

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA-672/2023
In
(IB) 440/ND/2021

Order under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF IB-440(ND)/2021:

Mr. ANIL KAUSHAL & Ors. Financial Creditors

VERSUS

M/s. LOGIX CITY DEVELOPERS PRIVATE LIMITEDCorporate Debtor

IN THE MATTER OF IA-4145/2023:

SHRI AMIT JAIN Applicant

VERSUS

RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR

..... Respondent

Oder Pronounced on: - 22.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Parties / Counsels present

For Applicant : Mr. Rakesh Kumar, Adv.

For the Respondent : Mr. Vishal Hirawat, Adv.

ORDER**Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by Applicant/Home Buyer seeking following prayer: -

a. Direct the respondents not to interfere in the peaceful use and enjoyment of unit no. B-2004 blossom Zest, Sector 143, Noida in any manner or to impede the supply of essentials to the said unit and carry out necessary compliances of installing electricity meter.

2. Briefly stated the facts of the present case are that, an application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditors i.e., Mr. Anil Kaushal & Ors. against the Corporate Debtor i.e., M/s. Logix City Developers Private Limited and the said application was admitted by the order of this Adjudicating Authority vide order dated 17.08.2022 and a moratorium was declared including the appointment of Mr. Manohar Lal Vij as an Interim Resolution Professional.

3. The applicant is a home buyer in the project namely "Logix Blossom Zest" being developed by the Corporate Debtor in Sector 143 Noida UP, after executing the agreement and after making the entire payment on account of sale consideration, the developer company entered into Builder buyer

agreement. The Applicant made all the payment and the Corporate Debtor after receiving the payment issued No Objection Certificate dated 24.09.2021 and also simultaneously issued the offer of possession to the Applicant. After execution of the above documents offer of possession was offered by the Corporate Debtor and the Applicant took possession of the unit.

4. It is further submitted that, as per the terms of the Builder Buyer Agreement the Corporate Debtor had to give fully furnished flat but the Corporate Debtor failed to do the same. The applicant carried out the necessary civil works by investing its own money to the tune of Rupees 5 lakhs. The applicant after carrying out the necessary works approached the maintenance office and deposited one-time annual maintenance @ Rupees 2746/- per month and deposited a sum of Rupees 32,953/-.

5. It is further averred that, the maintenance staff and the security guards have started creating obstruction and for the same reason the Applicant is not able to enjoy peaceful possession of the said property.

6. Per contra, the Resolution Professional has raised several objections and submitted that, no document has been placed on record by the Applicant which confirms that the unit was handed over to the Applicant.

7. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.

8. This Adjudicating Authority while considering the Applications of home buyers whose claims have been rejected by the Resolution Professional has passed orders which are reproduced below: -

“IA-3182/2023, IA-2031/2023, IA-1154/2023, IA-2292/2023, IA2921/2023, IA-3991/2023, IA-4183/2023, IA-4184/2023, IA4254/2023, IA-4278/2023: -

The prayers in these applications are either to condone the delay in filing the claim or to give a direction to the Resolution Professional to consider and admit claim. We have heard the submissions made by the Ld. Counsel appearing for the parties. Ld. Counsel appearing for the Resolution Professional has drawn our attention to relevant paragraph of the Resolution Plan which says as follows:

“Proposal:

a. Allottees of five completed towers for which provisional occupancy certificate has been received i.e. Tower No. A, B, C, & SAT – 1 & 2.

. Possession of flats to allottees shall be made within 9 months from the effective date after taking electricity connection. Resolution Applicant proposes to give possession to flat owners who have obtained. Nil balance dues from previous management after completing balance work, provided allottees agrees to pay maintenance charges, electricity charges and security deposit for meter.

. Possession of flats to other allottees shall be given after completion of balance work, on payment of balance dues within 9 months from effective date on payment of balance dues along with applicable taxes. Concerned Allottees will have to agree to pay maintenance charges, electricity charges and security deposit for meter. Resolution Applicant will have a right to recalculate amount payable by concerned allottee, considering existing terms of BBA and amount paid by concerned allottees, irrespective of the fact that they have filed their claim or not.

The above proposal for allottees of five already completed towers shall be subject to other general clauses, as mentioned in subsequent paragraphs of this Resolution Plan, for other categories of allottees.

b. Other Allottees – both related & unrelated

. Resolution applicant proposes to hand over possession of flats after completing construction to all bonafide allottee(s) including RERA decree holders irrespective of whether they (RERA decree holder) have filed their claim or not, or filed their claims after 90 days from CIRP date but claims have not been admitted by CIRP due to late filing. Notwithstanding the above, if any claim(s) have been rejected/non admitted by Resolution Professional, the inventory in the name of such allottees shall be deemed to be free inventory and the Resolution Applicant shall have all the exclusive rights to deal with the same. However, if any allottee have preferred to take legal recourse against the decision of RP, then RA hereby agrees to abide by the decision of Hon'ble Court.

. All allottees will have to pay balance amount, payable as terms & conditions of their respective Builder Buyer Agreement/Agreement to sell, without any cost escalation in principal amount, as mentioned in respective BBA/agreement to sell of allottees. However, Resolution Applicant shall not be liable to pay any kind of interest, compounding interest, penalty, late delivery charges or any kind of compensation to the Unit Holder/Allottee on account of delays happened before the approval of this plan. It is clarified that since Resolution Applicant proposes to give possession of flat to RERA/other court decree holders, on the payment of balance amount, therefore, no payment of interest/compound interest, compensation, penalty etc. shall be payable to them neither in cash nor by way of set off from the balance amount payable by them, even if awarded by the RERA of any other Judicial or quasi-judicial Authorities.

. On approval of resolution plan, decree obtained by concerned allottee shall automatically become null and void. Further, interim security by way of charge, given to District Magistrate or any other authority pursuant to such decree or recovery order shall automatically stand cancelled and satisfied and Resolution applicant shall become owner of said flats without any further action.

. Ld. Counsel for the RP further submitted that in the reply filed by the Resolution Professional in the IA-3182/2023 a statement has been made to the effect that all bona fide allottees irrespective of whether they have filed claim

or not or have filed belated claims will be given possession of the flats. The said paragraph is as follows:

“5. I further state that the Successful Resolution Applicant in the Resolution Plan has proposed to hand over possession of flats to all bona fide allottees irrespective of whether they have filed claim or not, or have filed belated claim.”

In view of the statement made by the Ld. Counsel appearing for the Resolution Professional that the grievance of the Applicant has been addressed properly. IAs disposed of accordingly.”

9. The facts and issues of the present case are similar to the facts of the applications which were disposed of vide Order dated 13.09.2023. Therefore, the present application is ***disposed of*** in terms of the Order passed in IA – 3182/2023 and batch.

SD/-

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

SD/-

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