



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 217/7/JPR/2019**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**SHRI GAURAV AGARWAL**

**...Financial Creditor**

**Versus**

**M/S STAR VALLEY HEIGHTS LLP**

**...Corporate Debtor**

**MEMO OF PARTIES**

**Shri Gaurav Agarwal**

R/o 2/142, Vidhyadhar Nagar,  
Jaipur, Rajasthan- 302039

**...Financial Creditor**

**VERSUS**

**M/s Star Valley Heights LLP**

R/o 707, Soni Paris Point, A-26-A,  
Jai Singh Highway, Banipark,  
Jaipur, Rajasthan- 302016

**...Corporate Debtor**

**For the Financial Creditor**

**: Anand Sharma, Adv.**

**For the Corporate Debtor**

**: Naresh Kumar Sejvani, Adv.**

**Order Pronounced On: - 13.01.2023**



## **ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This application is filed by Shri Gaurav Agarwal ('Applicant'/ 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC / Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s Star Valley Heights LLP ('Respondent' / 'Corporate Debtor') seeking initiation of Corporate Insolvency Resolution Process ('CIRP'), pursuant to default in repayment of loan amount.
2. The Corporate Debtor is a Limited Liability Partnership registered with Registrar of Companies, Jaipur holding LLPIN AAD-6787. The Corporate Debtor is involved in the business of construction. It is seen from the website of the Ministry of Corporate Affairs that the Corporate Debtor was earlier a private company having its registered address at 108, 1<sup>st</sup> Floor, Soni Paris Point Complex, A-26-A, Sawai Jai Singh Highway, Banipark, Jaipur. Then it was converted to LLP and the registered address of the LLP i.e. the Corporate Debtor herein is Star Valley Heights LLP K No. 284/1, 287/1/2 Machara, Neendad, Sikar Road, Jaipur, Rajasthan- 302013.
3. The details of the transactions leading to the filing of this application averred by the Applicant are as follows:
  - a. The Financial Creditor is a homebuyer who had paid an amount of Rs. 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two



Hundred Ninety) to the Corporate Debtor as ‘registration amount’ to purchase a flat in the residential building complex named ‘Star Valley Aegina’. Pursuant to this, the Financial Creditor entered into an Agreement to Sale with the Corporate Debtor on 12.04.2016 in furtherance to purchase the abovesaid flat i.e. Flat No. 1002, 3BHK flat situated on the 10<sup>th</sup> floor having build up area of 1220.25 sq. ft.

- b. As per the terms of the Agreement to Sale, the Corporate Debtor was to raise a demand note for payment in accordance with the construction plan and the payment for the same was to be made within 15 days from the issue of demand notice. After payment of Rs. 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two Hundred Ninety) no further demand notice was raised by the Corporate Debtor.
- c. In January 2019, the Financial Creditor visited the site of the project and discovered that the entire project has been scrapped off. A new project by the name of ‘Laxmi Vilas’ was in progress on the same location as that of the erstwhile project. Thereafter, the Financial Creditor discovered from the Real Estate Regulatory Authority (“RERA”) that this project had been registered and the actual commencement date of the same was 11.01.2017. After getting this information, the Financial Creditor preferred a demand notice to the Corporate Debtor and also wrote emails demanding the advance amount paid for purchase of a flat in Star Valley Aegina.



- d. The Financial Creditor has submitted that the amount paid to the Corporate Debtor has a commercial effect of borrowing and would be classified as “financial debt” under the provisions of the Code. The details of the debt as reflected in Part IV of the Application is as follows:

**Part IV**  
**PARTICULARS OF FINANCIAL DEBT**

1.	Total amount of debt granted  Date(s) of disbursement	Financial Creditor has paid an amount of INR 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two Hundred Ninety) to the Corporate Debtor as ‘registration amount’ in order to purchase a flat in the building complex named ‘Star Valley Aegina’.
2.	Amount claimed to be in default and the date on which the default occurred	The total amount of debt is INR 6,43,560/- (Six Lakh Forty-Three Thousand Five Hundred Sixty) principal amount along with interest @ 18% per annum from the date of default till date. The Corporate Debtor originally defaulted in repayment of its obligations to the financial creditor on 11.01.2017, the date on which the Project ‘Laxmi Vilas’ was commenced & since then the Corporate Debtor has persistently defaulted in its repayment obligations towards the Financial Creditor. The default on the part of Corporate Debtor came to the knowledge of Financial Creditor when the Financial Creditor visited the site of the project ‘Star Valley Aegina’ in January 2019.



