

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 1265 of 2019**

**IN THE MATTER OF:**

**Gajraj Jain & Ors.**

**...Appellants**

**Vs**

**Shivgyan Developers Pvt. Ltd.**

**....Respondent**

**Present:**

**For Appellants: Mr. Piyush Singh, Mr. Nithin Chandran and  
Mr. Sumbul Ismail, Advocates.**

**For Respondent:**

**ORDER**

**18.11.2019:** The Appellant claiming to be allottee filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s Shivgyan Developers Pvt. Ltd.' (Corporate Debtor). It is stated that the Corporate Debtor failed to handover the possession of residential unit by 31<sup>st</sup> March, 2017 as per the agreement and not paid the compensation.

2. The Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, Rajasthan by impugned order dated 11<sup>th</sup> October, 2019 rejected the application taking into consideration the submission made by the Corporate Debtor as quoted below:-

*“9. During the course of proceeding an opportunity was given to the Financial Creditors to exercise their option for taking possession. They have refused it on grounds that*

*they are no longer interested in the said units, especially since the Occupancy Certificate has not been granted in respect of the project by the Competent Authority. It is further submitted that the flat is not habitable.*

10. *Per contra, ld. counsel for the Corporate has submitted that the process for procuring the Occupancy Certificate had been initiated way back in the year 2017 itself. For reasons whatsoever on account of technicalities, the said Occupancy Certificate/ Completion Certificate has not been granted for want of certain formalities, but it is noticed that the same is in process. Various photographs of the flats in question, the completed towers and surrounding areas give rise to a reasonable surmise that the project is in a habitable condition. The photographs of the concerned units show that they are ready to be occupied. Learned counsel for the respondent has also submitted that a number of flats are already occupied and sale deeds have been executed in favour of allottees. We find no reasons for the Financial Creditors to resist taking possession and insist only on refund, or on initiation of CIR Process for the alleged failure to*

*complete the project on time or for want of the Completion Certificate. The photographs reflect that the flats are in a habitable condition. Moreover, defaults or dissatisfaction in the construction, if any, can be pointed out to the respondent for rectification, if required. The submission of the respondent that possession of several flats has been taken and are being occupied by the allottees has not been repudiated by the petitioners. Clearly the facts of this case point to an arm-twisting tactic. The initiation of Corporate Insolvency Resolution Process is a serious matter and cannot be resorted to by any disgruntled customer. There are other means of redressing their grievances, if they are in respect of lack of adequate quality of construction etc.”*

3. Learned counsel for the Appellant submits that the Corporate Debtor has not offered for legal possession and in absence of the Occupancy Certificate/ Completion Certificate registration cannot be made.

4. Having heard learned counsel for the Appellant and taking into consideration the fact that the Corporate Debtor has completed the project but in absence of Occupancy Certificate/Completion Certificate, which has not

been granted for want of certain formalities, while we are not inclined to interfere with the impugned order dated 11<sup>th</sup> October, 2019, expect that the Corporate Debtor will get the Occupancy Certificate/ Completion Certificate from the appropriate authority immediately.

5. The Appellant may bring this order to the notice of the Competent Authority, who is expected to issue Occupancy Certificate/ Completion Certificate on an early date on completion of formalities, if any, to be completed by the Corporate Debtor. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

*am/sk*