

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH**

**I.A 1342 of 2022
In
CP (IB) 3119 of 2018**

Filed Under Section 74 and Section 60 (5) of the Insolvency and
Bankruptcy Code.

Filed by

Mr. Om Prakash Agarwal

..... Applicant/Resolution Professional

In the matter of

India Asset Growth Fund

Vistra ITCL (India) Limited

.....Financial Creditors

Versus

Rashmi Housing Private Limited

.....Corporate Debtor

And

Mr. Hemendra Bosmiya and Ors.

Order Reserved On: 20.04.2023

Order Pronounced On: 21.06.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearances (via video conferencing)

For the Resolution Professional : Mr. Rohan Agarwal a/w Umang Mehta
and Aamir Attari, Advocates

For the Respondent no. 1 to 3 : Mr. Kunal Kanoongo, Tanushree sagani,
Atishay Jain, Advocates

For the Respodent no. 5: Mr. Jineshkumar Gandhi i/b Mr. Rajdeep Lahiri,
Advocates.

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

The above Interlocutory Application is filed by Mr. Om Prakash Agarwal (hereinafter referred to as Resolution Professional) the Resolution Professional of **Rashmi Housing Private Limited** (hereinafter referred to as Corporate Debtor) seeking directions against the Respondents under Section 74 and Section 60(5) of the Insolvency and Bankruptcy Code and praying for following reliefs:

- a. *That this Hon'ble Tribunal be pleased to take appropriate action against the Suspended Directors i.e. the Respondent No. 1 to 3 under Section 74 of the Insolvency and Bankruptcy code, 2016 for its illegal conduct and violations of the provisions of section 14 of the Code.*
- b. *With respect of the 90 Units/Flats (more specifically mentioned in the list annexed as Exhibit Tribunal be pleased to pass the following Gr. Mumbai*
 - i. *To declare that the registered Agreements executed with Respondent No. 12 to 90 are bad-in-law and Null & Void.*
 - ii. *To direct Respondent No. 12 to 90 to execute necessary Deeds of Cancellation before the Registrar of Assurances and to direct such Respondents to co-operate with the Resolution Professional/Liquidator in respect thereof:*

- iii. *To direct the Respondent No. 12 to 77 to also handover peaceful and vacant possession of respective Flat/ Shops in their occupation.*
- iv. *To Direct the Respondent No. 4 , to take appropriate steps with respect to cancellation of the respective Registered Agreements, in furtherance to Prayer.*
- c. *That this Hon'ble Tribunal be pleased to Declare all the Sale Transactions/Allotments/oral understanding executed by Suspended Director or anyone acting on their behalf, post CIRP of the Corporate Debtor as null and void and bad-in- Law.;*
- d. *That this Hon'ble Tribunal be pleased to direct the Suspended Directors & staff i.e. Respondent No. 1 to 3 & 5 to 11*
 - i. *To provide full disclosure of the Flats/Units sold or illegally handed over by them on an affidavit and co-operate with the Resolution Professional /Liquidator for restoration of such Units/Flats.*
 - ii. *To handover keys and peaceful possession of 71 Flats/Units (more particularly mentioned in the Exhibit "y) illegally handed over to third-parties or in unauthorized occupation of either of the Respondent Nos. 1 to 3 and 5 to 11.*

- iii. To handover keys and peaceful possession of 36 Flats illegally handed over to Parties/ Suspended Directors as more particularly mentioned in the Exhibit "W".*
- e. That this Hon'ble Tribunal be pleased to direct the deputy Inspector General of Registration i.e. Respondent No. 4 for not initiating any future Registration pertaining to Rashmi Housing Private Limited without the ratification of the RP or direction of this Hon'ble Tribunal;*
- f. to mention the matter to seek urgent listing of the present Application for urgent reliefs;*
- g. for costs;*
- h. for any such Order that this Hon'ble Tribunal may be pleased to pass in the interests of equity, justice and good conscience.*

I. Brief Submissions on Behalf of the Resolution Professional:

1. The Resolution Professional states that the Company Petition bearing no 3119 of 2018 was admitted by an Order dated 14th December, 2018 passed by this Hon'ble Tribunal. By virtue of the said Order, the Resolution Professional was appointed as the Interim RP ("IRP") of the Corporate Debtor. Further, the Resolution Professional, vide letter dated 20th December 2018 categorically intimated the Suspended Directors being the Respondent No. 1 & 2 about the initiation of the CIRP against the Corporate Debtor and implications of the Moratorium under the Code.

2. The Resolution Professionals further states that Mr. Sunil Adiwai, an employee of the Corporate Debtor vide an email dated 11.02.2019 requested the Resolution Professional to authorise the Suspended Directors to sign pre-CIRP Sale Agreements. Further, Mr. Adiwai in the said e-mail categorically confirmed that as far as new Sale Agreements are concerned, the same shall not be proceeded without the Resolution Professional's permission. In response to the said e-mail the Resolution Professional vide an e-mail dated 12.02.2019, held that NOC/permission for Agreements pertaining to the pre CIRP period will be required to be put before the COC. Evidently, no permission was granted at any point of time for signing of sales during the CIRP or even for pre-CIRP. Hence, the Resolution Professional states that the question of execution of the Agreements for sale with the approval of the Resolution Professional cannot and does not arise.

3. The Resolution Professional states that thereafter, on the receipt of the invitation of the Expression of Interest, the Suspended Directors had initially submitted a Resolution Plan as on 20th November 2019. However, the said Resolution Plan was rejected with 42.56% votes in favour of the Resolution Plan. Further, on request made by one Homebuyer namely Mr. Devaswaroop Ojha to extend the time-period of the CIRP in order to enable the Resolution Plan to be put to vote once again. Therefore, the Suspended Directors of the Corporate

Debtor submitted a revised Resolution Plan which was placed for consideration before the CoC in its meeting on 20th March 2020. Owing to the rejection of the aforesaid Resolution Plan, the Resolution Professional filed an application to initiate Liquidation under Section 33 of the Code on 25th June 2020. Further the Resolution Professional states that the said Application for Liquidation under Section 33 of the Code is still pending and sub-judice as on date.

4. In order to maintain the Corporate Debtor as going concern and in order to make the administration of the Corporate Debtor a seamless process, the Resolution Professional retained the employees of the Corporate Debtor who were involved in day to day affairs of the Corporate Debtor and also paid them Salaries which was crystalized as a CIRP cost. These Employees were categorically informed from time to time to act only on instructions of the Resolution Professional and to not act on instructions of any of the Suspended Directors.
5. The Resolution Professional states that the Employees were much well aware about the whereabouts of the unsold inventories of the Corporate Debtor. The Resolution Professional further states that it was practically impossible for the Resolution Professional to physically manage 393 unsold inventories spread over 17 Projects in 73 Buildings situated at different parts of Mumbai especially when these unsold inventories (incomplete in certain respects) were

required for various works such as repairs, leakage issues, maintenance, customer interface etc. Hence, the Resolution Professional allowed the respective employees of the Corporate Debtor to retain keys of the unsold inventory in respect of different projects of the Corporate Debtor with instruction that they must seek instructions from the Resolution Professional for any issue.

