

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

IA (I.B.C) No. 269/MB/2025 in CP (IB) No.1046/MB/2023

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]



1. MR. RAMPRASAD VISHWANATH GUPTA

Building No. 58, Flat No. 1305
Saikripa CHS Ltd, Nehru Nagar
Kurla (E), Mumbai - 400024, Maharashtra.

2. MR. SUNIL BHANWARLAL PUROHIT

201 A Wing, Swapna Bhoomi Building,
Near Portuguese Church, S. K. Bole Road,
Dadar West, Mumbai - 400028, Maharashtra.

3. MR. HEMANT KANHAIYALAL PAREKH

B-11, Bhagneri CHS Ltd. N.S. Mankikar Marg
Chunabhatti, Mumbai - 400022, Maharashtra

4. MR. HEMANT BHALERAO

Flat No. 28, B-E8, Sion Koliwada
Raoli Camp, BMC Colony
Mumbai 400037, Maharashtra

5. MR. RAJESH YASHWANT BANDARKAR

C-3, Flat No. 101, Bramhand Phase -4
Ghodbunder Road
Thane West- 400607, Maharashtra

...Applicants

Vs.

1. MR. DINESH KUMAR DEORA,

RESOLUTION PROFESSIONAL OF

M/S SNEHANJALI AND S.B. DEVELOPERS PRIVATE LIMITED

B-202, ABT Apartment, Rani Sati Marg
Near Navjivan School, Malad (East)
Mumbai-400097, Maharashtra.



2. MR. MANISH LALJI DAWDA

Authorized Representatives of Homebuyers

205 A, 2nd Floor. Hiren Light Industrial Estate
Behind Johson & Johnson, Moghul Land
Bhagoji Kheer Marg, Mahim West
Mumbai-400016, Maharashtra

3. LA MER DEVELOPERS LIMITED

in consortium with Neel Builders and Developers

No. 19, The Full Stop Mall
Plot No. 1 Sector -19, Sanpada, Palm Beach Road
Navi Mumbai -400705, Maharashtra

...Respondents

IN THE MATTER OF:

MR. SANTOSH ANANDA SHETTY AND ORS

...Financial Creditor

Vs.

**M/S SNEHANJALI AND S.B. DEVELOPERS
PRIVATE LIMITED**

...Corporate Debtor

Pronounced:24.01.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant: Adv. Akshay S. Malvia.

Respondent No.1: Adv. Niyati Merchant i/b MDP Legal.

Respondent Nos. 2 & 3 : None



ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

1.1 This IA (I.B.C) No.269/MB/2025 has been filed on 27.11.2024 by Mr. Ramprasad Vishwanath Gupta and Ors., under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 praying for quashing the condition of Request for Resolution Plan (RFRP) prohibiting modification and amendment of plan, declaring the successful resolution plan of La Mer Developers Limited in consortium with Neel Builders and Developers (Respondent No.3) as null and void, replacing Respondent Nos.1 and 2 with other suitable persons from their respective roles as Resolution Professional (RP) and Authorised Representative (AR) respectively and directing Respondent Nos.1 and 2 to produce the video and Zoom meeting recordings of the meeting held on 29.09.2024 and the e-voting details with respect to approval of the resolution plan.

1.2 The Corporate Debtor was admitted to Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) in C.P. (IB) No.1046/MB/2023 (Main C.P.) under Section 7 of the IBC *vide* order of this Bench dated 07.03.2024. Mr. Dinesh Kumar Deora, Respondent No.1 was appointed as the IRP and later his appointment as RP was confirmed for conducting CIRP.



1.3 The five Applicants in captioned IA are homebuyers who had purchased their respective flats from the Corporate Debtor. Respondent No.2 is the Authorised Representative (AR) of the Committee of Creditors (CoC) representing the class of creditors comprising only homebuyers. Respondent No.3 is the Successful Resolution Applicant (SRA) approved by the CoC who has submitted Resolution Plan, which is awaiting approval of this Adjudicating Authority.

2. AVERMENTS OF APPLICANT

2.1 The Corporate Debtor (erstwhile developer) constructing the Project was under obligation to give possession of flats to the homebuyers including the Applicants herein on or before 30.06.2022. Since the Corporate Debtor could not complete the project on time, it took RERA extension till 31.12.2022 and further till 30.06.2023. However, the Corporate Debtor completely stopped the work at the site from February, 2023.

2.2 On 02.07.2023 one Mr. Bipin Kabra, Director of Insolvency Professional Entity 'Stress Credit Resolution Private Limited', one of the homebuyers swung into action and projected before the homebuyers that taking recourse under the Code was the fastest process to get their respective dream homes. Mr. Bipin Kabra headed and conspired with a few members of the committee (formed by homebuyers of the project) including Mr. Suhash Thakur, Mr. Parag Hindlekar and Mr. Naresh Patil to cheat the innocent and stranded



homebuyers. He nominated Respondent No.1 Mr. Dinesh Kumar Deora, as an interim RP in the Main C.P. When inquired about Respondent No.1, Mr. Bipin Kabra told that it was interim management and Respondent No.1 would be replaced once the case was admitted before the Tribunal.

