IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

IA No. 490/JPR/2023
In CP No. (IB)- 297/7/JPR/2019

IN THE MATTER OF:
MRS. SAROJ GUPTA

...Financial Creditor

VERSUS

AASTHA BUILDHOME DEVELOPERS PVT. LTD. (Under CIRP)

...Corporate Debtor

IA No. 490/JPR/2023

MEMO OF PARTIES

ASHISH HEIGHTS MAINTENANCE AND WELFARE SOCIETY
Through its Treasurer and Authorised Representative Mr. Hanuman Saini,
R/o: - Ashish Heights Opp. Mahatma Gandhi Hospital, Ramchandra Pura, Sitapura, Jaipur-302022.

...Applicant

VERSUS

AASTHA BUILDHOME DEVELOPERS PVT. LTD. (Under CIRP)
Through Resolution Professional Mr. Prashant Agarwal
R/o: - F-174, First Floor, (F-106), Sumer Complex, Gautam Marg, Behind Bagadia Bhawan, C-Scheme, Jaipur- 302001.

...Respondent

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For the Petitioner	:	Nitesh Srivastava, Adv.
For the Respondent	:	Prakul Khurana, Adv. Gourav Asati, Adv.

Order Pronounced On: 15.10.2025

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The main Petition was filed by *Mrs. Saroj Gupta* ('Financial Creditor') against the Corporate Debtor, *Astha Buildhome Developers Private Limited* ('Corporate Debtor'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code'). The said Petition was allowed by this Adjudicating Authority vide its Order dated 09.10.2022 and the Corporate Insolvency Resolution Process ('CIRP') was initiated against the Corporate Debtor.

2. The instant Application bearing *IA (IBC) No. 490/JPR/2023* has been filed under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 on behalf of *Ashish Heights Maintenance and Welfare Society* ('Flat Buyers Association'/ 'Applicant') of real estate project '*Ashish Heights*' of the Corporate Debtor against the non-consideration of claim by the Resolution Professional ('Respondent'). The IA has been filed based on the following set of facts:

   2.1. The Applicant i.e. *Ashish Heights Maintenance and Welfare Society* is an association of flat owners of Ashish Heights (real estate project of

the Corporate Debtor) duly registered under the provisions of Rajasthan Societies Registration Act, 1958 vide registration dated 21.05.2019 bearing certificate no. COOP/2019/Jaipur/ 104287.

2.2. It is submitted that the Corporate Debtor though claiming the project to be completed by 30.06.2016 had failed to complete the project. The Corporate Debtor has failed to fulfill its promise made in the ATS and Sale Deed. However, the Corporate Debtor in order to avoid the RERA compliance on its project *"Ashish Heights"* induced the allottees to execute the Sale Deeds while the project was pending completion on the promise that the pending construction work including development of common area and common facilities will be completed in due course.

2.3. Based upon the promises and representation of the Corporate Debtor, almost all the flat buyers entered into sale deeds with the Corporate Debtor and out of total 253 units in the project, 233 units have been handed over to the flat buyers without approval of the revised map, occupancy certificate, Fire NOC, and without completing all the amenities in accordance with the sale deed towards which consideration has been taken by the Corporate Debtor.

2.4. It is submitted that the Corporate Debtor entered into an Agreement dated 21.07.2018 with the Flat owners of the *Ashish Heights* wherein the Corporate Debtor acknowledged the fact of incomplete project and

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failure to complete construction regarding common area and facilities. Despite multiple assurances and agreements, the Corporate Debtor failed to complete the project.

2.5. Subsequently, the Applicant filed a complaint before the RERA Authority bearing complaint number 2020-3896. The Corporate Debtor also defaulted in making payment of electric dues, pertaining to common areas. Further, in due course the CIRP of the Corporate Debtor was initiated vide Order dated 09.12.2022 and the Resolution Professional made paper publication on 12.12.2022 inviting claims from the creditors and the last date for submission of claims was 24.12.2022.

2.6. It is stated that the Applicant through its Authorised Representative filed its claim in Form-CA dated 27.12.2022 being a claim by Financial Creditors in a class which is as per Regulation 12(2) of the CIRP Regulation, 2016. The claim amount is of Rs. 5,12,94,947/- along with interest of Rs. 1,22,36,716/- total amounting to Rs. 6,35,31,664/- (Rupees Six Crore Thirty-Five Lakh Thirty-One Thousand Six Hundred and Sixty-Four Only).

2.7. Subsequently, the Applicant received an email dated 10.02.2023 from the Resolution Professional seeking additional information and explanation regarding the claim submitted. Consequently, the

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Applicant sent a reply dated 24.04.2023 to the aforementioned email of RP.

