



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

**Item No.-201**  
IB-225/ND/2022

**IN THE MATTER OF:**

Mr. Dharampal Singh Rawat & Ors.

....**Applicant**

**Vs.**

M/s. Realanchors Developers Pvt. Ltd.

.....**Respondent**

**SECTION**

U/s 7 IBC

**Order delivered on 16.10.2023**

**CORAM:**

**SHRI P.S.N PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-225/ND/2022 is admitted.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI, BENCH-V**

**COMPANY PETITION (IB) No.225/ND/2022**

**With/AND**

**IA/4899/2023 in C.P. (IB) No. 225/ND/2022**

Order under Section 7 r/w other provision of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Mr. DHARAMPAL SINGH RAWAT & Ors.**

...Petitioner/Financial Creditors

**Versus**

**M/s. REALANCHORS DEVELOPERS PRIVATE LIMITED**

Address: D-29, 2<sup>nd</sup> Floor

Defence Colony

New Delhi- 110024

...Respondent/Corporate Debtor

**Order Delivered on: 16.10.2023**



**CORAM:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Adv. Mr. Sahil Sethi

For the Respondent : Adv. Arpit Singh Arora

**ORDER**

**PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

1. This is an application filed by Mr. Dharampal Singh Rawat and 70 Others (hereinafter referred as Financial Creditors/Petitioners) on 03.03.2022 seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against "M/s. RealAnchors Developer Private Limited" ((hereinafter referred as Corporate Debtor/Respondent) under Section 7 of the Insolvency and Bankruptcy Code 2016 ("IBC"/"the Code") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules" for the alleged default on the part of the Respondent in settling an amount of Rs. 25,99,41,715/- (Rupees Twenty Five



Crores Ninety Nine Lacs Forty One Thousand and Seven Hundred and Fifteen).

**2. Submissions of the Financial Creditors are as follows:**

- i. That the Petitioners herein are Financial Creditors/homebuyers/allottees, who have purchased residential units/apartments in the project "World Residency" (hereinafter referred as "the project") being developed by the Corporate Debtor namely M/s. RealAnchors Developers Pvt. Ltd.
- ii. It is submitted that the Corporate Debtor invited applications inter-alia for allotment of residential units/apartments in the project. It is further submitted that the project has approximately 300 units/apartments and a total 38 Petitioners/allottees holding allotment rights have filed the instant application and thus the instant Application meets the criteria under the proviso of the amended Section 7(1) of IBC, pertaining to the minimum threshold requirements of at least 100 allottees or 10% of the total number of allottees, belonging to the real-estate project, whichever is less, to support the application.
- iii. Further, it is submitted that the Corporate Debtor issued allotment agreement to intending purchasers and as per terms of the



respective Allotment Letters/Flat Buyers Agreements (hereinafter referred to as the “Agreement”), the allotted units/apartments were to be delivered within 36 months (plus 6 months grace period) from the date of execution of allotment letter. However, the said time period varied to 24 months (plus 6 months grace period) and 18 month (plus 6 months grace period) in certain cases.

- iv. It is also submitted that the Corporate Debtor failed to handover possession of the subject units/apartments within the promised time and even today there is no sign of possession at any time soon. Further the Applicant submitted that the Financial Creditors have made timely and substantial payments of the instalments towards the sale consideration of their respective residential unit(s). The Financial Creditors have put in their hard-earned money in the project of the Corporate Debtor but due to the default committed by the Respondent are suffering as there is no sign of possession of their residential units/ apartments.
- v. That Agreements were executed between 09.03.2013 and 12.02.2015, and therefore, the possession of complete units/apartments as per the Agreement were to be handed over between 04.12.2015 and 12.05.2018. However, till date not even a



single unit/apartment has been delivered by the Corporate Debtor in the project. Further submitted that, the status of the project as uploaded on the website of the UPRERA, makes it clear that the project is still ongoing and the construction hasn't been completed even after the Corporate Debtor was granted extension twice, on 31.03.2019 and 31.03.2020, for the completion of the project.

- vi. The Applicant further submitted that, some of the allottees aggrieved from the situation, approached the Ld. UPRERA seeking possession of their respective units, where the Ld. UPRERA after hearing the parties directed the Corporate Debtor to provide possession on or before 31.03.2020. However, the Corporate Debtor failed to do so.
- vii. Hence, the present petition is filed to initiate CIRP against the Corporate Debtor.