2.3 Mr. Bipin Kabra further conspired with Respondent No.1 and few of the committee members and selected Respondent No.2 Mr. Manish Lalji Dawda as AR of the homebuyers. After notice, a few Committee Members telephonically called homebuyers and asked them to select Respondent No.2 as the AR to expedite the process. The queries were raised by Applicant No.1 on 10.03.2024 about the three names mentioned in the public announcement to the committee members. But a few Committee Members did not reply.

2.4 Mr. Bipin Kabra along with other committee members had committed fraud and are cheating the stranded homebuyers. They never shared financial information about the project. They portrayed that the project was in loss and thereby mentally harassed the homebuyers, whereas, in reality, the receivables were about Rs.187.57 Crore and thirteen unsold units and unused material lying at the project site are also worth several crores. In fact, at all stages, they created havoc and panic in the minds of the homebuyers that the Chinese Management had fled away due to financial problems and that homebuyers would lose their homes. The Respondent Nos.1 and 2 not only failed and neglected to furnish or explain the financial aspect and all other



important documents. The homebuyers have never seen and met these Respondents and have never had any interaction with them with respect to the CIRP of the Corporate Debtor.

2.5 Respondent No.3 was illegally selected by playing fraud, deception and obtaining consent by misrepresentation of facts. The Respondents and few committee members glorified the resolution plan of Respondent No.3. They did not bring the true facts and figures of the resolution plan and gave distorted information. Hence, the said process does not have legal sanctity and the same is liable to be quashed and set aside by this Tribunal.

2.6 The Respondent No.1 held CoC meetings on 02.04.2024; 29.04.2024; 10.06.2024; 11.07.2024; 26.08.2024 and 25.09.2024 and had passed various resolutions. There were number of flaws/ambiguities/ serious issues in the resolution plan of Respondent No.3. It was expected that the Respondent Nos. 1 and 2 and few committee members should have sought clarification from Respondent No.3. However, contrary to their responsibility towards the stranded homebuyers, they glorified the resolution plan and gave false and distorted information to the homebuyers, influencing them to vote in favour of Respondent No.3. It was informed that Respondent No.1 had received substantial amount of data from the Corporate Debtor both in digital and physical form, but he continued to harass the homebuyers by asking for different documents including old bank records without counter checking with



the data available with him for admitting their genuine claims and such delay was done deliberately with the intention of influencing the composition of the CoC.

2.7 It is evident that Respondent No.1 is not acting independently for the interest of homebuyers. In fact, he is not only controlled by Mr. Bipin Kabra but also Mr. Bipin Kabra is checking the emails of Respondent No. 1 and replying to these emails. Further, one of the committee members exceeded all his limits on many occasions by using threatening words and derogatory remarks against some homebuyers.

2.8 Further, Respondent No.3 was illegally selected as SRA with fraudulent act of Respondent No.1, Respondent No.2, a few committee members and Mr. Bipin Kabra. The Respondents on their own put the condition in the RFRP that once resolution plan is submitted, it cannot be modified or amended. The Code and the CIRP Regulations allow modification of plan at least once to all parties. This illegal condition was put by the Respondent Nos.1 and 2 without discussing the implications of said condition. The Respondent Nos. 1 and 2 never took any meeting with the homebuyers discussing the details of RFRP and its effects and it was put for voting. The said condition is detrimental and affecting the best interests of the Applicants. The Respondent No.3 has not only put many hidden clauses, ambiguous conditions and flaws in the plan but also an uncertain profit- sharing ratio of paying 19% to others which creates



serious doubt about the malpractice to get the project and the same was favoured by Respondent Nos.1 and 2. It was only a few committee members who were answering the questions on behalf of the SRA/Respondent No.3. All this illegality can be seen in the Video shooting and record of Zoom meetings. The Respondents know that they will be exposed and, therefore, they are not sharing the videos though demanded by many homebuyers. Hence, the Applicants pray that the Respondent Nos.1 and 2 may be directed to produce the Video and Zoom meeting recordings of the meeting held on 29.09.2024.

3. CONTENTIONS OF RESPONDENT No.1/RP

It is observed that Respondent No.1/RP has not furnished any Affidavit-in-Reply to the IA. However, in the course of hearing, Ld. Counsel for Respondent No.1/RP vehemently opposed the allegations made by the Applicants against Respondent No.1/RP with regard to the conduct of the CIRP of the Corporate Debtor. It was submitted that the Applicants had filed a frivolous IA with a view to derail the Resolution Process of the Corporate Debtor and hence, the said IA ought to be dismissed.

4. ANALYSIS AND FINDINGS

4.1 We have perused the pleadings and documents available on record and heard both the Ld. Counsel for the Applicant and Respondent No.1.



