



NATIONAL COMPANY LAW TRIBUNAL BENCH AT INDORE

ITEM No.6

IA/389(MP)2024

in

C.P.(IB)/56(MP)2021

Order under Section 60(5) r.w. 420(2) & Rule 11

IN THE MATTER OF:

Harinder Singh Bhatia

.....Applicant

V/s

Devvrat Developers Pvt Ltd & Ors

.....Respondents

Coram:

Mohan P. Tiwari, Hon'ble Member(J)

Sanjeev Sharma, Hon'ble Member(T)

ORDER

Delivered on 18/09/2025

This case is fixed for pronouncement of the order. The order is pronounced in open Court *vide* separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Neeraj

Sd/-

MOHAN P. TIWARI
MEMBER (JUDICIAL)



THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

IA/389(MP)2024
in
C.P.(IB)/56(MP)2021

Harminder Singh Bhatia

(Alias Pintu Bhatia)

AD-306, Sector No. 74-C,

Vijay Nagar Indore, Madhya Pradesh **Applicant**

Vs

1. Devvrat Developers Pvt Ltd,

101, 1st Floor, Dol Bin Shir,

Janmbhoomi Marg, Fort,

Mumbai, Maharashtra 400001 **Respondent No.1**

2. JSM Devcons Pvt Ltd

306, Orbit Mall, Scheme No. 54,

A.B. Road, Indore-Madhya Pradesh-452001 **Respondent No.2**

3. Commissioner of Police, Indore

Police Commissioner office,

Palasiya Square, Indore – 452001 **Respondent No.3**

Motel Rahans Private Limited.....Financial Creditor

Vs.

JSM Devcons Pvt Ltd.....Corporate Debtor

Coram: Mohan P. Tiwari, Hon'ble Member(J)

Sanjeev Sharma, Hon'ble Member(T)

Appearance:

For Applicant : Mr. Rohit Dubey, Adv a.w. Ms. Raji Nema, Adv

For the OIC : Mr. Aditya (ACP, Vijay Nagar, Indore)

For the SRA : Mr. Ayush J. Rajani, Adv a.w. Mr. Keshav

Khandelwal, Adv



ORDER

Delivered on: 18.09.2025

Per: Mohan P. Tiwari (Member J)

1. This application has been filed by the Applicant on 21.09.2024 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 420(2) of the Companies Act, 2013 and Rule 11 of the National Company Law Tribunal Rules, 2016 against the Successful Resolution Applicant i.e. Respondent No.1 & the corporate debtor i.e. Respondent No.2, seeking clarification of the order dated 05.04.2024 whereby the resolution plan of the corporate debtor was approved by this Adjudicating Authority and was subsequently amended on 18.04.2024 and 13.06.2024.

2. Succinctly, the facts of the case are such that on an application (CP (IB) 56 of 2021) filed by Motel Rahans Private Limited under section 7 of the Code, the Respondent No. 2, was admitted into CIRP by this Adjudicating Authority *vide* order dated 17.03.2022. The Respondent No. 2 was engaged in development and construction of a housing project namely "Pinnacle D Dreams" in Indore. As per the plan, eleven towers were to be built upon that land/plots, however only six towers namely PT-1, PT-2, PT-7, PT-8, SPT-1 and SPT-3 were built. In these developed towers, some of the flats were complete in all respect and have also been handed over to the allottees who have been residing there at the site.

3. During the course of the CIRP, an interlocutory application bearing IA No.254 of 2023 was filed before this Adjudicating Authority for the approval of the resolution plan of M/s Devvrat Developers Private Limited (i.e. the Respondent No.1). This Adjudicating Authority *vide* its order dated 05.04.2024 as amended on 18.04.2024 approved the said IA for approval of the resolution plan. Thereafter, on 13.06.2024 this Adjudicating Authority, on an application



filed by the Respondent No. 2, issued directions to the Police Commissioner Indore for the Police Authorities to provide assistance to the Respondents in evicting the unauthorized/illegal occupants from the flats of the Corporate Debtor.