### **Submissions of the Respondent/Corporate Debtor**

**3.** Consequent to the notice issued by this Tribunal, the Respondent filed its reply and written submission in which the following contentions were advanced:

- i. It is submitted that the present Application is devoid of merit and is not maintainable. Further submitted that the Applicant has filed the present Application to recover their money, that too at a stage



wherein all the civil works of the project is complete and only finishing work is going on and the Respondent is in a position of offering possession of the Apartments in or before the month of June, 2022. Further submitted that the Applicant does not have any right to approach this Adjudicating Authority and placed reliance on the matter of *Pioneer Urban Land & Infrastructure Limited & Anr. v. UOI (Writ Petition Civil No.43. of 2019)* where the Hon'ble Supreme Court has categorically observed that IBC is not meant to be a debt recovery mechanism.

- ii. Further in its reply filed on 05.04.2022 the Respondent submitted that it is a wrong contention of the Petitioners in the application that there is no sign of possession of their residential units/Apartments. On other hand, the construction of the project is about to be completed, and the Apartments would be possession ready by June, 2022. The Respondent submitted further that the Respondent has received the regularization certificate from the Ghaziabad Development Authority on 23.03.2021 and compounding fees has also been paid by the Respondent on 22.03.2021. The true copy of the certificate dated 23.03.2021 along with its typed and translated



version is annexed as Annexure R-5(Colly) in the Reply of Respondent.

- iii. The respondent further submitted that the delay was for reasons beyond the control of the Respondent Company to complete the said project. Further the Respondent submitted that the major reasons that caused the delay of the project were as follows:
- a) It took three years from 2013-2016 to obtain the sanction by the GDA;
  - b) Hob'ble NGT used to ban the construction activities in the NCT of Delhi for 3-6 months every year at the time of Diwali when pollution and smog is at its peak;
  - c) Government of India imposed national-wide lockdown on multiple occasions in the year of 2020, due to the World Health Organisation declaring the Covid-19 outbreak as a pandemic, etc.
- iv. Further on the date of final hearing the Ld. Counsel of the Respondent submitted that 40 unit holders of the flats/Apartments in the Project are residing with their families as on date (i.e 20.04.2022) and possession has been given to 100 unit holders. Furthermore, out of 38 unit holders who have filed the present



Petition, 5 unit holders have taken the possession of their units, i.e.

Applicant No.2&3, 4&5, 10&11, 44&45 and 46&47.

### **Analysis and Findings**

4. We have heard the Ld. Counsels for the petitioners and the respondents and perused the documents submitted. We find that the present petition is jointly filed by 38 allottees out of total 300 allottees (i.e more than 10%) holding allotment rights in the said project and therefore satisfies the minimum threshold required for filing a section 7 petition in case of real estate allottees. The details of homebuyers/ financial creditors who have joined the present petition, in respect of whom default has occurred as on date of filing of the petition is enlisted as memo of parties (page no 1-12) of the petition.
  
5. Before going into the merits of the present case, it was contended by the Corporate Debtor that the petitioners do not have the requisite threshold to maintain the present petition. It is submitted that out of 38 Applicants in the present Petition, 5 Applicants have already taken the possession of their respective units from the Respondent Company. To deal with the present issue, it is pertinent to refer to the judgement of Hon'ble Supreme Court in the matter of *Manish Kumar &Ors. vs. Uol&Ors. [W.P.(C) No.26 OF 2020]*, wherein it was held that the threshold of an Application filed under Section 7



has to be considered as on the date of filing of the Application, therefore threshold given under section 7 of the IBC (i.e *financial creditors who are allottees under a real estate project, an application for initiating CIRP against the corporate debtor shall be filed jointly by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less*) should not be considered on the date of pronouncing the Order by the Adjudicating Authority. In the present case, there is no doubt that at the time of filing the present petition, the number of applicants was well above the threshold limit and therefore the contention of the Corporate Debtor cannot be accepted.

6. We observed that the impugned real estate project was to be completed latest within 36 months from the date of execution of allotment letters with an extension of 6 months. There is no gainsaying the fact that the Corporate Debtor has defaulted in completing the construction and in delivering the possession on time. The stand taken by Corporate Debtor in its reply dated 05.04.2022 that the possession would be ready by June, 2022, as well as the reasons contended by the Respondent for the delay to handover the Possession of Flats/Apartments such as 3 years delay in obtaining the sanction from the Ghaziabad Development Authority (“GDA”), ban on the



construction activity at the time of Diwali for every 3-6 months in NCT of Delhi by the Hon'ble NGT in consequence of pollution and smog and the lockdown imposed on 25.03.2020 due to Covid-19 outbreak etc, do not form any substantial ground to reject this Application. The delay in obtaining the sanction from GDA cannot be termed as a Force Majeure for not delivering the project on time; as even if the 36 months delivery period is calculated from the time of sanction by the GDA in 2016, the same would fall in the year 2019 itself. Since Covid-19 lockdown was imposed on 25.03.2020, the same cannot be taken as a valid reason for delay in completion of the project, as the lockdown was imposed much after the original delivery timeline in 2018 and even much after 36 months as calculated from grants of the sanction by the GDA. Thus, the Corporate Debtor cannot claim any benefit on account of Force Majeure.