4. Consequent to the notice issued by this Adjudicating Authority the Respondent has filed its reply vide Diary No. 2297/2019 dated 16.10.2019 stating as follows:
- a. The Corporate Debtor has admitted that a token amount of Rs. 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two Hundred Ninety) was paid to confirm the booking of a 3BHK Flat No. 1002, on 10<sup>th</sup> Floor, admeasuring build up area of 1220.25 sq. ft. in the building complex named 'Star Valley Aegina' and consequently the same was documented in the 'Agreement to Sale' dated 12.04.2016. The total consideration amount as mentioned in due Agreement to Sale was Rs. 39,53,610/- (Rupees Thirty-Nine Lakh Fifty-Three Thousand Six Hundred Ten) which included the advance payment.
  - b. Consequent to the above transaction, the provisions of the Real Estate (Regulation and Development) Act, 2016 established RERA for regulation and promotion of the real estate sector. Resultingly, all the builders were to register the details of their projects online on the portal/website of the RERA. At such point of time, government schemes were also notified by which relaxations such as subsidies and interest free housing loans etc. in order to make housing affordable scheme like "Chief Minister Jan Avas Yojana (CMJAY)" were announced and therefore, the promoters changed the name of the



project “Star Valley Aegina” to “Laxmi Vilas Affordable Housing Under CMJAY”.

- c. Moreover, due to unfavourable situations in the market, demonetization and applicability of GST the real estate market took a hit thereby affecting the bookings, allotment, sale of flats, apartments in the project “Star Valley Aegina”. Hence, construction of the project was stalled.
- d. Considering due above situation, the Financial Creditor approached the Corporate Debtor to give him ready possession in an existing project and cancel the booking of the flat in the Star Valley Aegina Project. The Corporate Debtor acceded to the request and allotted the Financial Creditor a flat in the project named “Shree Ratna” i.e. Flat No. 1003, having area of 1947.27 sq. ft. Furthermore, the Corporate Debtor also adjusted the amount of penalty as applicable i.e. 18% of Rs. 36,53,610/- (Thirty-Six Lakh Fifty-Three Thousand Six Hundred Ten).
- e. The Corporate Debtor has submitted that in the Shree Ratna Project, the total flat cost was ranging from Rs. 4465/- to Rs. 5000/- per sq. ft., however, the Corporate Debtor provided the flat to the Applicant at the rate of Rs. 2824/- per sq. ft. Copy of the registered sale deed in favour of the applicant has been annexed as Annexure-1 of the reply.



- f. The Corporate Debtor has submitted that the Applicant in lieu of his flat in the project namely “Star Valley Aegina now Laxmi Villas” has already taken another flat in the project namely “Shree Ratna”. Furthermore, the amount of penalty has already been adjusted the Corporate Debtor. The act of the petitioner is filled with malicious intent. Therefore, neither any default has occurred on part of the Corporate Debtor nor there is any cause of action arising.
5. The Applicant has also preferred a set of Written Submissions vide Diary No. 3421/2022 dated 22.11.2022 wherein it is stated that the possession of flat at Star Valley Aegina was to be given within 48 months from April, 2016 and delayed payment would attract simple interest @ 18% per annum. It has also been contended that the Corporate Debtor has not provided any proof regarding the said adjustment of payment towards the new flat at “Shree Ratna”. Plus, this new agreement as mentioned above was entered with the Private Limited Company and therefore, has no bearing in the case at hand.
6. We have gone through the documents filed by both the parties and heard the arguments made by the Counsels. The Applicant has claimed default on part of the Corporate Debtor for loan amount of Rs. 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two Hundred Ninety). It is seen that this application was filed on 20.08.2019 and thereafter, the applicant had also filed an application bearing IA (IBC) No. 257/JPR/2022 stating that since



the entire project was scrapped, the Applicant could not comply with the second proviso of Section 7 as per which application by allottees in a Real Estate Project against the Corporate Debtor shall be filed jointly by not less than one hundred of such allottees under the same Real Estate project or not less than 10% of the total number of such allottees under the Real Estate project whichever is less. The said IA is also being considered with this order.