4. The applicant has sought clarification to the effect that the Applicant's flat, namely Flat No. 109, admeasuring 2383 sq. ft. built-up area in Tower No. 2, does not form part of the assets of the Corporate Debtor, and consequently, the Applicant cannot be dispossessed there from. It is further prayed that the Respondents be directed to execute the sale deed in favour of the Applicant in respect of the said flat.

5. The Applicant contends that he is rightfully entitled to the flat, by reason of being a legal purchaser holding valid allotment & possession over the said Flat in the project 'Pinnacle D Dreams', which have been allotted by the Respondent No. 2 in Applicant's favour and the possession thereof were handed over.

6. The Applicant further submits that on 06.09.2024, he requested the Respondent to execute the sale deed in his favour in respect of the flat which has been in his possession. However, subsequent thereto, the Police Authorities started exerting pressure on the Applicant to vacate the said flat, purportedly in compliance with the order dated 13.06.2024 of this Adjudicating Authority. The Applicant was never a party to the applications for eviction filed either by the erstwhile Resolution Professional or by Respondent No. 1, in which this Adjudicating Authority directed for Police assistance. It is contended by the Applicant that he is not an unauthorized occupant, as he holds a valid allotment and has been in lawful possession of the flat.

7. The Applicant further contends that he has already paid a total consideration of Rs. 23,10,000/- to the developer, i.e., Respondent No. 2, leaving only a nominal balance payable at the time of execution of the sale deed. Thus, the Applicant has effectively purchased the property and has also been put in possession thereof; however, the formal part performance, namely the



execution and registration of the sale deed, still remains to be completed by the Respondents. Therefore, it is prayed that the Respondents be directed to execute the sale deed in favour of the Applicant in respect of the said flat.

The case was first listed for hearing on 25.09.2024 and direction was given to issue notice on the respondents. An affidavit in reply is filed by Devvrat Developers Pvt. Ltd on 30.07.2025 (Respondent No.1), the successful resolution applicant.

8. The Respondent submits that the main company petition was admitted under the Corporate Insolvency Resolution Process (“CIRP”) by order dated 17.03.2022. The erstwhile Resolution Professional (“RP”) thereafter issued a public announcement on 31.03.2022 inviting claims from the creditors of the Corporate Debtor, fixing 14.04.2022 as the last date for submission of claims. It is an admitted position that the Applicant did not file any claim during the entire CIRP period. The present application has been filed after an inordinate delay of more than 2½ years from the last date of submission of claims, and significantly, after the Resolution Plan was approved on 05.04.2024 and is presently under implementation in accordance with the schedule provided therein. The Respondent contends that the application filed at this belated stage is not maintainable and cannot be entertained and it is requested that the same be dismissed.

9. The Respondent further contends that the approved plan has attained finality. The list of claimants in the class of Financial Creditors being allottees/flat buyers as admitted by the Resolution Professional and covered in the approved Resolution Plan comprises of 351 home buyers and hence any hindrance caused by the applicant is not only untenable and bad in law, but also adversely affect the legitimate interests of those allottees who were vigilant enough to submit and pursue their claims in time. The RP had submitted an affidavit dated 21 September 2023 in IA 254 of 2023 where the RP has given



the list of 401 homebuyers, out of these only 351 homebuyers had filed their claims with the RP and the rest of the claims were never submitted to the RP.

10. The Respondent has filed a copy of order of 09.05.2024 as Annexure 2 of its Reply, in which all the applications filed for consideration of belated claims were dismissed by a common order.

11. We have heard the Learned Counsels of the parties and perused the record.

12. We note that, the plan was approved on 05 April 2024 and modified vide order of 18.04.2024 by this Adjudicating Authority which has attained finality.

13. The list of claimants in the class of Financial Creditors being allottees/flat buyers as admitted by Resolution Professional and covered in the approved Resolution plan comprises of 351 home buyers. It is also pertinent to note that the applicant is indirectly challenging the direction given by this Adjudicating Authority vide order dated 13 June 2024 for enabling implementation of the approved Resolution plan by providing the police assistance to the Successful Resolution Applicants (Respondent No.1).

