

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB)No.114/BB/2020  
U/s.7 of the IBC, 2016  
R/w Rule 4 of I&B (AAA) Rules, 2016

**Between:**

M/s. IPSA Credit Pvt. Ltd.

*Rep. by its Director*

*Mr. Manoj K Gupta*

No.302, Eden Park,  
20, Vittal Mallya Road,  
Bengaluru – 560 001

- Petitioner/Financial Creditor

**And**

M/s. Eternity Structures Private Limited

“Vasavi”, No.75/757, 1<sup>st</sup> Floor,

10<sup>th</sup> Main, 4<sup>th</sup> Block,

Jayanagar,

Bengaluru – 560 011

- Respondent/Corporate Debtor

**Pronouncement of Order: 16<sup>th</sup> March, 2021**

**Coram:** 1. Hon’ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon’ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference:**

For the Petitioner : Shri C.K.Nandakumar

For the Respondent : Shri M.V.V.Ramana( not present)

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.114/BB/2020 is filed by M/s. IPSA Credit Pvt. Ltd. U/s.7 of IBC, 2016, R/w Rule 4 of I&B (AAA) Rules, 2016, by *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) in



respect of M/s. Eternity Structures Private Limited on the ground that it has committed default for an amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) excluding interest @ 24% p.a.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. IPSA Credit Pvt. Ltd. (hereinafter referred as Petitioner/ Financial Creditor), is a non-banking financial Company having its registered office in Kolkata.
- (2) M/s. Eternity Structures Private Limited (hereinafter referred to as Respondent/Corporate Debtor) is a Private Limited Company, was incorporated on 01.02.2012, under the Companies Act 1956, bearing CIN:U70100KA2012PTC062336. Its Nominal Share Capital is 1,00,00,000/- (Rupees One Crore only) and Paid-up Capital is Rs.8,00,000/- (Rupees Eight Lakhs only). It is involved in the business of real estate development.
- (3) The Respondent approached the Petitioner for investments in the real estate project 'Eternity Ecstasy'. Thereafter, towards the investments, the Petitioner and the Respondent executed 10 registered 'Agreements for sale' dated 07.05.2016 ('Agreements'). The Agreements executed contain identical clauses. Pursuant to Clause 1a) of the Agreements for sale, the Petitioner duly remitted a sum of Rs.5,00,000/- under each of the Agreements on 07.05.2016, the date on which the agreements were executed and registered. Therefore, a total sum of Rs.50,00,000/- being the principal amount was invested with the Respondent on 07.05.2016. The following are the Agreements for sale executed by the Petitioner and the Respondent:
  - i. Registered Agreement for sale dated 07.05.2016 in respect to 563 sq. ft. of undivided share in the immovable property



- bearing Sy. No. 34/4B for the residential apartment no. 124, ground floor, measuring 1415 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 29,80,000/-.
- ii. Registered Agreement for sale dated 07.05.2016 in respect to 417 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 302, second floor, measuring 1047 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,44,000/-.
- iii. Registered Agreement for sale dated 07.05.2016 in respect to 396 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 309, second floor, measuring 995 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 21,40,000/-.
- iv. Registered Agreement for sale dated 07.05.2016 in respect to 430 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 410, third floor, measuring 1080 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 23,10,000/-.
- v. Registered Agreement for sale dated 07.05.2016 in respect to 408 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 305, second floor, measuring 1025 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,00,000.
- vi. Registered Agreement for sale dated 07.05.2016 in respect to 424 sq. ft. of undivided share in the immovable property



bearing Sy. No. 34/4B for the residential apartment no. 113, ground floor, measuring 1065 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,80,000/-.

- vii. Registered Agreement for sale dated 07.05.2016 in respect to 408 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 205, first floor, measuring 1025 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,00,000/-.
- viii. Registered Agreement for sale dated 07.05.2016 in respect to 417 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 404, third floor, measuring 1047 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,44,000/-.
- ix. Registered Agreement for sale dated 07.05.2016 in respect to 424 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 201, first floor, measuring 1065 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 22,80,000/-.
- x. Registered Agreement for sale dated 07.05.2016 in respect to 431 sq. ft. of undivided share in the immovable property bearing Sy. No. 34/4B for the residential apartment no. 408, third floor, measuring 1082 sq. ft. in 'Eternity Ecstasy'. An advance amount of Rs. 5,00,000 out of the total consideration of Rs. 23,14,000/-.