6. The Resolution Professional further states that the Corporate Debtor has 17 on-going projects situated at various locations such as Virar, Vasai, Naigaon & Ghatkopar comprising of 73 buildings. The Resolution Professional and his team conducted periodic visits at the projects of the Corporate Debtor. However, it was practically impossible to check each and every Vacant Unit and hence the Resolution Professional and his team had to be reliant and trust the Employees for safe keeping of unsold inventory.
7. However, during the pendency of the said Application of Liquidation, the Resolution Professional was in a receipt of a notice wherein inter-alia it was put to the notice of the Resolution Professional that the Suspended Directors have purportedly executed some agreements with Home-buyers after the initiation of the CIRP of the Corporate Debtor.
8. In view of the aforesaid, the Resolution Professional issued an email dated 14th September 2020 to the Suspended Directors, calling upon

them to clarify if any transactions have been carried out by the suspended Directors in the name of Corporate Debtors post the CIRP. However, in reply to the said letter, the Suspended Directors as and by way of their Letter dated 24th September 2020 denied such allegations and submitted that they have not carried out any transactions as alleged or otherwise. The Resolution Professional, on the basis of such denials and in the absence of any documentary evidence, was not in a position to ascertain the validity of the contentions raised towards such illegal sales at that point of time.

9. Thereafter sometime in the early 2021, once again upon receipt of certain complaints of illegal/ unauthorized sales being conducted by the Suspended Directors and in addition to the same during the course of routine, regular checking and the inventories and reconciliation of accounts, the Resolution Professional realized about various irregularities and unknown sources of the receipt of funds. In view thereof, the Resolution Professional initiated investigation of the said issue. During the investigation and physical units, the Resolution Professional realized that the units/Flats have been sold in an unauthorized manner. Further the Resolution Professional states that several correspondences were issued by the Resolution Professional to the Suspended Directors and their employees wherein

- the Resolution Professional sought several details qua such illegal Sales being carried out by the Suspended Directors.
10. The Resolution Professional intended to take charge of each Flat/Unit of the Corporate Debtor and take all necessary steps to protect the inventory of the Corporate Debtor. However, for him to enable to do the same, physical inspection, verification of all the facts and figures was required to be done. However, before the RP could initiate the inspection, Second Wave of COVID-19 had begun in March 2021, which resulted into complete lockdown, further members of RP were themselves infected with Corona Virus and therefore it was impossible for the RP to proceed with such inspection for some period of time In view of the global Pandemic and restrictions of travel on account of the COVID-19 the Resolution Professional and their team could not do the visits of the Units and had to substantially rely upon the representation of the said employees. Taking the advantage of the situation, the Resolution Professional states that it appears that the Suspended Directors colluded with the said Employees and have unauthorizedly and illegally sold and/or promised to sale such Units/Flats, despite the receipt of repeated emails/letter of no such action ought to be taken and the same would amount to contempt.
11. The Resolution Professional states that upon lifting of the restrictions of Second wave of COVID-19, a lengthy process of inspection was initiated, which not only included to check each

- Flat/Unit in each of the 73 Buildings of the Corporate Debtor, but also find details of such Third-Parties to whom such Flats were either sold or promised to be sold.
12. The Resolution Professional had assigned the task of physical verification to Mr. Vinodkumar Deshmukh. Further, in addition to Mr. Deshmukh, the RP realised that huge Inventories have gone missing and lot of Flats/Units prima-facie appear to be undervalued and sold at throwaway price, and thus task of examining Inventory and Sales a firm of Chartered Accountants, namely M/S Bagaria & Co. LLP, looking to financial impact and gravity of the illegal sales was also engaged.
13. In the meantime, the Resolution Professional also issued a letter dated 20th September, 2021 to the Sub- Registrar of Assurances and put to their attention about the initiation of CIRP against the Corporate Debtor and that the powers of the Suspended Directors have been suspended with effect from 14th December, 2018. The Independent Chartered Accountants M/S Bagaria & Co., concluded the entire investigation and finally, prepared a detailed report as on February 7, 2022. Therefore, upon realizing the illegalities committed by the Suspended Directors the Resolution Professional proceeded to take the cognizance of the same.

14. Accordingly, the RP addressed an email dated February 14, 2022 and February 16, 2022 to the Suspended Directors and its employees respectively, wherein the RP put to their attention about the illegalities committed by the Suspended Directors and thereby called upon them to comply with the following within a period of 7 days from the date of receipt of the said email, as more particularly stated therein.

15. Thereafter, in response to the aforesaid email, the Suspended Director vide an email dated February 18, 2022 CATEGORICALLY ADMITTED THE SALE OF THE UNITS DURING THE COURSE OF CIRP of the Corporate Debtor and assured the RP to reconcile all the sales of the CD and recover possession of the units which have been illegally handed over by them without deposit of the applicable payments. This email is an unambiguous admission of the acts carried upon by the Suspended Directors without any authority of the Resolution Professional. However, despite their submission and an undertaking of ensuring restoration of the illegal occupations parted by them, till date no steps have been taken by the Suspended Directors in these regards.

II. Brief Submissions on behalf of Respondent no. 1 and Respondent no 3

1. The Respondent no. 1 i.e., Mr. Hemendra Bosmiya (Suspended Director of the Corporate Debtor) and Respondent no. 3 i.e., Mr. Ashok Bosmiya together have filed a reply dated 13.12.2022 opposing all the averments and objections raised by the Resolution Professional. Further, the Respondent no. 1 and Respondent no. 3 have raised the same contentions against the Resolution Professional. Further the Respondent no. 1 and Respondent no. 3 submits that the Resolution Professional unnecessarily arrayed them as parties to the application only because of position the ex-director/ suspended director of the Corporate Debtor. Further the Respondent no. 1 and Respondent no. 3 states that the documents annexed in the Application clearly shows that neither they were communicating with the Resolution Professional nor they had any role to play in the alleged illegal transactions.
2. Further, the Respondent no. 1 and Respondent no. 3 states that even before the CIRP Admission Order, the Corporate Debtor Company was managed by the Respondent No. 2 i.e. Mr. Yogesh Bosmiya (Suspended Director). The Respondent no. 1 and 3 never actively participated in any managerial decisions or controlled any administrative activities of the Corporate Debtor. Further, the Resolution Professional also has been communicating and co-ordinating with Respondent No.2 and it is also an admitted position in the Application.