14. The Law makers while enacting the provisions of the IBC, have also kept in their mind the fact that in real estate projects there might be various homebuyers who have also got possession subsequent to their allotments and possess rights in on the property in terms of Section 53A of the Transfer of Property Act, 1882. In this scenario the discussion paper issued by the Insolvency and Bankruptcy Board of India (IBBI) on 6 November 2023 becomes much relevant, which clarifies that in CIRP of companies with real estate projects, the assets whose possession had already been given to the homebuyers prior to the Insolvency Commencement Date, these assets remain excluded from the asset block of the Corporate Debtor, therefore neither there custody can be taken by the Resolution Professional under Section 18(1)(f) and nor they can be included in the list of assets under information memorandum.



15. The proposition presented in the discussion paper of the IBBI, also stands supported by various provisions of law as well-established judicial positions:

a) *The Regulation 46A of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, provides as under: "Exclusion of Certain Assets from the Liquidation Estate: For the purposes of Section 36(4) (e), wherever an "allottee" as defined under clause (d) of section 2 of the Real Estate (Regulation and Development) Act, 2016 is in possession of the unit, it shall not form a part of the liquidation estate of the corporate debtor."*

16. Our attention has been drawn by the Ld. Counsel of the Applicant towards the order dated 05.04.2024, as amended on 18.04.2024 of this Hon'ble Adjudicating Authority, paragraph 2, wherein it has been held that –

"Some of the flats were complete in all respect and have also been handed over to the allottees who were residing there at the site". Also, from the salient features of the resolution plan of the Respondent No. 1 as mentioned in para 5.1 of the order, it becomes clear that the resolution of the Corporate Debtor as proposed by the Resolution Applicant is only qua homebuyers who have not got possession, and the homebuyers like the Applicant who have already got possession they have not been touched upon for the reason of their asset being excluded for the Corporate Debtor's estate. Even the reliefs and concessions prayed for by the Resolution Applicant as mentioned at para 12 of the order, none of the reliefs are of nature of creating any hurdle on the exercise of the right of the Applicant as regards the flat which are not the asset of the Corporate Debtor.

17. Ld. Counsel of the Applicant further drawn our attention towards the matter of ***Pradip Kumar Chaudhuri Vs. Dagcon (India) (P) Ltd., 2020 SCC online NCLAT 860***, wherein the Hon'ble NCLAT, has held that the allottees in whose favour possession has been granted, their property is outside the assets of the Corporate Debtor and the moratorium doesn't apply in such cases, and there is no bar on the execution of sale deeds in favour of allottees in whose



favour possession had already been granted even during the period of moratorium under section 14 of the Code.

18. Further, the applicant has placed reliance on ***Alok Sharma & Ors. Vs. M/s. I.P. construction Pvt. Ltd [Comp. App (AT) (INS.) No.350 of 2020]*** clearly held that the flat already allotted and in possession of the third party shall not be included in the assets of the CD in CIRP.

19. ***Logix Developers Ltd, NCLT New Delhi vide order dated 13th July, 2023 [IA-743/2023 In IB-440(ND)/2021]***, directed the RP to hand over the possession of the flat 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. In the matter of ***AU Small Finance Bank Ltd. Vs. Coral Infragold Pvt. Ltd. (IA No. 237/JPR/2021 In CP No. (IB)-170/7/JPR/2019]*** NCLT Jaipur Bench vide order dated 15.02.2023 permitted RP to handover the flat after compliances of the statutory provisions and allowed sale/registration of the flat allotted to the home buyers.

20. The Hon'ble Apex Court in ***Bikram Chatterjee & Ors. Vs. Union of India & Ors. [2019 SCC SC 901]*** clearly held that the fraud cannot be perpetuated against the homebuyers by selling the flat 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. In the matter of ***Tharuvai Ramachandran Ravichandran, RP JBM Homes Private Limited, NCLT Chennai Bench (IA(IBC)/919(CHE)/2022/ in IBA/812/2020)*** clearly held that flat that are handed over/sold, should be kept outside the purview of assets of the Corporate Debtor (Excluded Assets).

