

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 341 of 2023**

[Arising out of Order dated 09.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V in IA No.1379 of 2022 in C.P.(IB) 1390 of 2020]

In the matter of:

Radius Estates & Developers Private Limited

...Appellants

Vs.

**Goverdhan Capital & Finance Private Limited &
Anr.**

...Respondents

For Appellant: Mr. Abhinav Vashisht, Sr. Advocate with Mr. Pranaya Goyal, Mr. Dharav Shah, Mr. Shubham Saini, Mr. Suyash Goverdhan, Ms. Akshita Sachdeva, Advocates.

For Respondents: Mr. Abhijit Sinha, Ms. Natashal Dalmia, Mr. Saikat Sarkar and Mr. Shivam Pundhir, Advocates for R1. Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Anurag Anand and Mr. Himanshu Kaushal, Advocates for R-2.

**J U D G M E N T
(22nd September, 2023)**

Ashok Bhushan, J.

1. This Appeal has been filed against the order dated 09.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V, on IA No. 1379 of 2022 by which order the Adjudicating Authority allowed the IA filed by Respondent No.1 directing the claim of the Respondent No.1 be included in the list of inventories of the Corporate Debtor.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:

2.1. The Respondent No.1 executed a booking form to apply for a unit in the project named “X BKC” of which the Appellant- ‘Radius Estates & Developers Pvt. Ltd.’ was a co-developer. The case of the Respondent No.1 was that Respondent No.1 has given various loans to the Appellant and its group entities. Booking form was executed on 30.09.2019 which was brought on record. The CIRP was initiated against the Corporate Debtor namely— ‘Radius Estates & Developers Pvt. Ltd.’ by order dated 30.04.2021. On 08.05.2021, erstwhile Resolution Professional published an advertisement inviting claims. Last date for filing of the claim was 22.05.2021. Respondent No.1 filed its claim on 16.06.2021 as a Financial Creditor (Homebuyer) on the basis of the purported booking form. Resolution Plan of ‘Adani Goodhomes Pvt. Ltd.’ was approved by the Committee of Creditors (CoC) by a majority of 83.93%. In May 2022, after approval of the Resolution Plan, Respondent No.1 filed an IA being IA No. 1379 of 2022 seeking direction of the Adjudicating Authority for admission of its claim. Application was opposed by the Resolution Professional. The Resolution Professional has not accepted the claim of Respondent No.1 nor the name of Respondent No.1 was reflected in the list of creditors as on 15.12.2021. Adjudicating Authority by impugned order had allowed the Application, condoned the delay in accepting the claim. In paragraph 9, following directions have been issued by the Adjudicating Authority:-

“After hearing both the sides, this Bench is of the view that the Resolution Professional should admit the

Applicant's claim as a flat owner. The Applicant's claim should be included in the list of inventories of the Corporate Debtor. The delay in filing the claim by 28 days is condoned."

2.2. Aggrieved by the impugned order dated 09.01.2023, the Appellant has come up in the Appeal.

3. We have heard Shri Abhinav Vashisht, Learned Senior Counsel appearing for the Appellant, Shri Abhijit Sinha, Learned Counsel for Respondent Nos.1 and Shri Tishampati Sen, Learned Counsel for Respondent No.2.

4. Learned Senior Counsel for the Appellant submits that the booking form dated 30.09.2019 does not record to any specific unit. It is submitted that booking form was merely a letter of comfort against group loans. It is submitted that the claim submitted by Respondent No.1 was rightly not admitted by the Resolution Professional. The claim of Respondent No.1 is unsubstantiated claim in the record maintained by erstwhile management of the Corporate Debtor. The name of the Respondent No.1 was never included as homebuyer. Admission of claim of Respondent No.1 at this stage is directly contrary to doctrine of clean slate. It is submitted that the Resolution Plan has already been approved on 22.12.2021 by the Committee of Creditors.

5. Shri Abhijit Sinha, Learned Counsel for the Respondent No.1 referring to booking form dated 30.09.2019 submits that remarks in the booking form clearly indicate that booking was accepted for 4 BHK Flat for an amount of Rs.27,000/- per sq. ft., hence, booking form was complete. It is submitted

that the Resolution Professional in spite of the claim having been filed with short delay did not admit the claim. It is further submitted that the Respondent No.1 never received any information that his allotment has not been honoured. The Adjudicating Authority has directed for admission of claim.

6. We have considered the submissions of the Learned Counsel for the parties and perused the record.

7. Copy of the booking form is part of the Appeal as Annexure-B. When we look into Annexure-B, in column where zone, wing, type, floor and flat no. to be filled up all are blank except Type 4 BHK. Allotment premium of Rs.50,00,000/- is mentioned which was received by way of RTGS dated 27.09.2019. Counsel for the Respondent has relied on the remarks at the end of the booking form at Page 38, which is to the following effect:-

“Remarks: Radius Estate Dev. Pvt. Ltd. comprising 4 BHK @ Higher floor on NOC from Bank will give details of flat no., floor, Carpet Area @ 27k per sq.ft. plus if Developer is not in a position to pay any outstanding in ground companies will adjust against the 4 BHK @ Higher floor against Balance Payment with interest on outstanding (loan & contracts dues) this is with approval of Mr. Sanjay R Chhabaria, CEO of group companies. ABOVE is at his chembar of ONE BKC its a part of Comfort & discussion.”