3. The Respondent no. 1 and 3 states that the present Application show that the Resolution Professional's grievances pertain to alleged illegal execution and registration of agreements for sale of units/flats of the Corporate Debtor. Further, the Respondent no.1 and 3 states that they had no knowledge regarding any such sale nor executed the said alleged agreements. Further, that the Resolution Professional ought to have produced the said Agreements before the Hon'ble Tribunal but for reasons best known to him, have chosen not to produce the same.
4. The Respondent no. 1 and 3 submits that a personal insolvency resolution process petition has been filed against them by Vista ITCL and Central Bank of India and the same is pending before the Hon'ble Tribunal. It is further submitted that the Resolution Professional shall also provide an explanation before this Tribunal as to why an intimation regarding the initiation of CIRP was sent to Sub-Registrar of Properties Officer -in-Charge, Bhayandar, Mumbai at a belated stage that is on 21.09.2021 and not at the time of commencement of CIRP.
5. Respondent no. 1 and Respondent no. 3 states that the contents of the Application shows that it was Respondent No. 2 who was communicating and assisting the Resolution Professional in providing information. It is a matter of fact that the Resolution Professional has not even contacted Respondent no. 1 and Respondent no. 3 by phone or called them to his office/ met me in last 2-2.5 years. Further, the

Respondent no. 1 and Respondent no. 3 have not even attended any CoC meetings in last 2-2.5 years.

6. Hence, the Respondent no. 1 and Respondent no. 3 states that the Resolution Professional has failed to make out a case against them and also failed to annex one single document that could associate them with the alleged illegal transactions.

III. Brief Submissions filed on behalf of Respondent no. 2

1. The Respondent No. 2 i.e., Mr. Yogesh Bosmiya (Suspended Director of the Corporate Debtor) has filed a detailed reply dated 20.12.2022 opposing all the averments and objections raised by the Resolution Professional. The Respondent no 2 states that Application is not maintainable in law as the Resolution Professional has filed it with mala-fide intentions and at a belated stage only to cause hindrance and obstruction in the corporate insolvency resolution process ("CIRP") of the Corporate Debtor.
2. The Respondent no 2 submits that since the Corporate Debtor is a company indulging in the business of real estate, there were numerous claims that were submitted by the homebuyers. The Resolution Professional failed to consider the claims of these homebuyers under the reasons best known to him and arbitrarily constituted the Committee of Creditors ("CoC"). Thereafter, an Application filed by the

aggrieved homebuyers is pending adjudication before this Bench. Therefore, the constitution of CoC by the Resolution Professional is in itself in question and requires indulgence of this Tribunal.

3. Further, the Respondent no. 2 submits that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide Order dated 14.12.2018. Pursuant to this, the suspended directors of the Corporate Debtor were directed to co-operate with the Resolution Professional. Hence, in compliance of the same, he cooperated with the Resolution Professional in good faith to assist him in keeping the Corporate Debtor as a going concern. This can also be substantiated from the documents placed on record by the Resolution Professional in the instant Application.
4. Further, it was the Respondent No. 5 i.e. Sunil Adiwal (an employee of the Corporate Debtor) who had requested the Resolution Professional to allow Respondent Nos. 1 to 3 to execute the pre-CIRP sale agreements. The Respondent No 2 states that Respondent Nos. 1 to 3 never tried to obtain permission regarding execution of pre-CIRP agreements or new sale agreements since we were made aware that no such decision could be taken by the suspended management without the permission of the Resolution Professional. Hence, no decisions were taken that could jeopardize or hinder in smooth functioning of CIRP and even abided by the decisions of the Resolution Professional.

5. The Respondent no. 2 submits that since the voting process was held at the peak of COVID-19 pandemic, the said e-voting process could not be successful. The sequence of dates are important to note, it CoC meeting was held on 20.03.2020 when the Resolution Plan submitted by me along with Respondent Nos. 1 and 3 was put to vote and the voting was initially opened for a period of 3 days starting from 23.03.2020 to 26.03,2020 and was subsequently extended to 14.04.2020. However, it is pertinent to mention that on 15.03.2020, the offices had stopped working at their full potential and on 22.03.2022, due to sudden outbreak of COVID-19. Further, the Respondent no 2 submits that if there is a chance of reviving the Corporate Debtor, then every attempt should be made for achieving the same and the Liquidation should be the last resort.
6. The Respondent no. 2 states that the since the CIRP was initiated vide Order dated 14.12.2018, neither me nor Respondent Nos. 1 to 4 had knowledge about the inventories of the Corporate Debtor pursuant to initiation of CIRP. The Respondent no. 2 states that he was not involved in any unlawful activities or transactions that were alleged by the Resolution Professional. The Resolution Professional vide email dated 14.09.2026 had requested the ex- directors to provide para-wise reply to email which was sent by one stage group. In response to the same, vide letter dated 24.09.2020. The Respondent no 2 had categorically stated that M/s Siddhi Group's contentions are untenable and

completely misconceived, in fact the letter dated 24.09.2020 addressed to the Resolution Professional is self-explanatory. The alleged contentions of Siddhi Group are frivolous and futile and as stated in the said letter in paragraph 8 of the said letter, it is categorically stated that none of the erstwhile directors of the Corporate Debtor had entered into any sale of executed any Agreement while being suspended as per the provisions of the Code, Furthermore, as even admitted by the Resolution Professional, there was no documentary evidence to prove that Respondent Nos. 1 to 3 had entered into any unlawful activities.

7. The Respondent no 2 states that the emails referred by the Resolution Professional are presented in coloured manner only to create prejudice against and the Respondent Nos. 1 to 3. Further, the contents of the Application clearly shows that the ex-directors i.e., Respondent Nos. 1 to 3 have benefited from the purported sale of flats. In fact, the alleged proceeds were deposited in the account of the Corporate Debtor which was in custody of the Resolution Professional. Furthermore, a bare perusal of the email dated 03.02.2021 clearly shows that since the commencement of CIRP proceedings, that all the requisite documents and information were provided requested by the Resolution Professional.
8. The Respondent no 2 states that on instructions of the staff engaged by the Resolution Professional, the said agreements were executed by him. Hence, the onus of proving that Respondent no. 3 carried out the illegal

sale of flats instead of acting on the instructions of the staff is on the Resolution Professional. Further, The Respondent no. 2 states that admittedly, the amount towards the sale of these flats was deposited in the account of the Corporate Debtor which was in the custody of the Resolution Professional.