2.8. However, the Resolution Professional vide email dated 05.06.2023 sent a response to the reply dated 24.04.2023 of the Applicant wherein RP did not accept the claim filed by the Applicant. Further, it is submitted by the Applicant that claim has been disregarded by the RP due to which the Applicant could not become part of the CoC.

2.9. It is stated that the Hon'ble Supreme Court in the matter of *"Manish Kumar v/s Union of India, 2021 (5) SCC"* held that the allottee would also include a person who acquires the allotment either through sale, transfer or otherwise. Further, reliance is placed on the order passed by the Hon'ble NCLAT in the matter of *"Bhaskar Biswas v/s/ Avani Oxford Owners Association"* held that the amounts were collected by the Developer from the allottees and kept with its subsidiary, the Corporate Debtor, for the purpose of maintenance till the Association/ Society or Holding Organization gets established to hand over the amounts to the body of the flat owners.

2.10. Additionally, the Applicant has challenged the non-acceptance/ consideration of the claim by the Corporate Debtor on following grounds: -

a) It is stated that the Corporate Debtor, despite receiving the entire sale consideration, corpus fund, and one-time maintenance

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amount, has failed to transfer these funds to the Society's account, as required under Clause 13 of the Sale Deed. Additionally, the amount for clubhouse membership remains undisclosed, though it was part of the total sale consideration. Since the clubhouse was not constructed, a claim has been raised due to the default committed by the Corporate Debtor.

b) Further, the claims regarding the incomplete prime jobs, approach road and pending electricity bill payment are also a financial debt being facilities not provided by the Corporate Debtor despite taking amount from allottees.

3. The Respondent i.e. Resolution Professional has filed its Reply to *IA (IBC) No. 4900/JPR/2023 vide* Diary No. 2340/2023 dated 20.10.2023 and stated that:

3.1. It is submitted that it is necessary to point out here that the Applicant by way of filing the aforesaid claim before the Resolution Professional as a Financial Creditor is trying to get its contractual rights adjudicated arising out of an alleged breach of contract on part of the Corporate Debtor for which the Respondent Resolution Professional has no jurisdiction to adjudicate.

3.2. The purported claims filed by the Applicant based upon non-performance of contractual obligation on the part of the Corporate Debtor does not constitute a financial debt under the terms of the Code

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and hence, the claim Form-CA, filed under the presumption of being a "Financial Creditors in a class" cannot said to be a valid claim in the eyes of law.

3.3. However, the Applicants contention regarding the Suspended Management who were managing the real estate project '*Ashish Heights*' of Corporate Debtor and the officials and employees of the Corporate Debtor who were indulged in the promotion and sale of units under the project. The answering Respondent does not have a locus to comment upon such allegation. However, during inspection of the project by the Respondent-RP it was found that the project in fact is not complete in all respects, to the extent information received from the suspended management.

3.4. Further, the actions taken by the Corporate Debtor prior to the initiation of CIRP in relation to which there are no sufficient documents available with the Respondent-RP to suggest or to make an opinion in this regard. Moreover, due to lack of co-operation by the suspended management, the Respondent-RP is unable to verify the averments made in the said Para and hence the Applicant-Society is put to strict proof thereof.

3.5. It is pertinent to point out that the Applicant-Society had filed its claim to the tune of Rs. 6,35,31,664/- purportedly arising out of a contractual breach on the part of the Corporate Debtor which is solely based upon the computation unilaterally carried out by the Applicant-Association

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without any basis or supporting documents to substantiate the valuation. The Respondent-RP vide his email dated 05.06.2023 had given detailed response while citing legal provisions and case laws for non-consideration of claim of the Applicant Association filed under Form-CA.

3.6. It is submitted that the Applicant-Association in order to support its claims, has relied on the agreements dated 21.07.2018 and 09.08.2019. However, the Respondent contended that the aforementioned agreements do not provide for liquidated damages nor does the aforesaid agreements provides for quantification of such damages.

3.7. It is also stated that Respondent-RP vide its email dated 10.02.2023 sought further information / clarifications in relation to the claim filed. The said email was replied vide letter dated 25.04.2023 in which there were no supporting documents which would enable the Respondent-RP to determine the legitimacy of the claim.

