residents through DG set, as a short term measure. The erstwhile management. was charging Rs. 7/- per unit from the residents against the cost of power generation of approx. Rs. 40/- per unit and was bearing the deficit.

B. NO FUNDS TO EFFECTUATE THE FINISHING/ CAPITAL WORK REQUIRED TO HAND OVER THE PHYSICAL POSSESSION

It is relevant to note that erstwhile management managed to obtain provisional occupancy certificate for a part of the project i.e. tower no A,B,C and Studio Towers 1 & 2, from Noida Development Authority, without carrying out finishing work in the flats. Construction activities at the Project site stalled in the year



2019 due to lack of funds and the finishing work for the units/apartments could not be completed.

C. SALE DEED CAN NOT BE EXECUTED OWING TO OUTSTANDING DUES OF NOIDA

The plot over which the Project of the Corporate Debtor is constructed was leased out by New Okhla Industrial Development Authority (NOIDA) to the Corporate Debtor for the development of residential project against the consideration as fixed under the lease deed. Corporate Debtor failed to pay the dues for the leased plot and accordingly, NOIDA has filed its claim of Rs. 6,07,74,76,966 before the Respondent.

As per the terms of the Lease deed executed between NOIDA and the Corporate Debtor, the sale deed/ sub-lease deed in favour of the allottee can only be executed once the dues of NOIDA are settled. Hence, the Respondent cannot execute any sale deed/ sub-lease deed in favour of the Applicant.

4. In Rejoinder, the Applicant submitted that at the outset, it is pertinent to highlight that the Respondent has not denied its legal obligation to handover the possession of the Residential Flat to the Applicant, but only highlighted certain issues which, as per the Respondent, have a bearing upon the handing over of Residential Flat to the Applicant. Accordingly, the Respondent has admitted and accepted that it is obligated under law to hand over the physical possession of the Residential Flat to the Applicant. The right of the Applicant to claim unconditional possession of the Residential Flat is thus, uncontroverted, reasserted and reserved. It is incumbent on the Resolution Professional to continue the business operations and activities of the Corporate Debtor as a going concern in terms of the object and purpose of the Code, which would also entail construction and handing over of possession of the flats to homebuyers in cases of real estate projects as held in the judgment passed by the Hon'ble National Company Law Appellate Tribunal in

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Pradip Kumar Chaudhuri v. Dagcon (India) (P) Ltd., 2020 SCC OnLine NCLAT 860. Reliance in this regard is also reiterated on the judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of **Alok Sharma v. IP Constructions (P) Ltd.**, 2022 SCC OnLine NCLAT 246, wherein it was held that there was no bar on the execution of sale deeds in favour of allottees even during the moratorium under Section 14 of the Code. It is further submitted that the non-availability of electricity at the project site cannot be a defense for the Resolution Professional for not handing over the physical possession to the Applicant, which is the Applicant's right and entitlement, having paid the entire amount in respect of the Residential Flat. If at all, it is the duty of the Resolution Professional to arrange for the supply of electricity at the Project Site, in fulfilment of its obligation to run the Corporate Debtor as a going concern. Furthermore, a perusal of the order dated 25th January 2023 passed in IA-4673/2022 in CP (IB)-440/2021 reveals that New Okhla Industrial Development Authority has already provided the external infrastructure for electricity connection to the Corporate Debtor and that it was upon the Resolution Professional to apply for electricity connection before the concerned authority and take steps in furtherance of it, which the Resolution Professional has admittedly failed to do.

5. **Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both parties. We have also perused the documents on record.
- ii. We are of the considered view as raised and contested by the Applicant that, the Applicant is agreeable to receive the physical possession of the Flat on an as-is-where-is basis, so long the rights of the Applicant to seek electricity connection and other amenities etc. as well as execution of the Tripartite Agreement with Noida is reserved and given effect to at an appropriate time.

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- iii.** In the interest of Justice, we direct the Respondent to hand over the possession of Residential Flat No. SAT 2-1217 in Project Blossom Zest to the Applicant and take all necessary steps in furtherance of the same as required under law to ensure the lawful and peaceful possession of the Residential Flat in favour of the Applicant.
- iv.** We further direct the Respondent to submit the status report after the pronouncement of this Order, giving the details of the necessary steps taken in providing lawful and peaceful possession in favour of the Applicant. Thereafter, we also advise the Respondent as well as the Applicant to make their best endeavors to work in consonance with each other so as to expedite the process.

6. Order

- i.** In light of the above facts and circumstances, the Application bearing **IA-743/2023** filed by **Ms. Preeti Das** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 **stands allowed and disposed of.**
- ii.** As a result, the relief as prayed for in the present application stands **allowed.**
- iii.** The Registry is directed to accept the status report and put up the same status report before the Bench for the final disposal.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

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