

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A No.343/BB/2021 &
I.A No. 395/BB/2021
IN
CP (IB) No. 189/BB/2018

IN THE MATTER OF:

I.A No. 343 of 2021 & I.A No. 395 of 2021

- 1. Sri. K. Jayant Prabhu,**
R/at E-103, Renaissance Jagriti,
Ramagondanahalli, Varthur Main Road,
Bengaluru 560 066. Applicant No.1

- 2. Smt. Juhi Santani,**
R/at E-103, Renaissance Jagriti,
Ramagondanahalli, Varthur Main Road,
Bengaluru 560 066 Applicant No.2

Versus

Pankaj Srivastava,
Liquidator of M/s Samruddhi Realty Ltd.
5,5th Cross, Navya Nagar,
Jakkur,
Bangalore 560 064 Respondent

Order delivered on: 25th May, 2023

Coram: Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant in
I.A Nos. 343 & 395 of 2021: Sh. S. Sriranga, Sr. Counsel

For the Respondent in
I.A Nos. 343 & 395 of 2021: Sh. Pankaj Srivastav
: Sh. Abhishek Anand

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present application I.A No. 343 of 2021 is filed on 21.10.2021 by the applicants seeking for directions to the respondent liquidator to exclude Schedule-B property from the Liquidation Estate of the Corporate Debtor and to direct the Liquidator to Execute Sale Deed and Register Schedule-B property in favour of the Applicants and to direct the Liquidator to Complete the remaining work in respect of Schedule-B property further direct the Liquidator to refund the excess amount of Rs. 65,611 paid towards sale consideration with interest.
2. Brief facts of the case which are relevant to the issue in question are as follows:
 - a. It is submitted that one Mrs. Mahalakshmi Ramakrishnan was the sole and absolute owner of parcel of converted land bearing Sy.No.43 and Sy.No. 52 totally measuring 6 acres 7 guntas and 3 guntas of Kharab (hereinafter referred to as 'Schedule-A property'). The land owner and the Corporate Debtor, M/s Samruddhi Realty Ltd entered into a registered Joint Venture Agreement dated 02.07.2010 for development of the Schedule A property by constructing thereon residential villas/town houses as per the terms and conditions set out in the Joint Development Agreement.
 - b. Further, as per the Joint Development Agreement, the land owner was entitled to 40.21% and the Corporate Debtor was entitled to remaining 59.79% of the villas/houses/row houses with undivided 59.79% share, right, title and interest in the land comprised in Schedule A property. The Corporate Debtor has formulated a scheme for development of the Schedule-A property into a Residential group housing complex known as 'Samruddhi Lake Drive' consisting of 60 units, parks and open space, club house with electricity and water supply system, sewerage disposal system, etc.
 - c. It is submitted that the Applicant agreed to purchase a plot in the Schedule -A property bearing plot no. 51 with all rights,

appurtenances (hereinafter referred as Schedule –B property) and booked the villa to be constructed on Plot No. 51 of Schedule A property called Samruddhi Lemon Tree Villa No. 51 on 30.03.2021. Accordingly, the Applicants entered into a Sale Agreement dated 12.07.2011 for purchase of plot no. 51 for a total sale consideration of Rs. 40,82,500/-. Concurrently, the applicants entered into a Construction Agreement with the Corporate Debtor of even date for construction of residential unit described as Schedule C to Construction and Sale Agreements on Plot No. 51. The consideration agreed to be paid for construction of the residential unit is Rs. 81,85,993/-.

- d. Thus the total construction agreed to be paid for the plot of land and construction of residential unit was Rs. 1,22,68,493/-. The applicants were required to pay a total sum of Rs. 1,34,07,565/- to the corporate debtor inclusive of all statutory and other charges. It is submitted that the Applicants have paid the entire sale consideration along with the statutory and non-statutory charges amounting to Rs. 1,34,07,565/-, and have paid an excess sum of Rs. 65,191/- and requested the corporate debtor to adjust the same towards registration charges.
- e. It is further submitted that the Applicants have become members of Samruddhi Lake Drive Owners' Association from the date of entering into Agreements for sale and construction and have been paying maintenance of Rs. 17,400/- per quarter. The applicants have paid a sum of Rs. 2,55,000/- till date towards maintenance to the association.
- f. It is submitted that 95 percent of the construction work of villa is completed. However, since the Corporate Debtor was delaying completion of the pending work it permitted the Applicants to take possession of the villa and start interior work. Since July 2016, the Applicants have been in possession of the villa No. 51 and have spent a sum of Rs. 4,63,000/- on the furniture and interior designing of the Villa.

