

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 04
(IB)-674(PB)/2021

IN THE MATTER OF:

Sanjib Kumar & Ors.

.... Petitioner/Applicant

v.

M/s. Vardhaman Estates & Developers Pvt. Ltd. Respondent

Order Under Section 7 of Insolvency & Bankruptcy Code

Order delivered on 07.02.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner

Mr. Krishnamohan K. Menon, Mr. Tejaswi
Bhanu, Mr. Chaitanyashil Priyadarshi, Ms.
Saloni Sharma, Ms. Dania Nayyar, Ms. Parul
Sachdeva & Mr. Gautam Dhamija, Adv.
Mr. Deepak Garg, Adv.


For the CD

ORDER

Per Oral: AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

The present application under Section 7 of the Insolvency & Bankruptcy Code, 2016 has been filed by 146 Real Estate Allottees representing 122 allotted units, seeking CIRP proceedings against M/s. Vardhman Estates & Developers Pvt. Ltd., the Corporate Debtor (CD). As per the application, the Real Estate Allottees/Financial Creditors have paid a Principal amount of ₹ 30,11,41,190/- (Rupees Thirty Crores Eleven Lakhs Forty One Thousand One Hundred Ninety Only) which together with interest is

now adding upto ₹ 53,69,39,984/- (Rupees Fifty Three Crores Sixty Nine Lakhs Thirty Nine Thousand Nine Hundred Eighty Four Only). This money has been paid to the CD for allotment of units in Real Estate project namely Vardhaman I Valley purportedly being developed by the CD at Plot No. 26/1, admeasuring 40470 Square meters located at Knowledge Park-III, Greater Noida, Gautam Buddh Nagar, Uttar Pradesh. The project was to have IT/ITES office, Residential Units, Commercial Spaces and Other facilities in the ratio of 50:15:15:20. Project spaces/units were offered at 12% Assured Returns on advance consideration payment. It is stated by the Financial Creditors that a company namely M/s. Zestha Projects Pvt. Ltd. was allotted the above land by Greater Noida on 07.11.2003. However, without the sanction of Greater Noida, M/s. Zestha Projects Pvt. Ltd. assigned the development rights to the CD vide a joint development agreement dated 16.04.2007 wherein the arrangement was that M/s. Zestha Projects Pvt. Ltd. would permit the CD to construct and sell the project units on the said land for a return consideration of the super built-up area of 30,000 Sq. Ft and a security deposit of ₹ 3,50,00,000/- (Rupees Three Crores Fifty Lakhs Only). The remainder of the project would vest with the CD. As the above JDA was in violation of the lease deed conditions by which the Greater Noida had sanctioned the plot to M/s. Zestha Projects Pvt. Ltd., Greater Noida by its letter dated 25.02.2021 read with letter dated 17.11.2021 and 24.11.2021 found the JDA to be illegal. It is stated by the Financial Creditors that neither the assured returns nor the promised date of possession which was to



be done within a period of three to four years after entering into the Builder Buyer Agreements, were honoured by the CD. Most of the Financial Creditors had to enter into superseding fresh agreements whose revised possession dates of 2018-19 were also not honoured. It is stated that the CD sought to fraudulently offer possession knowing very well that the project itself has no sanction from Greater Noida and in any case, without project completion and Occupancy Certificate/ Completion Certificate, no sub-lease registration is permissible. The RERA reports and site photographs given as late as 02.07.2021 clearly establish the incomplete construction till date. It is a case of the Financial Creditors that they fulfil the condition of threshold limit of minimum of 100 allottees as per the 2nd Proviso to Section 7 (1) of the IBC. The default in the case of CD is clearly established to be ₹ 53,69,39,984/- (Rupees Fifty Three Crores Sixty Nine Lakhs Thirty Nine Thousand Nine Hundred Eighty Four Only), therefore the CIRP proceedings to be initiated against the CD.

2. Earlier the CD was represented by Counsel Mr. Prashant Katara on various dates who is also present today. However, it is submitted that Shri Prashant Katara is no more counsel of the CD and Mr. Deepak Garg is there to argue on behalf of CD from now onwards. A list was earlier submitted on behalf of CD dated 27.01.2023 in which primarily the argument has been taken that the Financial Creditors are mostly speculative investors and hence would be covered by the ratio of Hon'ble Supreme Court Judgment in **Pioneer Urban Land and Infrastructure Limited & Anr. vs.**

Union of India & Ors. Writ Petition (Civil) No. 43 of 2019, dated 09.08.2019 and therefore there would not be a case of CIRP proceedings against the CD.

3. The list of 36 units submitted was perused wherein the rate of assured return is varying from 9.5% to as high as 40%. The second argument presented by the earlier Ld. Counsel for the CD is that the Financial Creditors include several RERA decree holders who as per his contention would no longer qualify as real estate allottees. On the contrary, Ld. Counsel for the Financial Creditors rebutted that the number of units having such a high rate of assured return is very limited and most of them are genuine buyers and they would still be able to cross the threshold of 100 or more. The test of speculative investors is not satisfied by each one of the units mentioned in the list provided by the CD. As regards the submission of the counsel for the CD w.r.t. RERA decree holders no longer being an allottee, this issue is no longer res-integra as we have already held in **M/s Jones Lang Lasalle Building Operations Private Limited vs. M/s Celebration City Projects Private Limited 2022 ibclaws.in 825 NCLT** dated 26.09.2022 and the Hon'ble NCLAT in **Mukul Agarwal vs. Royale Resinex Private Limited in Company Appeal (AT) (Insolvency) No.777 of 2020** dated 30.03.2022. In the M/s Jones Lang (supra), we have held that a RERA decree holder would not lose the original character of being an allottee and a decree is just a measure of the debt amount.


4. The third contention of the earlier Ld. Counsel for the CD that some of the allottees of units have taken back the money and No

Due certificates have been issued in favour of the CD. Therefore, they did not remain allottees and therefore they cannot make claim. However, it is to be noticed that the agreements signed by the CD with those intending unit holders continue to remain on record and have not been cancelled so therefore the agreements are valid in law. This contention too does not merit consideration.

5. In view of the above, we are inclined to **admit this petition** for CIRP proceedings to be initiated against the Respondent/CD.

6. In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **CP(IB)-674(PB)/2021** filed by the Applicants, under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Respondent, is hereby **admitted**.
- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Applicants have proposed the name of **Mr. Mukesh Gupta** as the Interim Resolution Professional ("**IRP**") having



address: F-1 Milap Nagar, Uttam Nagar, New Delhi, Delhi-110059. His Email id is camukeship@rediffmail.com. His registration number is **IBBI/IPA-001/IP-P-01494/2018-2019/12254**. The Applicant has annexed a copy of the Consent issued by **Mr. Mukesh Gupta** in Form 2, Written Communication by proposed IRP as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, **Mr. Mukesh Gupta** is appointed as IRP.

- iv.** In pursuance of Section 13(2) of the Code, we direct the IRP, to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will

follow. There shall be no future opportunity given in this regard.

- vi.** The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- viii.** The FC shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (**"CoC"**).
- ix.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.



- x.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- xi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

SD/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

07.02.2023
Ritu Sharma