

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

IA-4089/2023

In

IB-85(ND)/2021

**IN THE MATTER OF IB-85(ND)/2021:**

**M/s. GK CRYSTAL HOMES**

**..... Operational Creditor**

**VERSUS**

**M/s. ANSAL LOTUS MELANGE PROJECTS PRIVATE LIMITED**

**.....Corporate Debtor**

**IN THE MATTER OF IA-4089/2023:**

**Mr. ASHWANI KUMAR KAURA**

**..... Applicant**

**VERSUS**

**Mr. DEVENDRA UMRAO**

Resolution Professional of the Corporate Debtor

**..... Respondent**

**Order Delivered On: 20.11.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant :

For the RP : Mr. P. Nagesh Sr. Adv., Mr. Abhishek Parmar, Mr. Akshay Sharma, Advs.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by Mr. Ashwani Kaura, the Applicant (Allottee/Financial Creditor) on 27.07.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

**IA-4089/2023 In IB-85(ND)/2021**

**Date of Order: 20.11.2023**

*“a. Direct the Respondent/RP to consider the claim of the Applicant in Form CA as Financial Creditors; AND/OR*

*b. Admit the entire claim of the Applicant, as claimed in the form; AND/OR*

*c. Pass any such further order(s) as this Hon’ble Adjudicating Authority may deem fit and proper.”*

**2. Brief Background of the Case**

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e., M/s. GK Crystal Homes against the Corporate Debtor i.e., M/s. Ansal Lotus Melange Projects Private Limited and the said application was admitted by the order of this Adjudicating Authority vide order dated 07.04.2021 and a moratorium was declared including the appointment of Mr. Devendra Umrao as an Interim Resolution Professional.
  - ii. The Resolution Plan was submitted by the Successful Resolution Applicant namely M/s. Singla Builders and Promoters Limited which was approved by the CoC in its 8<sup>th</sup> reconvened meeting dated 01.02.2022 (e-voting concluded on 11.02.2022) under Section 30(4) of the IBC by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability.
3. The Applicant is aggrieved by the wrongful partial rejection of the claim and not considering the claim of the Applicant as a Financial Creditor by the Respondent/RP.
  4. The Applicant applied for purchasing of a shop in the proposed Retail cum Commercial Office complex 'City Centre' Kharar Landran Road, Mohali, Punjab developed by the Corporate Debtor. The total cost of the Unit was fixed as Rs.67,86,000/- (Rupees Sixty Seven Lakh Eighty Six Thousand Only) calculated at the rate of Rs.3900/- per sq. feet. The Applicant paid the same amount in full, and the Corporate Debtor issued receipts for the same.

5. The Corporate Debtor allotted Unit 5 GF in project 'City Centre', Kharar Landran Road, Mohali, Punjab to the Applicant vide Allotment Letter cum Agreement dated 09.02.2010 with detailed Terms and Conditions of Appointment.
6. The Corporate Debtor and Applicant entered into an Addendum Agreement dated 12.05.2012 wherein it was agreed that the Applicant will be allotted basement of Unit 5 GF to the Applicant and the consideration for the same of Rs.12,14,000/- will be adjusted out of the Assured Return of Rs. 1,86,615/- as agreed in the Clause 5 of the Allotment Agreement to be paid to the Applicant. Thus, the Total Consideration for the Unit 5 GF + Basement paid by Applicant is now Rs. 80,00,000/-.
7. The Corporate Debtor failed to deliver possession within the stipulated time period of 36 months. The Applicant sent a Notice dated 24.07.2013 to the Corporate Debtor, asking the Corporate Debtor to deliver possession within 30 days or refund the whole amount along with Interest.
8. The Applicant, in the year 2021, came to know that the Corporate Debtor has gone into insolvency. Thereafter, Applicant has filed the claim to the Resolution Professional vide email dated 26.05.2021 in form CA for Rs. 7,58,01,360/- with all the other relevant documents, pursuant to the public announcement dated 12.04.2021.
9. Vide email dated 27.05.2021, it was informed to the Applicant by Respondent/RP that since the offer of possession has already been made, therefore, he is required to file his claim in Form F. In response, the Applicant wrote to the Respondent/RP on 01.07.2021, that the project was not complete at the time when the possession was offered and the completion certificate was not shown to him at the time of offering possession. Further, there is a breach of contract as the possession was not offered within the stipulated time. Therefore, a request was made to consider his claim as it is.
10. No response was received from the Respondent/RP. Therefore, on 28.10.2021, the Applicant had also submitted his claim in Form F.