- g. As per the construction agreement the corporate debtor was required to complete the construction work and deliver the Villa within a period of 24 months. However, despite receiving the entire sale consideration, the corporate debtor is yet to complete work worth Rs. 6 lakhs.
- h. It is submitted that this Tribunal vide order dated 16.04.2019 admitted the petition filed against the Corporate Debtor for CIRP. Immediately thereafter, the Applicant No. 1 addressed email dated 22.07.2019 to the Resolution Professional requesting him to register the Schedule B property in favour of the Applicants and the RP orally indicated to the Applicants that since the project is a completed project it will not form part of the estate of the Corporate Debtor and advised the Applicants to file proof of claim only to extent of value of unfinished work. The applicant at the advice of the Resolution Professional filed proof of claim in Form –F vide email dated 13.12.2019.
- i. It is submitted that the resolution process has failed and this Tribunal vide order dated 13.03.2020 allowed the application seeking to liquidate the Corporate Debtor. Further, on the advice of the liquidator the applicant filed their proof of claim in Form – D vide email dated 01.06.2020. It is pertinent to note that since the Applicants wanted the Schedule – B property registered in their favour, the Applicants restricted their claim to Rs. 6,65,191/- towards the cost of the unfinished work.
- j. The Liquidator vide email dated 18.07.2020 replied to the Applicants stating therein that the Applicants will not fall under homebuyers and that the Applicants should file claim under Form-G, the applicant filed claim under Form –G vide email dated 18.07.2020 and further restricted the claim to Rs. 6,65,191/-. Further, the Liquidator vide email dated 21.07.2020 sought information from the Applicants as to whether they are in possession of the Schedule – B property and if yes, whether there is any document in this regard and also asked the Applicants to claim the entire amount paid as sale consideration in Form – G. The

applicants on the advice of the Liquidator filed revised Form G vide email dated 22.07.2020 and stated that since Schedule – B is not registered in their favour, they are not in possession of the property.

- k. It is submitted that Applicants had orally informed the Liquidator that the Corporate Debtor had permitted the Applicants to commence Interior work in the villa and to that extent they were in permissive possession of the Schedule B property. In the revised Form G, the Applicants made a claim for Rs. 1,39,72,756/-.
 1. Further, the Liquidator vide email dated 22.07.2020 informed the Applicants that since the applicants are not in juridical possession of the property and should re-file the claims in Form –D. Accordingly, the Applicants vide email dated 22.07.2020 filed their proof of claim for Rs. 1,39,72,756/- filed by the Applicants in Form –D, the Liquidator vide email dated 17.09.2020 conveyed acceptance of the claim for Rs. 1,39,72,756/-.
 - m. Further, the applicants vide email dated 15.01.2021 re-iterated their claim for registration of the Schedule –B property. The Liquidator vide email dated 06.09.2021 directed the Applicants to handover possession of the Schedule –B property as the same forms part of the Liquidation Estate. The Applicant being unaware of their rights initially replied to the email dated 06.09.2021 stating that they are not in possession and that the Schedule –B property is in possession of the Liquidator. Subsequently, after legal advice, the Applicants vide email dated 14.09.2021 sent an email to the Liquidator stating that they are in possession of Schedule B property and that the Liquidator should refrain from taking forceful possession of the Schedule B property.
 - n. The present application has been filed being aggrieved by the fact that the Schedule B property is included in the Liquidation estate of the Corporate Debtor and that no action is being taken to register the Schedule –B property in favour of the Applicants.
3. The Learned Counsel for the respondent filed is its objection/written submission interalia contenting the following:

- a. The respondent is the Liquidator of the Corporate Debtor, M/s Samruddhi Realty Limited. It is submitted that although the Corporate Debtor had handed over the possession of Schedule – B property to the Applicants to carry out interior works, no Sale Deed was executed by the Corporate Debtor in favour of the Applicants prior to the commencement of the CIRP of the Corporate Debtor. It is further submitted that construction of said property is not yet complete, and construction work worth Rs. 6 Lakhs is still pending.
- b. Moreover, mere Agreement to Sell or possession over a property does not amount to the ownership of that property. The Learned Counsel for the respondent placed reliance of the Judgment of Hon'ble Supreme Court in the matter of "*Suraj Lamp and Industries Pvt. Ltd v State of Haryana and Ors.*," AIR 2012 206 wherein it is laid down that, an agreement to sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter. It is further submitted that the title in immovable property is transferred only upon execution of a conveyance (sale) deed before the Registrar and in this regard the respondent placed reliance on the upon the judgment of Hon'ble Supreme Court in the matter of "*Narandas Karsondas v. S.A Kamtam and Anr.*," (1977)3 SCC 247.
- c. Accordingly, the respondent submits that the Corporate Debtor is the owner of property as mentioned in Schedule B.
- d. It is further submitted that Section 35 of the Code provides for the powers and duties of the Liquidator. Section 35 (b) & (d), respectively, provides that the Liquidator shall take into custody or control all the assets, property, effects and actionable claims of the Corporate Debtor. It is submitted that in the present case, the ownership of the subject property vests with the Corporate Debtor. Moreover, the Applicants in the Liquidation proceeding filed their claim in Form G for an amount of Rs. 6,65,191/- for the unfinished work in the subject property. When the Liquidator inquired from the

Applicants if the possession of the subject property is with the Applicant, the Applicant informed that they don't have possession of the subject property and the sale deed has not been registered as construction work worth Rs. 6 Lakhs is yet to be completed. Accordingly, the Applicants were requested to file their claim in Form D for the entire amount which they have paid to the Corporate Debtor. Thereafter, the Applicants filed its claim in Form D dated 28.05.2020 for an amount of Rs. 1,39,72,756/- which was admitted by the Liquidator and the Applicants were directed to handover control and custody of the subject property as per the provisions of the Code.