(4) As per the terms of the Agreements, particularly Clause 5, the

Respondent was to complete the apartments within a period of 6 months, with a provision for a further extension of 6 months. Therefore, the Respondent was required to provide the apartments by 07.11.2016 or latest by 07.05.2017. However, on 07.05.2017, despite the Respondent being provided 6 months extension, it failed to handover the apartments or even remit the principal with interest. Till date, the Petitioner has not received possession of the apartments or the amounts.

- (5) The Petitioner claims it is a real estate allottee under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Therefore, pursuant to Section 5(8) (f) explanation (i) of the IBC, 2016, the sum remitted by the Petitioner under the Agreements has the commercial effect of a borrowing and is considered a financial debt. Hence, the Petitioner is a Financial Creditor. There is a total of 98 apartments in the real estate project 'Eternity Ecstasy'. The Petitioner being an allottee of 10 apartments, meets the threshold of 10% of the total number of allottees in the project 'Eternity Ecstasy' as required under the proviso to Section 7 (1) of the Code.
  - (6) The cause of action arose on 07.05.2017, when the apartments were to be handed over under the Agreements, after extension of time was provided to the Respondent. Therefore, the instant Petition is within limitation. Therefore, the CIRP be initiated against the Corporate Debtor.
3. Heard Shri C.K.Nandakumar, learned Counsel for the Petitioner, **through Video Conference**, and none appeared for the Respondent, even though notice has been served. We have carefully perused the pleadings of the Party and extant provisions of the Code and the Rules made thereunder and the Law on the issue.



4. The case was listed for admission on various dates viz., 08.06.2020, 22.06.2020, 10.07.2020, 26.08.2020, 14.09.2020 and on 23.02.2021. Accordingly, the Adjudicating Authority ordered notice to the Respondent on 08.06.2020 and 10.07.2020. Further, the Petitioner has served the notice on the Respondent by email on 15.02.2021, personal notice on 18.02.2021 and also through RPAD and filed proof of service on 19.02.2021. Though Counsel filed vakalat for the Respondent, none appeared for the Respondent and no reply has been filed.
5. As states supra, the Petition is filed basing on Agreements for Sale even dated 07.05.2016, when apartments agreed were not constructed and handed over in terms of Agreement. The Petitioner, being LLP has executed separate Agreements for Sale even dated 07.05.2016, between Mr. A. Venkata Reddy, Rep. by their GPA Holder M/s. Eternity Structures Private Limited, as the Vendors (Respondent) and M/s. IPSA Credit Pvt. Ltd., Rep. by its Director Mr. Manoj Gupta (Petitioner) as the Purchaser, having common terms and conditions. Relevant terms and conditions of the Agreements, with reference to the instant case, are mentioned as under:

*"....1 The Vendor/Developer shall build/construct and complete the Schedule 'C' Property for a total consideration of Rs.29,80,000/- shall be paid by the Purchaser to the Developer. The Purchaser has to pay the charges, deposits & expenses in connection with KEB Basic Deposit, BWSSB Basic Deposits, Sales Tax, Service Tax, which are incidental to construct and have over all the flat and the Purchaser agrees to bear the registration expenses as per the Government Rate at the time of registration. Subject to the conditions hereinafter contained, the Purchaser shall pay to the Vendor/Developer the total contract price Rs.29,80,000/- in the following manner.*



a) Rs.5,00,000/- is paid by way of Cheque No.122792 dated 07.05.2016, drawn on Canara Bank, Lavelle Road Branch, Bangalore – 560 001.

b) Rs.24,80,000/- shall be paid at the time of registration and possession after the completion of the said flat.

3. Without prejudice to the Builder/Developer's other rights under this Agreement and/or in law the Purchaser shall be liable to pay to the Builder interest at the rate of 24% p.a. on all unpaid amounts payable by the Purchaser under this Agreement including various deposits set-out herein after the said becomes due.

5. The Vendor/Developer shall under normal conditions complete the construction of the Schedule 'C' Apartment within 6 months from this agreement and deliver vacant possession of the same of the PURCHASER/PURCHASER against the receipt of the entire cost of construction of the Schedule 'C' Apartment as agreed hereinabove. However, the VENDOR/DEVELOPER shall be entitled for grace period of 6 (Six) months on the expiry of the period agreed hereinabove subject to the availability of cement, steel and other essential items of the construction and also subject to unforeseen circumstances like act of God, Earth Quake, flood, war or other civil commotion, local disturbances, change in laws of the State, Corporation or any other clauses or events beyond the control of the VENDOR/DEVELOPER. In such an event, the VENDOR/DEVELOPER shall complete and deliver vacant possession of the Schedule 'C' Apartment to the PURCHASER/PURCHASER within such reasonable extended period as may be agreed between the PARTIES. The PURCHASER shall not lay any claim if the delay is beyond the control of the VENDOR/DEVELOPER.

