

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

IA-3951/2020

In

IB-2130(ND)/2019

**IN THE MATTER OF IB-2130(ND)/2019:**

M/s. Dynacon Projects Private Limited ..... **Operational Creditor**

**Versus**

M/s. Today Homes & Infrastructure Private Limited  
..... **Corporate Debtor**

**AND IN THE MATTER OF IA-3951/2020:**

Canary Greens Buyers Welfare Association ..... **Applicant**

**Versus**

Mr. Mordhwaj Singh & Ors. .... **Respondents**

**Order Pronounced On: 22.12.2023**

**CORAM:**

**SHRI ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**

**PRESENT:**

For the Applicant/ RP : Mr. Saurabh Kirpal, Sr. Adv., Mr. Kanishk Khetan,  
Ms. Swastika Kumari, Mr. Shivam Jaiswal, Ms.  
Anushka Sarkar, Advocates for RP

Mr. Akshay Goel, Adv. for the Applicant in IA  
4211/2023, Mr. Vivek Kumar, Advocate in IA  
3951/2020

For the Respondent : Mr. Rajesh Kr. Gautam, Mr. Anant Gautam,  
Mr. Sumit Sharma, Mr. Dinesh Sharma, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application has been filed by Canary Greens Buyers Welfare Association, the Applicant on 15.09.2020 under Section 60(5)

of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority, for seeking the following reliefs:

*“A. Allow the present Application and reject the Application filed by Respondent Nos. 3 to 6 bearing IA No. 3629/2020, and*

*B Direct Respondent Nos 2 to 6 to not interfere with the peaceful, vacant and physical possession of the Project Land admeasuring approx 10.81 Acres situated at Sector 73, Gurugram. Haryana, and*

*C. Direct Respondent Nos. 2 to 6 to sign all papers/applications as may be required for the development of the Project and make themselves available whenever they are required by the Resolution Professional for submission of any applications, undertakings, representations, etc for seeking or renewal of approvals, permissions, licenses, etc. and*

*D. Direct Respondent Nos 2 to 6 to give all assistance as may be required by the Resolution Professional in processing any applications for grant/renewal of approvals and to not cause any hindrance in obtaining the approvals, and*

*E. Direct Respondent Nos. 2 to 6 to perform all acts, deeds, matters and things as may be required by the Resolution Professional in law including but not limited to signing of any documents, papers, returns or compliance with all applicable state or central laws, to carry out the development of the Project, and*

*F Direct Respondent Nos. 2 to 6 to not do any act, deed, matter or thing whereby or means whereof the license granted by the Director of Town and Country Planning Department, Haryana, Chandigarh for the development of the Project is or may be or likely to be cancelled, terminated or otherwise made invalid or inoperative, and*

*G. Direct Respondent Nos. 2 to 6 to not in any way interfere or obstruct the constructions and development of the Project being executed for maximizing the value of the assets of the Corporate Debtor, and*

*H. Direct Respondent No. 7 to renew the building plans in respect of the Project, the fee for which has already been filed by the Corporate Debtor, and*

*I. Levy heavy costs on Respondent Nos. 3 to 6 for attempting to diminishing the value of the Corporate Debtor and de-railing the entire Corporate Insolvency Resolution Process, and*

*J. Pass such other or further orders as the Hon'ble Tribunal may deem fit in the facts and circumstances of the present case and also to safeguard the rights of the creditors of the Corporate Debtor, and to preserve the assets of the Corporate Debtor.”*

## **2. Brief Background of the Case:**

The facts which are relevant and common for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Dynacon Projects Private Limited, against the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 31.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Bansal as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Nilesh Sharma was confirmed as Resolution Professional vide order dated 09.01.2020 in terms of Section 22 of IBC.
- ii.** The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegancia Apartment Buyers Association which was approved by the CoC in its 12<sup>th</sup> meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% voting share in respect of the CIRP of the

Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Nilesh Sharma, the Resolution Professional of the Corporate Debtor submitted an IA-4766/2021 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.08.2021, which is pending adjudication before this Adjudicating Authority.

3. It is the case of the Applicant that the Respondent Nos. 3 to 6 without any cause and/or basis and against the settled principles of law, unilaterally and fraudulently revoked an Irrevocable Power of Attorney dated 19.01.2010 (registered as Vasika No. 49 on 20.01.2010) executed in favour of the Corporate Debtor on the basis of which the Corporate Debtor had sold units/apartments to the homebuyers and also created undivided proportionate interest in the land underneath the Project ("Project Land"). The revocation of the Power of Attorney is not only contrary to the settled provisions of law but also the undertakings given by the Respondent Nos. 3 to 6 under various inter-se agreements executed between the Respondents Nos. 1 to 6.
4. The Respondents on the other hand have disputed the possession and ownership of the land and submitted that the development rights over the said land were duly transferred by the Respondent No. 3 to 6 in favour of Respondent No. 2 by way of a Development Agreement dated 03.03.2007.
5. We have heard the submissions made by Ld. Counsel appearing for the both the parties and perused the records.
6. The Applicant has claimed to have stepped into the shoes of the Corporate Debtor and got development rights for developing the land in question by virtue of the General Power of Attorney dated 06.08.2010. However, the Applicant has not produced any documentary evidence to show that possession of the land was given to the Resolution Professional who has filed the present application

seeking a direction to the Respondents to hand over the possession of the land in question.

7. In an identical situation in IA-3356/2020, IA-3629/2020 & IA-5001/2021 in IB-2130(ND)/2019 vide order dated 05.12.2023, this Adjudicating Authority has taken a view with the disputed questions with regard to possession of the land which cannot be decided by this Adjudicating Authority and such issues have to be decided by a Competent Civil Court having jurisdiction.
8. We are therefore of the considered view that the question of possession in the present case also has to be decided by a Competent Civil Court having jurisdiction.
9. IA-3951/2020 is **disposed of** accordingly.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**