9. The Respondent no. 2 states that the Resolution Professional is now filing application and raising false accusations against the suspended board of directors to cloak his inefficiency for not keeping a thorough check on the assets of the Corporate Debtor. Furthermore, the staff was engaged by the Resolution Professional, hence, were answerable to the Resolution Professional. Further, being suspended from the management of the Corporate Debtor, Respondent no. 2 states that he had not participated in any kind of managerial decisions or could exercise any control over the staff.
10. Further, Respondent no 2 states that it is imperative to note that the Resolution Professional admits that the custody of the keys of the flats was given to the employees/staff of the Resolution Professional and Respondent no 2 had no control or influence on the staff.
11. The Respondent no 2 states that as admitted by the Resolution Professional, Respondent No. 5 was the in charge of the sales of the said units/flats. Neither the Respondent no. 2 had knowledge about the buyers nor he tried to approach them any of the parties. The purported agreements were executed on the instructions of the staff. Hence, the

Respondent no. 2 states that he had no knowledge about issuance of any Occupation Certificate and Fire NOC.

12. The Respondent no 2 states that the Resolution Professional waited for the lockdown to lift instead of inquiring from his team and staff engaged by him. Even then, the task of physical verification was given to one Mr. Vinodkumar Deshmukh instead of being hands on towards conducting investigation. The Resolution Professional took more than a year to inform the Sub-Registrar of Assurances regarding the initiation of CIRP. Despite having knowledge about the on-going projects and the assets belonging to the Corporate Debtor, the Resolution Professional took measures only after realizing that something was amiss. In fact, a bare perusal of the contents of the Application shows that the Resolution Professional has miserably failed to make out a case against Respondent no. 2 on the other hand, it is the Resolution Professional's lackadaisical attitude towards safeguarding the assets and engaging right staff that has led to decrease in the inventories.
13. The Respondent no. 2 directed was directed to cooperate with the Resolution Professional so when the Resolution Professional inquired about the agreements, he shared the list of the same since he had a copy of these agreements which were handed over to him by the staff at the time of execution of these agreements. The Respondent no. 2 states that if he had refused to provide the copy of the said agreements then he would be in blatant breach of the directions.

14. The Respondent no. 2 states that the bifurcation mentioned by the Chartered Accountants which shows that the Resolution Professional had wrongly included 5 flats/units as part of the inventory of the Corporate Debtor. Once again, it is the Resolution Professional's inefficiency and incompetence that has led to miscalculation of inventories, the Resolution Professional should have carried out this thorough investigation in the beginning when the information memorandum was being prepared. The Resolution Professional, at the eleventh hour of the CIRP, decided to conduct the investigation again only to know that there were certain units/flats that were wrongly added as inventory of the Corporate Debtor.
15. The Respondent no. 2 states that the contents of my email dated 18.02.2022 are self-explanatory. The Respondent no. 2 states that he provided assistance to the Resolution Professional and his staff as and when it was expected out of me. Furthermore, even if any inquiries were made by any third parties, he had diverted them to the marketing team of the Corporate Debtor. Further, the Respondent no 2 had also mentioned that it could be a possibility that in or around 140 units could have been sold. But the same was possible because of the efforts of the marketing team of the Corporate Debtor. In fact, it was informed to the Resolution Professional that all 140 allottees may be called to deposit the applicable payment if not made already. the Respondent no.2 submits that he had also offered help to reconcile all the sales of

the Corporate Debtor and had further given assurance to cooperate with the Resolution Professional for handing over 35 units which were occupied by the employees prior to CIRP. Pertinently, it is to be noted that these flats were in possession of the employees prior to initiation of CIRP. The Respondent no 2 states that the Resolution Professional was well within his rights to take appropriate measures for vacating the said flats, despite the same, the Respondent no 2 did not evade from co-operating with the Resolution Professional at any point of time. It is further imperative to point out that none of these alleged purchasers are related parties or employees of the Corporate Debtor.

16. The Respondent no 2 states that till the filing of the said Application, the Resolution Professional is relying on a report issued by Chartered Accountants instead of physically investigating himself and keeping the units/flats under lock and key. Interestingly, the report also records that mistakenly 5 flats were made part of the inventory which were also made part of the information memorandum.
17. The Respondent no 2 states that the Resolution Professional in receipt of all the agreements and the list of all the buyers/purchasers of these flats, the said buyers/purchasers may be called upon to deposit the consideration towards these flats, failing which the said agreements may be terminated. Furthermore, even when the Resolution Professional failed to take control and custody of the assets of the Corporate Debtor, the Respondent no 2 never tried to escape from the

responsibility for providing assistance and co-operation to the Resolution Professional. Due to which, it was informed to the Resolution Professional that by the time the flats were being vacated, rent could be deposited from 01.04.2021. The Resolution Professional is unnecessarily trying to give this a colour of illegality when in fact, Respondent no. 2 had always presented true and correct facts regarding the inventories of the Corporate Debtor.

18. Further the Respondent no 2 states that he was not asked to draft these agreements nor he was given an opportunity to analyze the documents in detail. In fact, the same were provided to Respondent at the time of execution and as per instructions, and he only had to sign the agreements at the mentioned places. Hence, the Respondent no 2 states that he cannot be held accountable for misleading the said buyers/purchasers nor I can be blamed for omitting any details.
19. The Respondent no. 2 states that the contents of the aforementioned paragraphs and states that he have executed these agreements on instructions of the staff engaged/employed by the Resolution Professional. Neither he was in charge of drafting the said agreements nor he was well conversant with the knowledge of law in order to understand the implications of the clauses mentioned or missed in the said agreements. Further, the Respondent no 2 states that the Resolution Professional has full knowledge about the details of these buyers/purchasers, the said buyers/purchasers may be called upon to

deposit sale consideration towards the said flats/units. The Resolution Plan was submitted based on the information provided in the information memorandum, if the said units/flats were 393 at the time of submitting the Plan then the Resolution Plan was with respect to these many units/flats. The Respondent no. 2 states that say that he was not benefited from the sale proceeds of these units/flats. In fact, the outcome of the said sale would be based on the steps taken by the Resolution Professional to assemble the buyers/purchasers to either submit the entire sale consideration or else it would result in termination of the said agreements. In any case, no where the Respondent no 2 is in beneficial position in the entire process.