8. Paragraph 5 of the booking form deals with 'acceptance of application'.

Paragraph 5 is as follows:-

“ACCEPTANCE OF APPLICATION

5.1. The Applicant shall submit the Application Form, duly filed in with all the details along with Application Money Part 1 and shall pay Application Money Part 2 strictly as per Payment Schedule as contained in Annexure-1 hereto, the payment/ instalment schedule has already considered a rebate for early payments of Instalments and the same has already been adjusted in the Allotment Premium. Application Money Part 1 and Application Money Part 2 are hereinafter collectively referred to as the "Application Monies". A copy of this Application Form signed by the Applicant(s) shall be delivered to the Applicant(s) against submitting the same to the Promoters. The receipt in respect of the Application Money Part 1 and Application Money Part 2 shall be issued within 7 days from the respective date of receipt thereof, subject to realization of the respective cheques. This Application and / or the receipt of the Application Monies Part 1 does not confer or constitute any right upon the Applicant(s) in or to the Premises.

5.2. The Application shall be deemed to be incomplete until the deposit and clearance of the Application Monies Part 2 along with Goods and Services Tax (GST).

5.3. The Promoters shall have the right to reject the Application at its sole discretion and without assigning any reason for the same, till the issuance of the "Allotment Letter. In the event of rejection of the Application, the amounts paid by the Applicant(s) up to the date of the Rejection shall be refunded to the Applicant(s) in full without interest.

5.4. Within 30 days of receipt of Application Money Part 2, the Promoters shall issue an Allotment Letter, subject to Application being accepted by the Promoters and the Applicant(s) fulfilling all the terms and conditions including realization of Application Monies by the Promoters together with the applicable taxes thereon. This Application shall be deemed to

have been accepted only after the Promoters have Communicated such acceptance through ...Letter.

5.5 The Applicant(s) agrees and undertakes to execute and register an Agreement for Sale under the provisions of Section 4 of MOFA/13 of RERA, In respect of the Premises, on receipt of all requisite approvals, within 30 days from the date of intimation by the Promoters and in the form as would be drawn up by the Promoters, subject to the commercial terms remaining the same and pay the necessary Stamp Duty and Registration Charges thereon. In the event the Applicant(s) fails to pay the necessary stamp duty, registration fees and incidental expenses thereon and further fails to execute and register the Agreement for Sale. In respect of the Promises, within the abovementioned 30 days period, then the Promoters shall have the right to cancel the Application/Allotment Letter and forfeit the amounts paid by the Applicant(s) till such date.

5.6. The Applicant(s) agrees and undertakes to be bound by and undertakes to perform all the obligations and the terms and conditions as contained herein, including the obligation to make payments as per the payment schedule.”

9. On the record of the present Appeal, there is no allotment letter claimed by Respondent No.1 nor any confirmation on the allotment. The necessity for further allotment and confirmation was due to the reason that in a booking form, wing no. and flat no. was blanked. No unit, thus, can be said to be allotted by the booking form. The remarks on which the Respondent has much relied itself states that Radius Estates & Developers Pvt. Ltd. confirmed 4BHK and higher floor on NOC from Bank. The remarks itself contemplated that, details of flat no. and floor no. will be given subsequently. Thus, the booking form contemplated further letter intimating that Flat No., Floor etc. which have never been done. We are of the view that Respondent No.1 cannot claim

allotment of any unit to become a homebuyer. Thus, the Resolution Professional has rightly not accepted the claim of Respondent No.1 as a homebuyer and has not included the Respondent No.1 in the list of creditors as on 15.12.2021. In the written submissions which have been filed by the Appellant, Appellant has offered to refund Rs.50 Lakhs received from Respondent No.1 without any interest. We, thus, are of the considered opinion that Respondent No.1 cannot be held to be homebuyer and the Resolution Professional did not commit any error in not accepting the claim of Respondent No.1 as a homebuyer. There being no allotment in favour of Respondent No.1 as contemplated in the booking form itself, the direction passed by the Adjudicating Authority thus are unsustainable. However, in view of the fact that Appellant themselves has offered to refund the amount of Rs. 50 Lakhs, we direct the amount of Rs.50 Lakhs be refunded to the Respondent No.1 within a period of 30 days from today.

10. In result, the Appeal is partly allowed. The direction issued in the order to accept the claim of Respondent No.1 is set aside. The Appellant shall refund the amount as indicated above.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

New Delhi
Anjali