21. The Hon'ble NCLAT in the matter of ***Puneet Kaur and Ors. Vs. KV Developers Private Limited and Ors. [Company Appeal (AT) (Insolvency) Nos. 390, 391, 392, 393 and 394 of 2022 Decided On: 01.06.2022]***, in which the following was held:



"...In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan."

22. The Respondent contends that the Applicant failed to submit its claim during the Corporate Insolvency Resolution Process (CIRP), despite public announcement made on 31.03.2022, setting 14.04.2022 as the final date for claim submission. The present application has been filed after an inordinate delay of over 2½ years and, notably, after the Resolution Plan was approved on 05.04.2024 and is already under implementation. The Respondent argues that allowing the claim at this belated stage would disrupt the CIRP framework under the IBC and prejudice the interests of the Successful Resolution Applicant and other stakeholders. Therefore, the application is not maintainable and should be dismissed in limine. The respondent further referred to “***Vigilantibus non dormientibus jura subveniunt***”, which simply means. that the law comes to the assistance of those who are vigilant with their right who are vigilant to their



right and not those who sleep on their rights. Hence, at this juncture, this present application is hopelessly time-barred and is not maintainable.

23. The respondent further, argued that it is also settled law that once the CoC has approved the resolution plan, no claims can be entertained whatsoever as is also held in the decision of ***Vadilal Industries Ltd vs FanendraMunot and Ors by the Hon'ble NCLAT in CA AT (Ins) No 748 of 2023*** wherein the Hon'ble Appellate Authority after due consideration of the several judgements passed by the Hon'ble Apex Court has held that once CoC approves a resolution plan there cannot be any claim which can be entertained. Further, the Hon'ble Apex Court in the matter of ***Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. dated 13 April 2021 reported in (2021) 9 Supreme Court Cases 657***, wherein the Hon'ble Apex Court has clearly stated once the resolution plan is approved by the Committee of Creditors and thereafter the adjudicating authority any claim thereafter which is not part of the resolution plan shall extinguish.

24. The respondent further argued that no claim was ever filed with the RP prior to the approval of the Resolution Plan by the Adjudicating Authority on 5 April 2024, and thus the Applicant was left with only one recourse, which was to file an appeal before the Hon'ble NCLAT within 45 days of the order being passed, i.e. on or before 20 May 2024. Hence, the Applicant has no *locus standi* to file this Application, and shall be treated as an illegal occupant.

25. The Judgment of Supreme Court in ***RPS infrastructure Limited vs. Mukul Kumar &Anr., Civil Appeal No. 5590 of 2021 dated 11 September 2023*** has set the point of extinguishment of claims on the date of approval of resolution plan by CoC, therefore, as per Judgment in ***RPS Infrastructure case***, the unadmitted and unfilled claims stand extinguished upon approval of resolution plan by CoC which happened in August 2023 itself.

26. Further, that the intent of the Code is *inter-alia* permit restructuring process and to revive the company whereby the liability of the corporate debtor



would enable new management (in the present case respondent no. 2) to begin on a clean slate for reviving the business of the Corporate Debtor. It is further relevant to note that the Hon'ble Apex Court in the matter of "***Essar Steel Vs. Satish Gupta and others***" decided on 15 November 2019 held as under: -

"For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan 112 submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

27. Further, reliance is being placed upon the law laid down by the Hon'ble Supreme Court of India in the matter of ***Swiss Ribbons v. Union of India & Ors, decided on 25 January 2019, (2019} 4 SCC 17*** wherein, it has been held that the aim of the Code is to economically rehabilitate the Corporate Debtor and for that purpose, the timelines protect the Corporate Debtor's assets from further dilution. To achieve the said purpose, it is essential that creditors are barred from raising belated claims against the Successfully Resolution Applicant who is trying to resuscitate the Corporate Debtor.