7. The Purchaser shall take possession of the Schedule 'C'



*Apartment within fifteen days after notice is given by the VENDOR to the PURCHASER the Schedule 'C' Apartment is ready for use and occupation in the manner stated supra (time being essence of the contract in that behalf) and the PURCHASER shall be liable to bear and pay all the taxes and charges including for electricity, water and other common services and the outgoings payable in respect of the said Schedule 'C' Apartment.....*

9. *Subject to the PURCHASER/S fulfilling the terms and conditions of this Agreement of Sale of Undivided Land and the Construction Agreement even date, the DEVELOPER shall execute the Sale Date fulfilling the terms of the Construction Agreement and against the payment of all dues to the VENDOR/DEVELOPER.*

12. *The VENDOR/DEVELOER herein shall put the PURCHASER/S in joint possession of the Schedule 'B' and 'C' Properties along with the other co-owners of the Composite Schedule 'A' Property at the time of registration of the sale deed and the VENDOR/DEVELOPER shall deliver legal possession of the Schedule 'B' and 'C' Properties at the time of registration of the Sale Deed Subject to all payments due to the DEVELOPER under this Agreement and the Construction Agreement are paid by the PURCHASER/s.*

16. *The parties agree that in case of any dispute arising in respect of this agreement, the matter shall be referred to arbitration of an arbitrator, in consonance with the provisions of the Indian Arbitration and Conciliation Act, 1996, as may be amended from time to time. The decision of the arbitrator so appointed shall be binding on the parties hereto. The seat of arbitration shall be Bangalore; the proceedings shall be held at Bangalore and conducted in the English language. The Courts in*



*Bangalore shall alone have jurisdiction with regard to this agreement.”*

6. As stated by the Petitioner, it has paid advance amount of Rs. 5 lakhs each for 10 apartments. However, the Petitioner has not furnished any details of construction, payment of remaining consideration, except enclosing copies of Agreements of Sale. The Petitioner alone has entered into agreements of sale for purchase of 10 apartments. Therefore, the Petitioner, at the most, can claim refund of advance money rather than to hand over completed apartments without paying major portion of consideration. Mere Agreement of sale by paying paltry advance amount cannot create substantial right to the Petitioner to invoke provisions of Code. There is an alternative remedy of Arbitration available in the Agreements of Sale, if there is any dispute arises between the Parties. The Petitioner has not stated whether any steps have been taken to offer the balance amount of consideration to the Respondent. The Petitioner has not furnished any details in respect of Corporate Debtor with regard to its insolvency. The Petitioner alone has entered into similar Agreements of Sale for all 10 apartments, and now claim that it should be treated as 10 individual home buyers so as to fulfil the requisite conditions prescribed under the provisions of Code, which is not tenable. And the instant Petition is admittedly filed with an intention to recover advance amount paid, as it has no right to demand to deliver possession of Apartments without paying remaining consideration. One of conditions in the said Agreement of Sale is “Subject to the Purchaser/s fulfilling the terms and conditions of this Agreement of Sale of Undivided Land and the Construction Agreement even date, the DEVELOPER shall execute the Sale Date fulfilling the terms of the Construction Agreement and against the payment of all dues to the



VENDOR/DEVELOPER. And the Petitioner admittedly has not fulfilled terms of conditions of Agreements of sale so as to claim handover of apartments in question. Therefore, only point for consideration is whether the Petitioner is entitled for refund of advance amount or not, for which provisions of Code cannot be invoked.

7. For the aforesaid reasons and circumstances of the case, we are of the considered opinion that the Petitioner has failed to make out any case so as to initiate CIRP in respect of the Corporate Debtor. The Petition is filed on misconceived facts and Law. Therefore, the Company Petition is liable to be dismissed.
8. In the result, C.P.(IB)No.114/BB/2020 is hereby dismissed. However this order will not come in the way of the Petitioner to invoke appropriate legal course of action, in accordance with Law, in terms of Agreements for Sale of even dated 07.05.2016. No order as to costs.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

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