FINDINGS AND OBSERVATIONS

1. Heard Mr. Kunal Kanungo Counsel appearing for the Respondents 1 and 3, Mr. Anirudh Purushottaman Counsel appearing for Respondent no. 2, Mr. Jineshkumar Gandhi Counsel appearing for Respondent no. 5 and Mr. Rohan Agarwal Counsel appearing for Resolution Applicant and perused the material placed on record. It is pertinent to mention here that the Counsel appearing for Respondent no. 5 was merely present during the course of hearing. However, he has not filed any reply in the present matter. Respondent no. 5 is none other than the employee of the Corporate Debtor. The Resolution Professional affected Service of Notice

on the remaining Respondents way back in the year 2022 itself. Despite the Service of Notice, the remaining Respondents did not participate in the proceedings. Apart from the earlier Service of Notice filed by Resolution Professional in 2022, the Resolution Professional once again filed Affidavit of Service dated 20.04.2023 clearly mentioning the status of Service of Notice on all the Respondents.

2. As mentioned above, the Resolution Professional filed the above application seeking cancellation of 82 flats said to have been sold by the Respondent nos. 1-3 during the moratorium and also for passing appropriate penal orders against Respondent nos. 1-3 who have contravened the provisions of the Code. In the light of the above pleadings, the following questions arise for consideration:

a. Whether the flats sold by the Respondent nos. 1-3 more fully described in the list annexed by the Resolution Professional numbering in 82 are hit by the moratorium and liable to be cancelled?

b. Whether the Respondent nos.1-3 have contravened the provisions of the Code and liable for punishment under Section 74 of the Code?

3. The genesis of the present application originates from the Company Petition bearing no. 3119 of 2018, filed by the Financial Creditor i.e., India Asset Growth Fund Through Essel Finance Advisors & Mangers LLP and Ors against the Corporate Debtor i.e. Rashmi Housing Private Limited,

which was admitted on 14.02.2018 and consequently the CIRP period commenced from the date of the admission order. The Resolution Professional has vehemently argued that 90 Registered Sale Agreements were executed & registered with various third parties (Respondent nos. 12 to 90) by the Suspended Directors i.e., Respondents No. 1 to 3 during the CIRP without any valid authority and approval. In addition to this, the Resolution Professional contested that despite the non-receipt of the occupation certificate, the Suspended Directors have illegally granted wrongful occupation of 184 Units/Flats whereas there are 36 illegal occupants that are in wrongful possession. Further 71 units/flats are still not in possession despite of various reminders to the Employees and Suspended Directors regarding handover of keys and possession of the completed flats.

4. The only submission of the Counsel appearing for the Respondent No. 1 i.e., Mr. Hemendra Bosmiya and Respondent no. 3 i.e., Ashok Bosmiya is that; the Respondent no. 2 i.e., Mr. Yogesh Bosmiya alone is responsible for daily affairs of the Corporate Debtor and they have no personal knowledge regarding any of the alleged sale transactions done by the Respondent no 2 or the staff. He further contends that some of the sale transactions were entered into with the consent of the Resolution Professional and money has come into the account of the Corporate Debtor. Similarly, the Respondent no. 2 also contended that no units were sold illegally without the authorisation of the Resolution Professional and

the Respondent no. 2 never approached the flat buyers or carried out any publication for sale of these flats. Advancing the argument, the Respondent no. 2 contested that the said agreements were executed only on instructions of the staff and the Respondent no. 2 only provided assistance. Thus, all the respondents except throwing the blame on Resolution Professional did not dispute the fact that the subject matter of sale transactions took place during the moratorium.

5. In order to attract the ingredients of Section of 74 of the IBC, it is imperative to observe the intention on the part of the Respondents being the Suspended Directors or employees was to cheat and/or to defraud the Corporate Debtor by entering into transaction during the CIRP period. Taking that into concern, it is necessary to advert to the Section 14 of the Code which comes into force and the moratorium starts. As per the Insolvency and bankruptcy Code, 2016 it is prescribed as under :-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(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 Securitisation 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.

1[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 license, permit, registration, quota, concession, clearances 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;] (2) The supply of essential

goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

1[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

2[(3) The provisions of sub-section (1) shall not apply to —

3[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating

Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

*Reference *Effective from 01.12.2016.*

1. Ins. by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, w.e.f. 28.12.2019.

2. Subs. by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.e.f. 06.06.2018(see State Bank of India Vs. V. Ramakrishnan & Anr.-SC), for sub-section:

“(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

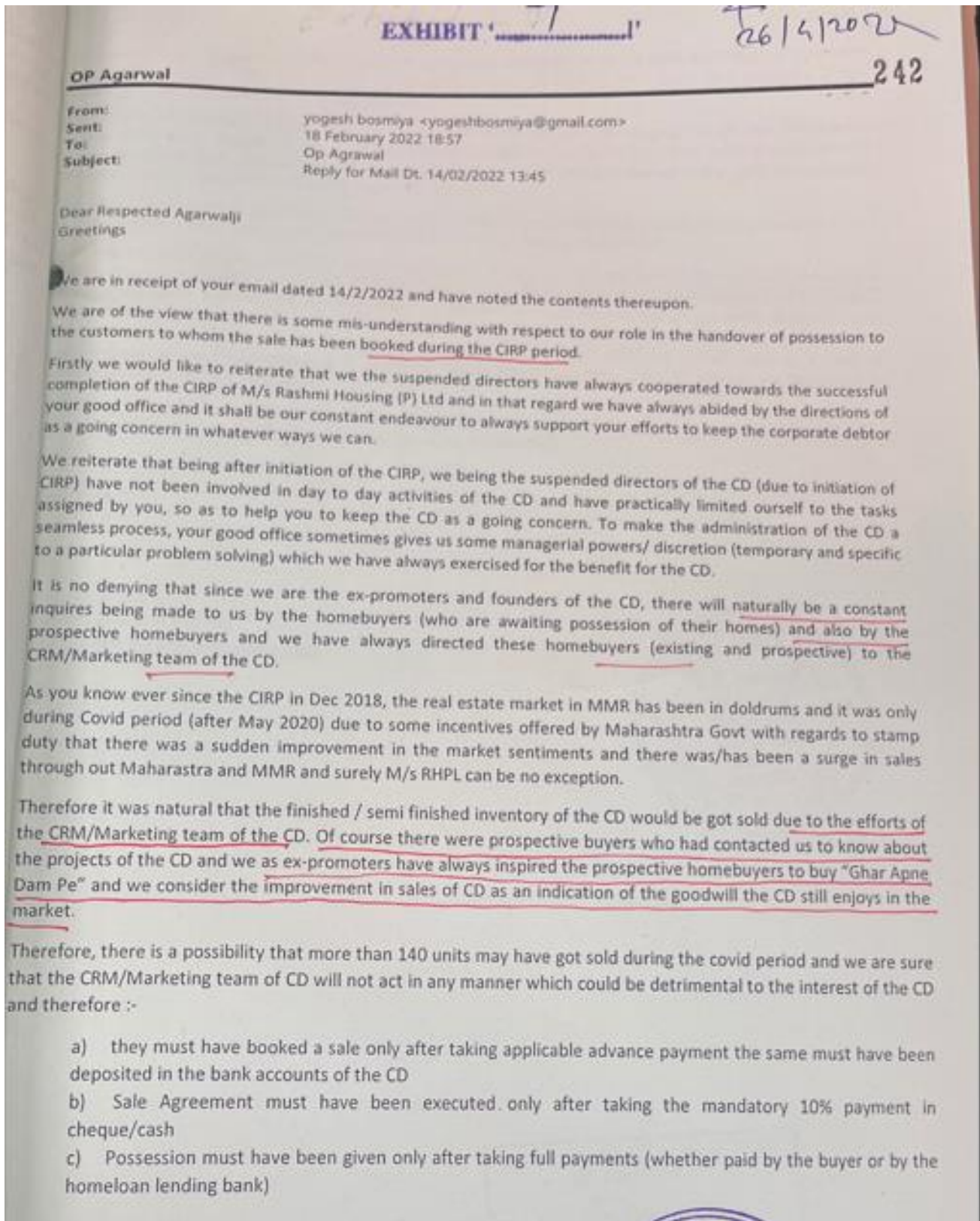
Subs. by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, w.e.f. 28.12.2019, for the clause:

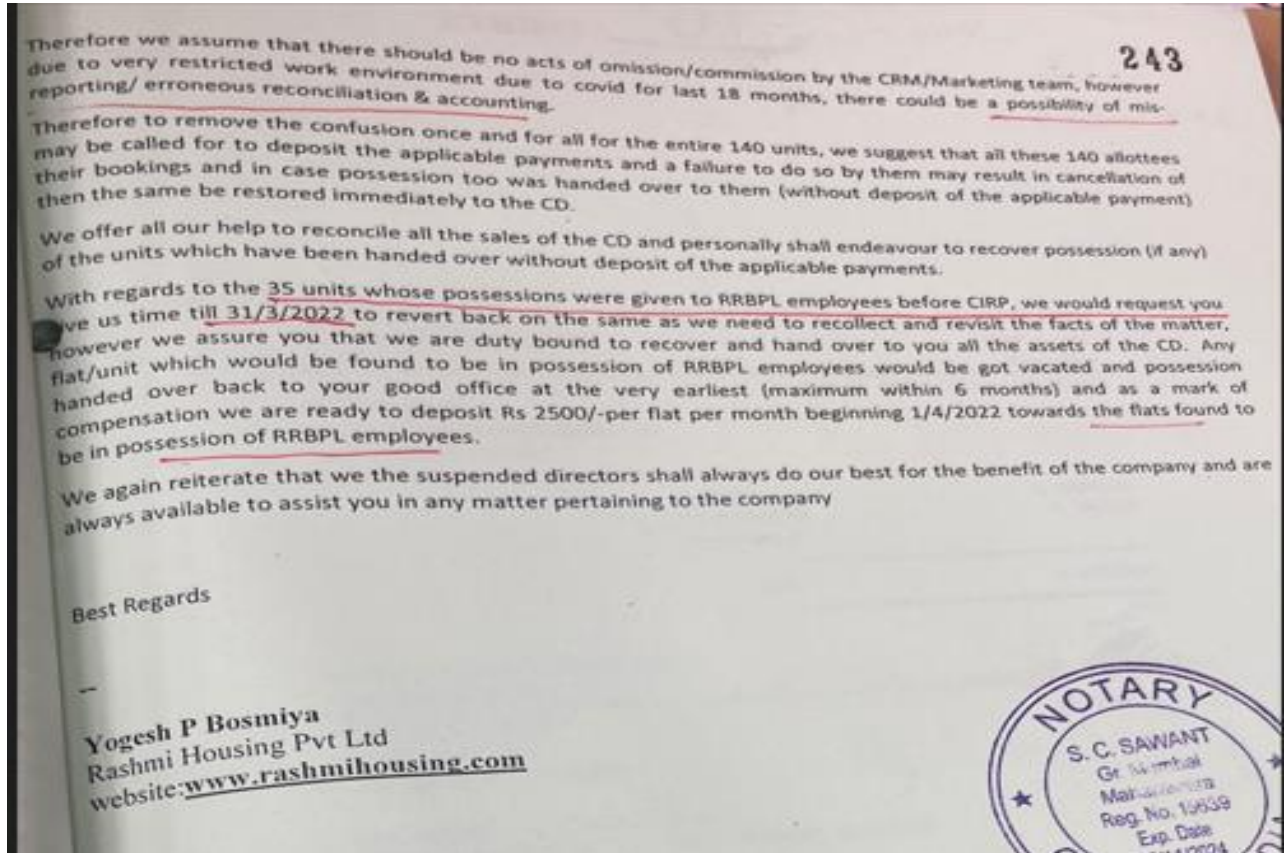
“(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;”.

6. Therefore, as per sub clause (b) of the above provision, any transfer of property/assets of the Corporate Debtor is prohibited after the commencement of moratorium. The rationale behind implementing such prohibitions as laid down in Section 14 during moratorium is to maintain

the sanctity of the CIRP and to ensure the avoidance of frivolous and fraudulent transactions which will leave the Corporate Debtor in a devastated state by further sabotaging the CIRP process.

7. At the outset, the Resolution Professional has stated that the Suspended Directors along with the employees are responsible of sale transactions of the units/flats of the Corporate Debtor during the CIRP period. The Resolution Professional has drawn the attention of this bench to Exhibit B of the Written Submissions which evidences the facts that there are 82 units of the Corporate Debtor which has been reflected as “sold units” in the ERP data base of the Corporate Debtor. However, no agreement for sales have been executed and registered of these 82 units. The Resolution Professional has further drawn the attention of this Bench to the report prepared by Mr. Vinodkumar Deshmukh on Physical Verification Report Of Inventory of 393 Units attached at Exhibit M. The Resolution Professional has further drawn the attention of this Bench to the e-mail dated sent by Respondent no. 2 annexed at page 242 to Written Submissions which is reproduced below for ready reference:





It is clear from the abovementioned email that the Respondents have clearly admitted the fact that the flats were sold during the Covid Period which falls within the duration of the CIRP process. This clearly demonstrates that the Respondents had mala fide intentions and admittedly accepted this fact time and again in the above e-mail that the agreements were executed by Respondent no.2 and the special emphasis can be laid on the abovementioned email.