28. Further, it is argued that there has been a substantial time for the Applicant to file their claim with the RP since the Applicant is an Indian resident. Hence, the Applicant should have been aware of the ongoing proceedings. This also brings attention to the legal maxim "***Ignorantia juris non excuse***", which simply means ignorance of the law is no excuse. This principle places the possibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law. This aspect becomes important in view of the observation of Hon'ble Supreme Court in ***RPS Infrastructure Limited vs. Mukul Kumar & Anr., Civil Appeal No. 5590 of 2021 (2023) ibclaw.in 102 SC***, wherein it is held as follows-

" Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. "

29. Hon'ble Supreme Court in ***Popat Bahiru Gouardhane Vs Special Land Acquisition officer (2013) 10 sec 765*** has by relying on the maxim "***dura lex sed lex***" (law is hard but it is law) held that "It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute." In the said case also plea that the limitation shall begin from the date of knowledge was rejected.

30. It is submitted that the affidavit dated 21 September 2023 filed by the RP in IA 254 of 2023 where the RP has given the list of 401 home buyers, out of these only 351 home buyers had filed their claims with the RP and the rest of the claims were never submitted to the RP and hence stands extinguished by operation of law. Reference is also given to order dated 09 May 2024 passed by the Adjudicating Authority wherein similar kind of applications were dismissed where the Applicant had not even filed their claim during entire period of CIRP.



However, no such copy of any order or the case number has been cited by the Ld. Counsel.

31. We note that the facts in the present case are different from that of applicants covered in the order of 09.05.2024 passed this Tribunal. In the present case, the fact has not been denied that the applicant has paid an amount of Rs 23,10,000/- to the Corporate Debtor and it is also pertinent to mention that the Applicant is in possession of the Flat No.109 as laid by the Hon'ble Apex Court and Hon'ble NCLAT in the forgoing judgments has categorically held that properties where possession has already been granted to allottees fall outside the scope of the Corporate Debtor's assets. We are of the view that the order of 18.04.2024 passed by this Tribunal modifying the plan approval order will apply to this case. Consequently, the moratorium under Section 14 of the IBC does not apply, and there is no legal bar on executing sale deeds in such cases even during the CIRP.

32. As reflected in paragraph 5.1 of the Resolution Plan, the plan addresses only those homebuyers who have not yet received possession. In the present case, the payment of ₹23,10,000/- made by the Applicant is not disputed, nor is there any dispute regarding the fact that possession of the flat intended to be purchased by the Applicant has already been handed over, and the Applicant has been residing therein. It is further noted that only the balance payment remains to be made by the Applicant to enable registration of the flat in his name.

33. Once a substantial payment has been made and possession delivered prior to the commencement of the CIRP, there is no requirement for such a homebuyer to file a claim before the Resolution Professional (RP). This is because the Corporate Debtor has already discharged its corresponding obligation by completing the flat and handing over possession. Therefore, no further obligation remains on account of the ₹23,10,000/- already paid. Any remaining obligation pertains solely to the execution of the sale deed upon payment of the balance amount, as per the terms of the agreement entered into



between the Corporate Debtor and the homebuyer. In light of these facts, the arguments advanced by the Learned Counsel for the Respondent/RP, including the contention of delay in filing the claim and reliance on various case laws, are misplaced. Delay in filing a claim may be relevant only in cases where the claimant has made a payment but has not received a corresponding asset, service, or benefit in return — and the amounts are due to the corporate debtor which is clearly not the situation here.

34. In the matter of “**Pradip Kumar Chaudhary (Supra)**” the Hon’ble NCLAT have held that properties where possession has already been granted to the allottees fall outside the scope of the Corporate Debtor’s assets. Consequently, the Moratorium under Section 14 of the IBC does not apply, and there is no legal bar on executing sale deeds in such cases - even during the CIRP. In “**Alok Sharma and others (supra)**” the Hon’ble NCLAT has reaffirmed that flats already allotted and handed over to third parties are excluded from the assets of the Corporate Debtor. Similarly, in “**Au Small Finance Bank Limited (Supra)**” the NCLT Jaipur Bench allowed the registration of the flats already allotted to home buyers subject to statutory compliances.