3.8. It is submitted that Admission of such unadjudicated and uncrystallised claim cannot be done by the Respondent- RP as admission of such claim would tantamount to adjudication of contractual right which is not within the domain or the duties / powers of the Resolution Professional. Needless to say, the Hon'ble Supreme Court in *Swiss Ribbon Pvt. Ltd. Vs. Union of India Civil Writ Petition 99 of 2018* has in most unequivocal terms held that Respondent-RP is not vested with

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adjudicatory powers to be exercised under the Code. Reliance is also placed upon the decision of Hon'ble NCLT Mumbai in the *Gujarat Urja Nigam Limited Vs. Nitash Co-generation Pvt. Ltd., Manu/NC/0104/2019* wherein it was observed that liquidated damages arising out breach of contract are provided as an estimate of loss for which a suit can be filed to ascertain the damages.

4. We have heard the Ld. Counsels for the parties and perused the averments made in the Application and Reply along with the documents enclosed therein.

5. The instant Application has been filed by the association of flat owners of Ashish Heights (real estate project of the Corporate Debtor). It is alleged by the Applicant that the Corporate Debtor has failed to fulfill its promise made in the ATS and Sale Deed. It is submitted that the Corporate Debtor executed Sale Deeds with the flat allottees while the project was still under construction, promising that the pending work including the development of common areas and facilities would be completed in due course. For the same the Corporate Debtor has entered into an Agreement dated 21.07.2018 with the Flat owners.

6. Whereas, the Respondent contended that the Applicant by way of filing the aforesaid claim before the Resolution Professional as a Financial Creditor is trying to get its contractual rights adjudicated arising out of an alleged breach of contract on part of the Corporate Debtor. Further, the Resolution

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Professional Respondent had contended that the claims filed by the Association of allottees for the admission are unadjudicated and uncrystallised. However, for the same the Applicant had provided crystallised and bifurcated table of amounts claimed in para 14 of the Application at page 7 onwards.

7. Upon perusal of the documents, it transpires that the Applicants are the home owners in the real estate project '*Ashish Heights*' of the Corporate Debtor and the said fact have nowhere been disputed by the Resolution profession. Further, the Resolution Professional in his Reply has corroborated the fact stated by the Flat owners that the concerned infrastructure project of the Corporate Debtor remains incomplete in all respects.

8. At this juncture, it is pertinent to take note of the amendment made to the definition of 'Financial Debt' in 2018 which came into effect from 06.06.2018 as per which any amount raised from an allottee under a real estate project shall have the commercial effect of a borrowing. Thus, an allottee of real estate project shall fall within the definition of Financial Creditor for the purposes of the Code.

9. Further, the Hon'ble NCLAT in the matter of *Bhaskar Biswas v/s Avaani oxford Owners' Association* (*CA* (AT) (Inv.) No. 864 of 2020). The relevant portions of the order are quoted below: -

"12. Admittedly, the amounts were collected by the Developer and kept with its subsidiary, the Corporate Debtor, for the purpose of maintenance till the Association/ Society or Holding Organization (i.e. Respondent No. 1) gets

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established to hand over the amounts to the body of the flat owners. Section 5(8)(f) Explanation makes it clear that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. Thus, we accept the claim made by Respondent No. 1 that it is the 'Financial Debt'. There is Financial Debt due and in default of amount more than threshold stated in Section 4 of IBC. We do not find that there is any error in the impugned order vide which the CIRP was initiated."

10. In view of the amendment made to the definition of Financial Debt and the judgment of the Hon'ble NCLAT there remains no iota of doubts qua the status of allottees as the Financial Creditors of the Corporate Debtor. Thus, in light of settled legal position, once a claim has been submitted by an allottee of a real estate project, the Resolution Professional does not have any discretion but to verify and admit the same upon submission of relevant documents. In complete disregard of the provision of the Code and the settled legal position, in the instant case the Resolution Professional has illegally denied the claims of rightful flat owners.

11. Further, the sole reason for denial of claims as given by the Resolution Professional is that the claims of flat owners remain unadjudicated and uncrystallised. It is no more res integra that the Resolution Professional is only empowered to verify and collate the claims of creditors and does not posses any adjudicatory power qua the claims. At this juncture, it is also pertinent to refer to Regulation 14 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. For ease of reference the same is reproduced hereunder: -

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"14. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him."

12. In view of Regulation 14 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the rejection of claims of flat owners due to the reason that the same cannot be determined is completely unwarranted. Thus, we are of the opinion that the Resolution Professional exceeded its power and failed to perform its duties as per the Code in rejecting the claims of the Flat owners.

13. In view of the aforementioned observations the instant Application stands allowed and the Respondent Resolution Professional is directed to verify and admit the claims of the Applicants. Thus, the *IA No. 490/JPR/2023* is allowed and thus disposed off.

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REETA KOHLI
JUDICIAL MEMBER

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KAVITA BHATNAGAR
TECHNICAL MEMBER