8. The entire origin emanates from the selling of flats and units during the Covid 19 period and the malafide intention of the Suspended Directors

along with the Employees i.e., Respondent no. 5 which can be culled out from following facts:- a. wherein the Suspended Directors attempted take advantage of Covid -19 situation to execute the agreements at a slashed/ low priced rate than that of a market rates and sold to the flat/unit purchasers during the CIRP period. It is noteworthy to mention here that the Respondents who are educated businessmen having complete knowledge of business transactions having signed the sale agreements with open eyes cannot plead innocence or ignorance of law. The flimsy defence taken by the Respondent 1 and 3 that they were only proforma party is untenable. Even if the Respondent no. 2 having signed and executed the sale agreements , the Respondent no. 1 i.e., Hemendra Bosmiya owns 5 unit/flats under his own name which is deducible from ERP data which shows that the flats/units ranging from at serial no. 30 to 35 are under the name of "H SIR" annexed as "Exhibit B" at page 11 of the Written submissions . Further there are no executed or registered sale deeds for the flats/units. It is apparent from the above facts and circumstances that the sale transactions took placed during the CIRP stage and further certain units and flats are illegally detained (as the entire transaction took placed during the Covid period i.e., 2020 and the CIRP started from 14.12.2018) with the objective of causing harm to the Corporate Debtor. The Resolution Professional has submitted the list of 82 units alleged to said to have been sold to the Respondents for which there are no Agreement of sales or registration documents except mentioning

them as sold in the ERP data base of the Corporate Debtor. The copy of the list filed by the liquidator is also extracted hereinbelow:

11

List of Inventory of 82 units shown as Sold in ERP data but for which no Sale Agreement has been executed

Sr. No.	Project Details	Unit Details	Customer Name	Sale Value as per ERP (INR)
1	Rashmi Residency - Vasai			
2	Rashmi Residency - Vasai	Flat - F - 103	A. K. Enterprise	30,00,000
3	Rashmi Dhruvita Park - Vasai	Flat - F - 104	A. K. Enterprise	30,00,000
4	Rashmi Pink City Phase II - Naigaon	Flat - D - 002	Adishri Constructions	48,95,000
5	Rashmi Garden I - Virar	Flat - 8 - 404	Amit Rai	21,00,000
6	Rashmi Garden I - Virar	Shop - 1 - C-10	Anil Singhji	12,00,000
7	Rashmi Garden I - Virar	Shop - 1 - C-13	Anil Singhji	12,00,000
8	Rashmi Garden I - Virar	Shop - 1 - C-9	Anil Singhji	12,00,000
9	Rashmi Garden I - Virar	Shop - 3 - B-29	Anil Singhji	12,00,000
10	Rashmi Garden II - Virar	Shop - A - 1	Anil Singhji	6,00,000
11	Rashmi Garden II - Virar	Shop - A - 2	Anil Singhji	8,00,000
12	Rashmi Garden II - Virar	Shop - A - 3	Anil Singhji	8,00,000
13	Rashmi Garden II - Virar	Shop - A - 4	Anil Singhji	8,00,000
14	Rashmi Heights - Vasai	Flat - C - 204	Arun S. Gupta	20,00,000
15	Rashmi Pink City Phase I - Naigaon	Flat - P - 002	Ashok Rambhau Waghmare	30,00,000
16	Rashmi Heights - Vasai	Flat - A - 501	Avinash Banvari Yadav	15,00,000
17	Yashwant Park - Vasai	Shop - C - 18	Avinash Banvari Yadav	7,00,000
18	Rashmi Heights - Vasai	Flat - B - 301	Bhakti Suraj Tiwari	15,00,000
19	Rashmi Heights - Vasai	Flat - B - 602	Bichitra Dadhibaman Das	20,00,000
20	Rashmi Snehdeep - Ghatkopar	Flat - B - 802	Chandra C. Bhatia	81,00,000
21	Rashmi Classic - Vasai	Shop - J - 1	City Logic Co.	7,00,000
22	Rashmi Classic - Vasai	Shop - J - 2	City Logic Co.	7,00,000
23	Rashmi Heights - Vasai	Flat - A - 201	Dinesh Laxman Patel	1,12,77,500
24	Rashmi Garden I - Virar	Flat - F - 105	Dineshkumar R. Baranwal	50,87,500
25	Rashmi Pink City Phase I - Naigaon	Flat - G - 001	Evegreen Infrastructure	17,00,000
26	Rashmi Pink City Phase I - Naigaon	Flat - G - 004	Evegreen Infrastructure	17,00,000
27	Rashmi Garden I - Virar	Shop - 4 - B-24	Firoz Bhai	9,00,000
28	Rashmi Garden I - Virar	Shop - 4 - B-25	Firoz Bhai	10,00,000
29	Rashmi Garden I - Virar	Shop - 4 - B-26	Firoz Bhai	10,00,000
30	Rashmi Garden I - Virar	Shop - A - D-4	Firoz Bhai	10,00,000
31	Rashmi Classic - Vasai	Flat - G - 101	H Sir	40,00,000
32	Rashmi Classic - Vasai	Shop - J - 4	H Sir	11,00,000
33	Rashmi Garden Evershine - Vasai	Shop - A - 006	H Sir	7,00,000
34	Rashmi Residency - Vasai	Flat - F - 101	H Sir	39,00,000
35	Rashmi Residency - Vasai	Flat - F - 102	H Sir	38,00,000
36	Rashmi Heights - Vasai	Flat - A - 101	Jyotiben S. Sutar	15,00,000
37	Rashmi Star City Phase I - Naigaon	Shop - C-3 - 14	Kalpesh Kishor Oza	15,60,000
38	Rashmi Dhruvita Park - Vasai	Flat - G - 703	Khan Shakila Bano Azmat Ali	15,00,000
39	Rashmi Garden Evershine - Vasai	Flat - E - 005	M/s. Balaji Enterprises	41,25,000
40	Rashmi Garden Evershine - Vasai	Flat - E - 105	M/s. Balaji Enterprises	43,75,000
41	Rashmi Garden I - Virar	Flat - H - 605	M/s. Balaji Enterprises	46,25,000
42	Rashmi Garden I - Virar	Flat - H - 405	Mahendra Singh Bhatia	30,00,000