4.2 It is noticed from the record that all five Applicants in the captioned IA are homebuyers of the project and that Applicant No.1 has filed the said IA for himself and on behalf of Applicant Nos.2 to 5. All five Applicants have voting share of 2.14% in the CoC as on 31.07.2024. It is settled law that homebuyers of corporate debtor fall in a class of financial creditors and constitute a class of creditors different and distinct from other financial creditors. Individual homebuyers may have divergent views but ultimately they vote as a class and individual homebuyers cannot claim to be 'dissenting homebuyers'. Thus, we find that the Applicants being part of class of homebuyers majority of whom have already voted in favour of the resolution plan of Respondent No.3 have no independent *locus standi* to raise objections with regard to the manner of conduct of CIRP and hence, the present IA is liable to be dismissed on this ground alone.

4.3 Be that as it may, as regards appointment of Respondent Nos.1 and 2, it is noticed from perusal of minutes of the 1st CoC meeting of the Corporate Debtor held 02.04.2024 at 5:15 pm at 205 A, 2nd Floor, Hiren Light Industrial Estate, Behind Johnson and Johnson, Mogul Lane, Bhagoji Keer Marg, Mahim West, Mumbai-400016, that the appointment of Respondent No.1 (RP) was with 100% voting and the provisional appointment of Respondent No.2 (AR) was also with 100% voting. The Applicants alleged that Respondent Nos.1 and 2 in connivance with a few committee members headed by Mr. Bipin Kabra have committed fraud and cheating with the



stranded homebuyers and that Respondent No.3 was illegally selected by playing fraud and deception and obtaining consent by misrepresentation of facts. In this connection, it is pertinent to note that the Adjudicating Authority exercises only a summary jurisdiction and allegations of fraud, cheating, deception, etc., involving appreciation of elaborate evidence and oral testimony cannot be examined and adjudicated upon. In other words, the contention of the Applicant in regard to the illegal selection of Respondent No.3 under the influence of threat, misrepresentation and fraud is outside the scope of the Code. This Adjudicating Authority in summary jurisdiction need not delve into extraneous matters regarding fraud, misrepresentation, etc., as the Code has made sufficient provisions regarding the conduct of the processes. Further, detailed working provisions are available under the CIRP Regulations to deal with the various insolvency resolution processes. Dealing with matters such as the one raised by the Applicants would only cause unnecessary delay and hindrance to CIRP and is outside the scope of the Code.

4.4 It is also noticed that the Resolution Plan submitted by Respondent No.3 has already been voted upon and that it received 83.46% of the voting share. As per Section 25A(3A) of the Code, the AR is required to vote in accordance with the decision taken by a vote of more than 51% of the voting share of home buyers who have cast their vote and, therefore, the AR (Respondent No.2) voted in favour of the Resolution Plan of Respondent No.3. It is further



noticed that the Resolution Plan is pending for approval of this Adjudicating Authority. As regards the Applicants' prayer for declaring the said Resolution Plan as null and void, it would be appropriate to take note of the settled legal position in this behalf. As held by the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association Vs. NBCC (India) & Ors.** [(2022) 1 SCC 401], the proposition of some of the individual homebuyers to claim themselves as 'dissenting homebuyers' does not stand in conformity with the scheme of the Code and the manner of voting on a plan of resolution by the Committee of Creditors. The dissatisfaction of any homebuyer does not partake the legal character of a dissenting financial creditor. Once a particular resolution plan has been voted upon and has found favour with the majority of homebuyers representing more than 51% of the voting share, all creditors in the particular class are necessarily bound by the decision of the majority and cannot maintain any claim against such decision. This principle is also well-established in the following words:

"164.4... There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is authorised to represent, a plan of resolution involving large



number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation which is not the prime target of the Code.”

4.5 It is an undisputed fact that the Applicants in the present case by virtue of being members of class of creditors/homebuyers were represented on the CoC through Respondent No.2 who had participated in the course of the CIRP process. Merely because the Applicants are dissatisfied with the resolution plan, they cannot raise objections against the collective commercial decision taken by the CoC in approving the said resolution plan of Respondent No.3. The Applicants being disgruntled homebuyers in a minority position have no option but to ‘sail along’ or ‘drag along’ with overwhelming majority which has accepted the resolution plan in terms of the legal position laid down in the **Jaypee Kensington** judgement (supra). The Applicants being in a minority cannot override the commercial wisdom of the majority in the CoC. If the prayers of the Applicants were to be accepted, it would have the effect of derailing the resolution process and setting the clock back which cannot be permitted.

ORDER

In view of the above discussions, we do not find any merit in the contentions raised by the Applicants and we are of the considered view that this **IA No.269/2025** deserves only to be **dismissed**. Ordered accordingly.



The designated Registrar is directed to forward electronic version of this Order to the IBBI only for the purposes of information and record.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

/Vani/