7. Before we go into the details, it is important to refer to the Agreement to Sale mentioned by both the parties. The Agreement to Sale dated 12.04.2016 was entered into between the parties herein for purchase of a flat in the project named Star Valley Aegina. The total sale consideration as mentioned in the agreement was Rs. 39,53,610/- (Rupees Thirty-Nine Lakh Fifty-Three Thousand Six Hundred Ten). The flat booked had a built-up area of 1220.25 sq. feet. An advance amount of Rs. 4,39,290/- (Rupees Four Lakh Thirty-Nine Thousand Two Hundred Ninety) was paid by the Applicant to the Corporate Debtor and the balance amount of Rs. 35,14,320/- (Rupees Thirty-Five Lakh Fourteen Thousand Three Hundred Twenty) was to be paid by the Applicant as per the terms laid down. Along with all of these the final possession was to be given within a period of 48 months from the date of official launching i.e. April 2016. It was also mentioned that in case of cancellation by purchaser i.e. the Applicant herein, the amount will be



refunded after deducting 18% of the flat cost. This said agreement has been annexed with the application as Annexure A-3.

8. The second Agreement to Sale as mentioned by the Corporate Debtor has been annexed with the reply and was entered into between the Applicant and M/s SNG Real Estate Pvt. Ltd. The said agreement was with respect to purchase of Flat No. 1003 admeasuring 1947.27 sq. feet in the project named Shri Ratna and the total sale consideration as mentioned in the Agreement is Rs. 55,00,000/- (Rupees Fifty-Five Lakh). This Agreement was registered on 16.04.2018.
9. A mere plain reading of the provision under Section 7 of the IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and a default has been committed in respect of the financial debt by the Corporate Debtor. While dealing with the Application under Section 7, the Adjudicating Authority is not required to consider the question of dispute between the parties as long as the debt and default is proved.
10. It is seen that the Applicant herein had given certain sum to book a flat in a particular project which was subsequently shelved. Due to the delay in the project the Applicant purchased a different flat in another project with the sister concern of the Corporate Debtor i.e. M/s SNG Real Estate. In the written submissions, the said Applicant has nowhere denied that the transactions were undertaken as a settlement on part of default committed



by the Corporate Debtor. The Applicant has stated that this transaction is separate whereas the Corporate Debtor has contended that the transaction with M/s SNG Real Estate corollary to the failure or part of the Corporate Debtor to give possession of flat in Star Valley Aegina. To prove the same the Corporate Debtor has also annexed the Agreement to Sale of the Applicant with M/s SNG Real Estate.

11. Even though, a dispute is not relevant to be considered in a Section 7 application, we take into account when a settlement has been arrived at between the parties with respect to a same transaction. In the present matter, it is clear that the Corporate Debtor entered into an Agreement with the Applicant to sell a flat in Star Valley Aegina but as the construction of the same was hauled, the Applicant purchased another flat with the sister concern of the Corporate Debtor.
12. The Corporate Debtor submitted that the delay in handing over the possession was calculated for and such amount was adjusted in the second sale of the flat in the Project of Shri Ratna. Also, the Corporate Debtor has submitted that the Agreement with the Applicant for the flat in Shri Ratna was at a concessional rate of Rs. 2824/- per sq. feet whereas in the same project the standard rate has been approx. Rs. 4500-5000 per sq. ft. To prove the same, the Corporate Debtor has also annexed another Agreement to Sale with one Ms. Mona Gupta for sale consideration of Rs. 86,94,162 (Rupees Eighty-Six Lakh Ninety-Four Thousand One Hundred Sixty-Two). Hence,



we see that the Applicant has already availed benefits for the delay caused in handing over possession of the flat in Star Valley Aegina by the Corporate Debtor. When the Applicant already signed the Agreement to Sale and availed the benefits, it renounced its right to claim any damages against the default committed by the Corporate Debtor. It seems that with the present application, the Applicant is trying to row two boats at the same time.

13. Moreover, it is clear the Applicant has finally settled the matter with the Corporate Debtor by buying another flat in exchange with earlier one. Hence, there is no cause of action arising as envisaged under the provisions of the code. Therefore, the application is dismissed. In view of the above order, we are not divulging in the issue arisen in IA (IBC) No. 257/JPR/2022. The same is dismissed. Let the copy of order be served to the Parties.

**DEEP  
CHANDRA  
JOSHI** Digitally signed  
by DEEP  
CHANDRA JOSHI  
Date: 2023.01.13  
17:45:59 +05'30'  
**DEEP CHANDRA JOSHI**  
**JUDICIAL MEMBER**

**PRASANTA  
KUMAR  
MOHANTY** Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2023.01.13  
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**PRASANTA KUMAR MOHANTY**  
**TECHNICAL MEMBER**