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH

I.A 1342 of 2022
In
CP (IB) 3119 of 2018

42	Rashmi Pink City Phase I - Naigaon	Shop - L - 6	Meena Jitendra Singh	9,90,000
43	Rashmi Pink City Phase I - Naigaon	Flat - K - 102	Ncetu A Giri	34,60,000
44	Rashmi Classic - Vasai	Shop - K - 12	Nidhi Tripathi	9,22,000
45	Rashmi Star City Phase I - Naigaon	Flat - G-4 - 106	Prashant Ravindra Thakare	15,00,000
46	Rashmi Star City Phase I - Naigaon	Flat - C-2 - 002	Premanand Harishchandra Borkar	16,50,000
47	Rashmi Star City Phase I - Naigaon	Shop - C-2 - 9	Premanand Harishchandra Borkar	12,50,000
48	Rashmi Garden I - Virar	Shop - 2 - C-6	Priyanka Panchal	27,41,000
49	Rashmi Heights - Vasai	Flat - A - 304	Ramesh Shankar Dhaigude	35,00,000
50	Rashmi Heights - Vasai	Flat - C - 304	Rekha Arvind Patel	42,00,000
51	Rashmi Star City Phase I - Naigaon	Flat - G-4 - 101	Rita Badgamiya	17,50,000
52	Rashmi Pink City Phase I - Naigaon	Flat - R - 102	Ronak Chimanbhai Vaghasia	15,00,000
53	Rashmi Star City Phase I - Naigaon	Shop - G-1 - G-32	Ruchi Mittal	15,00,000
54	Rashmi Star City Phase I - Naigaon	Shop - G-1 - G-33	Ruchi Mittal	12,50,000
55	Rashmi Star City Phase I - Naigaon	Shop - G-1 - G-34	Ruchi Mittal	9,50,000
56	Rashmi Star City Phase I - Naigaon	Shop - G-1 - G-35	Ruchi Mittal	13,50,000
57	Rashmi Hill View Row House - Vasai	Flat - ROW HOUSE - 1	Ruchi Mittal	75,00,000
58	Rashmi Hill View Row House - Vasai	Flat - ROW HOUSE - 2	Ruchi Mittal	75,00,000

Page 1 of 2

List of Inventory of 82 units shown as Sold in ERP data but for which no Sale Agreement has been executed

Sr. No.	Project Details	Unit Details	Customer Name	Sale Value as per ERP (INR)
59	Rashmi Pink City Phase I - Naigaon	Flat - C - 402	Sajid Bhai	24,00,000
60	Rashmi Pink City Phase I - Naigaon	Flat - C - 403	Sajid Bhai	25,00,000
61	Rashmi Pink City Phase I - Naigaon	Flat - D - 002	Sajid Bhai	30,00,000
62	Rashmi Pink City Phase I - Naigaon	Flat - E - 204	Sajid Bhai	24,00,000
63	Rashmi Classic - Vasai	Shop - K - 16	Sanjay Shambahadur Singh	7,00,000
64	Rashmi Classic - Vasai	Flat - C - 204	Sharif G. Shaikh	40,00,000
65	Rashmi Pink City Phase I - Naigaon	Flat - D - 401	Shivam Sureshchandra Shukla	24,00,000
66	Rashmi Star City Phase I - Naigaon	Flat - C-2 - 001	Starcity A-10, A-11, A-12 Society	14,10,000
67	Rashmi Star City Phase I - Naigaon	Flat - C-6 - 002	Starcity A-13, A-14, A-15 Society	16,35,000
68	Rashmi Star City Phase I - Naigaon	Flat - G-1 - 101	Starcity G-1 To G-6 Society	15,00,000
69	Rashmi Star City Phase I - Naigaon	Flat - G-3 - 101	Starcity G-1 To G-6 Society	15,00,000
70	Rashmi Garden I - Virar	Flat - E - 002	Subhash Maruti Kamble	15,00,000
71	Rashmi Garden I - Virar	Flat - H - 305	Subhash Maruti Kamble	37,12,500
72	Rashmi Star City Phase I - Naigaon	Shop - C-2 - 12	Sujit Bindhyvasni Sharma	12,75,000
73	Rashmi Regency I - Vasai	Flat - A - 002	Sushant Harsh Sabat	22,00,000
74	Rashmi Star City Phase I - Naigaon	Flat - G-2 - 102	Triloksingh C Sisodiya	15,25,000
75	Rashmi Heights - Vasai	Flat - A - 204	Umesh Anant Bhagwat	35,00,000
76	Rashmi Classic - Vasai	Shop - K - 9	Umesh Ramashankar Gupta	7,00,000
77	Rashmi Residency - Vasai	Flat - I - 103	Vibha Govind Dubey	35,00,000
78	Rashmi Dhruvita Park - Vasai	Flat - B - 705	Vijay Daryanamal Lulla	10,00,000
79	Rashmi Classic - Vasai	Shop - J - 3	Vikas Vilas Shinde	32,50,000
80	Rashmi Star City Phase I - Naigaon	Flat - G-1 - 001	Wahid S. Bhati	14,25,000
81	Rashmi Star City Phase I - Naigaon	Flat - G-3 - 104	Wahid S. Bhati	15,00,000
82	Rashmi Star City Phase I - Naigaon	Flat - G-4 - 102	Wahid S. Bhati	15,00,000
Grand Total				19,23,90,500

9. It is not proper to recognise the above purported sale transactions in the absence of any valid registered documents more so in the absence of the purported buyers claiming their rights over their respective flats. In the light of the above facts and circumstances coupled with the documents

and evidence placed on record, it is observed that the averments and the allegations raised by the Resolution Professional against the Respondents constitute an offence under Section 74 of the IBC, 2016. Accordingly, this Tribunal; hereby hold that the 82 flats shown as sold in the ERP data of the Corporate Debtor are sham and collusive entries made by Respondent 1 to Respondent 3 and they are hit by moratorium and liable to be cancelled even if they are true. This Tribunal further hold that Respondents nos. 1-3 have wilfully disobeyed the moratorium and committed an act punishable under Section 74 of the Code.

10. This Bench in view of Section 74 of the IBC, hereby direct the Suspended Directors i.e., Respondent 1 to 3 to deposit a fine of Rs. 3 Lakhs each within two weeks from the date of communication of this order to Bharatkosh and shall submit compliance affidavit to Resolution Professional. The Bench further directs that since the 82 units are sold without any execution or registration of sale as per the ERP Data of the Corporate Debtor mentioned above will be null and void. Consequently, the concerned flat purchases/Respondent having no executed or registered deed for sale shall co-operate with the Resolution Professional for peaceful handover.
11. Further all sale transaction conducted during the post CIRP are bad in law and hereby declared as null and void as these sale transactions are hit by moratorium.
12. Since most of the sale transactions took place during the moratorium period and 82 units are still unregistered therefore, this Tribunal with no

choice has allowed the Application and it is hereby directed to the Suspended Directors/concerned Respondents for full and proper disclosure to the Resolution Professional.

13. Resolution Professional as well as Registry are directed to communicate the above order forthwith to the Respondents through all modes of communication.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

//RENUKA//LRA//

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)