

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA-4145/2023
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:

Mrs. Namita Jain & Ors. Applicants

VERSUS

RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR

..... Respondent

Order 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 Applicants/Home Buyers seeking following prayers: -

a. To issue necessary directions to Resolution Professional to execute duly registered Sale Deed in favour of the applicants who have possession of their flats and no dues certificates have already been issued to them by the Corporate Debtor.

b. To issue necessary directions to Resolution professional to acknowledge the possession of the applicant who have possession of their Units.

c. To issue necessary directions to Resolution Professional to give possession to applicants who have fully paid the sale consideration and have been allotted units against them.

d. Direct that status quo be maintained with regard to the approval of the Resolution Plan by the COC till the pendency of this instant application.

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. It is submitted by the Ld. Counsel appearing for the Applicant that, the Applicants are home buyers of one of the projects launched by the Corporate Debtor and all the flats are under dispute which are located in Phase I of the 'Logix Zest Project'. The Phase -1 is comprising of tower A, B and C have occupancy certificate since 08.02.2019.

4. It is further averred that, Applicants no. 1, 2 and 3 have received their Offer of Possession and allotment letters and have received No Due Certificate from the management of Corporate Debtor when the company was not in CIRP. Further, Applicant nos. 4, 5, 6 and 7 also have allotment letter in their favour and have paid the payment of full sale consideration amount. These flats have been purchased at different points of time by different persons being sold by the Corporate Debtor.

5. It is further submitted that, these flats were mortgaged to Piramal Enterprises Limited (lenders) who gave permission to sell to the Corporate Debtor and it is with the consent of the financial institution these units were sold. This consent has been obtained on 8.3.2021 much prior to the date of CIRP which is 17.8.2022. The Applicants no. 1, 2 and 3 have obtained the possession and renovated their flats investing around Rs.4 Lakhs per flat by carrying out necessary electrical, civil, painting work.

6. It is further averred that, the Resolution Professional is obstructing the possession and not allowing electricity connection in the flats of the Applicants.

7. Per contra, the Resolution Professional has raised several objections and submitted that, the sale deed cannot be executed owing to the outstanding
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dues of Noida and CoC in the 8th meeting has approved the Resolution Plan with 100% votes. The Resolution Professional vehemently argued that, the Applicant purchased these flats at a significantly lower price, which caused heavy loss to the Corporate Debtor, and in order to get possession of these flats, the Applicants must deposit the amount equivalent to the loss caused to the Corporate Debtor.

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

9. 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.”

10. 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)**