- 7.** Vide order dated 29.08.2022, this Adjudicating Authority appointed with the consent of both the parties Shri Kunal Tandon, Advocate as the Court Commissioner to visit the site in the present matter and verify the current status of the project and to submit a report based on physical inspection of the tenements (units).



- 8.** In compliance of the order dated 29.08.2022, the Ld. Court Commissioner made a detailed inspection of each unit in the said real estate project and the Ld. Court Commissioner in his report dated 24.09.2022 has categorically stated in paragraph 7 that the flats/apartments are not habitable/liveable in the current condition. The Court Commissioner also noted as follows:
- a. Out of four lifts, only two lifts are installed. (Para 5, Pg. 2 of the Report)
  - b. Out of three parking (B1, B2 and B3) only B3 parking was operational.
  - c. Adjoining wall of flat no. J606 & 607 was found broken. (Para 6, Pg3 of the Report)
- 9.** In view of the above facts, it is clear that the project was not ready for possession even in August, 2022 or thereafter. In fact, the project was not completed till the date of final hearing of this instant application i.e 20.04.2023 despite the fact that the UPRERA's Registration Certificate also lapsed on 30.09.2020. There is nothing on record to show that further extension was granted by UPRERA.
- 10.** Considering the above facts and circumstances, we are of the considered view that there is a financial debt due, there is a default committed in respect of



the said debt by the Respondent/Corporate Debtor and the present petition is meeting the threshold which is required under section 7 of the IBC for filing the joint Petition by the allottees/Homebuyers.

**11.** Therefore, we are satisfied that the present petition is maintainable. Also, that the financial debt is due and there is a default in payment of debt of the Respondent/Corporate Debtor, within the meaning of provisions of section 7 of the Code and the said default is for an amount well above the minimum amount of pecuniary threshold stipulated under Section 4(1) of the Code. Hence, we are inclined to admit this application.

**12.** In our reasoning leading to our conclusion, we are also supported by the judgment of the Hon'ble Supreme Court in the Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407, which clearly held that:

*"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default has*



*occurred. . It is of no matter that the debt is disputed so, long as the debt is "due" ie., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise"*

**13.** Further in a more recent judgment in M. Suresh Kumar Reddy Vs. Canara Bank & Ors. [Civil Appeal No.7121 of 2022], the above principles have been reiterated by Hon'ble Supreme Court as follows:

*"once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7 of IBC. Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."*

#### **14. Order**

In the light of the above facts and circumstances of the instant case and the judicial pronouncements, it is, hereby ordered as follows: -



- i.** The Application bearing **(IB)-225(ND)/2022** filed by the Petitioners/Financial Creditors), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/Corporate Debtor, is hereby admitted.
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*
- [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other*



*authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”*

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- iv.** The Applicants/Financial Creditors have proposed the name of Mr. Deepak Joshi (“IRP”) having IBBI Registration No-IBBI/IPA-001/IP-P-02691/2022-2023/14199 as the Interim Resolution Professional.
- v.** The Petitioners filed a copy of the Consent Issued by Mr. Deepak Joshi in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(1) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B. Accordingly, Mr. Deepak Joshi is appointed as IRP.
- vi.** In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of



this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- vii.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which further steps under section 19 of IBC will follow. There shall be no future opportunity given in this regard.
- viii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- ix.** The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval and reimbursement by the Committee of Creditors ("CoC"), when constituted.
- xi.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the



Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.

**xii.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

**xiii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

**15.** The applicants have moved an interlocutory application i.e IA/4899/2023 after the order was reserved in the matter. The said interlocutory application was listed for hearing on 26.09.2023. The respondents’ counsel was also present. The respondent’s counsel had acknowledged the receipt of advance copy of the interlocutory application therefore, the requirement of notice was dispensed with and the respondent was directed to file its reply on or before one week from the date of 26.09.2023, and the said application was listed on dated 20.10.2023 for hearing with regard to the prayers made in the said application wherein the applicant has sought for grant of interim reliefs restraining the respondent i.e. Corporate Debtor from selling the flats. As this Adjudicating Authority has hereby admitted the Section 7 application, the interim application seeking the grant of interim reliefs has now become infructuous. Therefore, the parties are directed to take note of the same.



- 16.** The Application bearing IB/225/ND/2022 stands admitted.
- 17.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- 18.** Let a copy of order be served to parties.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER (JUDICIAL)**