35. The Hon’ble Supreme Court in their judgment in “**Bikram Chatterjee and Other (Supra)**” have held that home buyers cannot be defrauded or deprived of their flats which were developed using their own funds. Once possession has been granted their interest must be protected.

36. The Respondent contends that the homebuyer failed to submit a claim during the CIRP, despite a public announcement dated 31.03.2022, with 14.04.2022 fixed as the last date for submission of claims. However, this contention appears to be an attempt to take undue advantage of a homebuyer who, out of abundant caution, submitted a delayed claim later rejected by the Respondent thereby necessitating the filing of the present IA. As already discussed, once a substantial payment has been made by a homebuyer,



possession of the flat has been handed over, and the homebuyer has been residing therein even prior to the commencement of the CIRP, there is no requirement for such a homebuyer to submit a claim before the RP. In such cases, the Corporate Debtor continues to be bound by the residual obligation of executing the sale deed upon receipt of the remaining nominal balance amount, whether during the CIRP or even after the approval of the Resolution Plan. Furthermore, it is a settled principle that a Successful Resolution Applicant (SRA) cannot acquire rights greater than those held by the Corporate Debtor at the commencement of the CIRP. The SRA merely steps into the shoes of the Corporate Debtor and cannot assert any title or position superior to what the Corporate Debtor itself could lawfully claim. Accordingly, the Corporate Debtor could not have denied the Applicant's entitlement to the flat, and by extension, the SRA is equally bound to honour the Applicant's subsisting rights, and cannot repudiate them on the mere ground that the Resolution Plan has been approved.

37. The Hon'ble Supreme Court in ***"Committee of Creditor of Essar Steel India Limited (Supra)"*** has held that while the commercial wisdom of the CoC is paramount and the resolution plan, once approved, is binding on all stakeholders under Section 31 of the IBC, the rights of allottees/home buyers, cannot be disregarded in violation of the law. Further, in ***"JP Kensington Bolevert Apartment Welfare Association Vs. NBCC India Limited (2022) 1 SCC 401"*** the Hon'ble Supreme Court have specifically protected the rights of the home buyers/allottees holding that once consideration is paid, their equitable ownership cannot be ignored and the Successful Resolution Applicant is obliged to honour the commitments, subject to adjustment of balances, if any.

38. The Corporate Debtor has continued as a going concern. We are also conscious of the fact that the applicant has not paid the full sale consideration as per the agreement with the Corporate Debtor and should not benefit from the loss of time value of money to the Corporate Debtor. The Corporate Debtor has



continued as a going concern and therefore it is also eligible to claim interest for late payments from the homebuyer. The Applicant shall pay interest along with the unpaid principal amount to the corporate debtor computed at the rate as provided in the agreement or SBI home loan interest rate, which ever is less.

39. In view of the above, while the resolution plan in the present case stands approved, the equities in favour of the Applicant cannot be defeated. Accordingly, the application deserves to be allowed with the following directions:

- 1. The Applicant shall deposit within a month from the date of this order with the Successful Resolution Applicant the balance sale consideration, i.e., the difference between the total consideration stipulated under the plan/agreement and the amount already paid by the Applicant to the Corporate Debtor, along with interest based on the formula given above*
- 2. Upon receipt of the said balance consideration and interest, the Successful Resolution Applicant shall, within one month, execute and register the sale deed/conveyance in favour of the Applicant and hand over lawful possession of the flat.*

40. This direction is in conformity with Section 31 of the IBC, read with the principles laid down in the above-cited judgments, and does not dilute the binding nature of the resolution plan but merely enforces the lawful and subsisting right of the allottee, who has already parted with substantial consideration. Section 18 of the Transfer of Property Act (principle of equitable ownership after part-performance) and Section 53A TPA, which courts have read harmoniously with IBC in such matters?

41. Accordingly, the present application deserves to be allowed and is hereby **allowed and disposed of.**

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Neeraj Gupta

Sd/-

MOHAN P. TIWARI
MEMBER (JUDICIAL)