Since the applicant had submitted his claims both in Form CA and Form F, a request was made to consider his claim, as per law.

11. On 02.09.2022, it was informed to the applicant by the Respondent/ RP that his claim in respect of unit no. 5 GF+ Basement at "City Centre", Mohali, was admitted for Rs.28,55,210/- only which was wrong and without any basis. The Applicant in response sent email dated 17.09.2022 objected to the decision of the Respondent/RP in admitting only part amount of claim and requested him to reconsider the same on the basis of documents submitted with his claim. It was also requested by the Applicant to provide the calculations for the amount admitted by the RP. However, the Respondent/ RP failed to respond.
12. The Applicant preferred an Application bearing IA-1313/2023, seeking direction against the Respondent/RP to accept his claim as a Financial Creditor and for admitting the full amount. This Adjudicating Authority vide order dated 26.05.2023, allowed the IA-1313/2023 and the order is reproduced below:

**“IA-1313/2023:-**

*This application has been filed seeking to the RP to reconsider and accept the entire claims of the Applicants and include them as the members of CoC.*

*The Ld. Counsel appearing for the Applicant has relied upon a judgment passed by Hon’ble National Company Law Appellate Tribunal in the matter of **Puneet Kaur Vs. K V Developers Private Limited in Company Appeal (AT)(Ins.) No. 390 of 2020** and submitted that necessary directions be given to the Resolution Professional to consider the claims of the Applicant in the light of the directions given by the Hon’ble NCLAT.*

*The Ld. Counsel appearing for the Resolution Professional has submitted that the Resolution Professional is willing to reconsider the claims in case this Tribunal passes necessary direction.*

*Having heard the submissions of Ld. Counsel appearing for the parties, we direct the Resolution Professional to consider the claims in*

*accordance with law and communicate the decision to the Applicant within a week.*

**IA allowed.”**

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

14. We find that in compliance of the Order dated 26.05.2023, the Respondent re-inspected/verified the claim of the Applicant and sent an email dated 13.06.2023 and admitted the claim for Rs. 40,40,465/- i.e. increased by Rs. 11,85,255/- from 28,55,210/- and gave a detailed reply to the Applicant by giving the reasons on which the claim was re-inspected/verified which is reproduced below:

Email dated 13.06.2023:

*“g. That after the payment of consideration in full of basement through adjustment of assured return, the Corporate Debtor should have paid assured return at a rate of 11% per annum as compensation i.e. amount Rs. 2,20,000/- for each quarter, calculated on the entire amount deposited by you i.e. Rs.80,00,000/- till offer of possession of the said unit.*

*h. That the Corporate Debtor has defaulted in payment of the aforesaid assured return, for which this instant claim was filed by your good self, wherein you have claimed for assured return along with penal interest @ 2% per month on the said assured return. However, neither the original allotment letter nor the addendum to the original allotment letter provides for any other compensation/delayed interest/penalty for non-payment of assured return etc. to paid by the Corporate Debtor.*

*i. That as per the records of the Corporate Debtor available with us, the Corporate Debtor has already obtained the required Certificate in respect of the said unit/s, issued by the concerned appropriate authority; and on basis of which, the physical possession of the said unit was offered to you on 30-09-2020.*

*j. That it is an admitted fact that as per the terms of the said allotment letter, it is understood and admitted fact that once the*

*corporate debtor offered the possession of the unit, the amount accumulated and payable on account of assured return, till date of such offer of possession stands final, and no further interest will be continued to accrue and payable by the Corporate Debtor.”*

15. On perusal of the email dated 13.06.2023, it is clear that the Resolution Professional has considered the claim as directed by this Adjudicating Authority by order dated 26.05.2023 passed in IA-1313/2023. In compliance of the Order dated 26.05.2023 passed in IA-1313/2023, the Resolution Professional already revised the claim for Rs. 40,40,465/- from 28,55,210/-.
16. We therefore do not wish to interfere with the decision of the Resolution professional and hold that the Resolution Professional has applied his mind and passed a detailed and reasoned e-mail regarding the claim.
17. We are of the considered view that if such claims are allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never reach resolution. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan.
18. In view of the above, the IA-4089/2023 stands **dismissed**.

**Sd/-**

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

**Sd/-**

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