- e. It is submitted that relief sought by the Applicants to keep the said asset of the Corporate Debtor outside the Liquidation process is neither maintainable nor the same is tenable under the provisions of the Code. Further, only an asset which is a 'security interest' charged to a secured creditor can be left outside the Liquidation estate under Section 52 of the Code. However, the said units are not charged to the Applicants and relief sought is beyond the provisions of the Code.
- f. The Learned Counsel for the Respondent further placed reliance on the judgment of Hon'ble Supreme Court in the matter of '*Jaypee Kensington Boulevard Apartments Welfare Association & Ors v NBCC (India) Ltd*, Civil Appeal No. 3395 of 2020' wherein it is held that "*The relevant aspect for the present point for determination is that apart from such dissenting financial creditors, a few of the associations of homebuyers and some of the individual homebuyers carry their own grievances against the resolution plan and seek to submit that their interests have not been safeguarded and they are being denied of their legal rights. These dissatisfied associations and individual homebuyers seek to contend that the resolution plan is lacking in various requisite arrangements; is violative of the CIRP Regulations; and is also violative of the provisions of RERA and therefore, it could not have been approved. One block of such objectors is rather differently dissatisfied for the reasons that according to them, the housing projects which have been completed or are nearing completion ought to be kept out of the purview of this plan of resolution. ..*
The suggestion to keep any housing project which is already complete or nearing completion out of the purview of the resolution plan is

required to be rejected. When approval of the resolution plan is to be voted by CoC; and its composition is specified by the Code, there is no such concept of keeping any particular homebuyer out of CoC even if the relationship of creditor and debtor subsists between him and the corporate debtor”

4. The Learned Counsel for the Petitioner filed its Rejoinder vide diary No. 508 dated 09.02.2022.
5. Heard both the Counsels and perused the records available.
6. On 16.02.2023, this Tribunal directed the parties to file short note along with copies of the judgments relied. In compliance to the above the petitioner did not file any submissions whereas the Respondent Liquidator had already filed his written submissions vid diary No. 1660 dated 19.04.2022.
7. The present application is filed by the Applicants, who have entered into a sale agreement with the Corporate Debtor for participating in the housing project scheme and booked villa to be constructed by the corporate Debtor, interalia seeking for a direction to the Liquidator to exclude Schedule B property from the Liquidation Estate of the Corporate Debtor and to execute Sale Deed and Register Schedule B property in favour of the Applicants.
8. It is seen from the petition that the Applicants have paid the entire sale consideration along with the statutory and non-statutory charges amounting to Rs. 1,34,07,565/-. However, it is submitted by the petitioner that the construction worth of Rs. 6 Lakhs is yet to be completed. It is further submitted by the Applicant that they are in permissive possession of the property as the Corporate Debtor has handed over the key to the villa to the Applicants for commencement of interior work and have spent an amount Rs. 4,63,000/- on the interior work of the villa.
9. However, the petitioner itself has submitted that no sale deed has been executed by the Applicants and Corporate Debtor.
10. It is observed that the applicant has prayed to exclude Schedule B property from the Liquidation Estate of the Corporate Debtor. However, it is pertinent to note that only the assets which is charged as security interest will fall outside the purview of Liquidation proceedings. Section

3 (31) of the IBC defines security interest as right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. However, in this present case no such security interest is created in favour of the applicants since there is no such document and the sale deed was not executed. Hence the prayer for excluding the Schedule B property from the Liquidation estate of the Corporate Debtor is not tenable.

11. Hence, this Tribunal is of the considered opinion that that since no Sale Deed is registered and no security interest is created in favour of Applicants the said property falls within the purview of Liquidation Estates of the Corporate Debtor.
12. Accordingly I.A 343 of 2021 is **dismissed**

I.A No. 395 of 2021

1. The present application I.A_No. 395 of 2021 is filed on 20.12.2021 by the Applicants to restrain the Liquidator, their agents, workmen, servants or any other person/persons claiming through or under them from alienating, encumbering, or creating any third party rights in respect of Schedule B property until disposal of I.A No. 343 of 2021.
2. However, this Tribunal in the order passed toady has dismissed I.A No. 343 of 2021. Hence the prayer to restrain the Liquidator from alienating, encumbering or creating any third party right until the disposal of I.A No. 395 of 2021 has become infructuous.
3. Hence **I.A 395 of 2021** is disposed of accordingly.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**