

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS.) No. 254 of 2023

(Filed under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of the 'Impugned Order' dated 25.05.2023 in IA No. 343 of
2021 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating
Authority', (National Company Law Tribunal', Bengaluru Bench)**

In the matter of:

Mr. K. Jayant Prabhu

S/o. K.V. Prabhu

Aged about 48 years,

Residing at: E-103, Renaissance Jagriti

Ramgondanahalli, Varthur Main Road

Bengaluru – 560066

**..... 1st Appellant /
1st Petitioner**

Mrs. Juhi Santani

W/o. K. Jayant Prabhu

Aged about 47 years,

Residing at: E-103, Renaissance Jagriti

Ramgondanahalli, Varthur Main Road

Bengaluru – 560066

**..... 2nd Appellant /
2nd Petitioner**

v

Mr. Pankaj Srivastava

Liquidator of

M/s. Samruddhi Realty Ltd.

IBBI Registration No.

IBBI/IPA-001/IP-P00245/2017-18/10474

Having Office at:

No.5, 5th Cross, Navya Nagar,

Jakkur, Bengaluru – 560064

..... Respondent/Liquidator

Present:

For Appellants : Mr. Sriranga Subbanna, Senior Advocate
For Ms. Sumana Naganand, Advocate
M/s. JustLaw, Advocates

For Respondent / : Mr. Abhishek Anand, Advocate
Liquidator For Ms. Shriraja S, Advocate

J U D G M E N T
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

Background:

Comp. App (AT) (CH) (INS.) No. 254 of 2023:

The `Appellants / Petitioners`, have filed the instant Comp. App (AT) (CH) (INS.) No. 254 of 2023, in respect of the `impugned order`, dated 25.05.2023 in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018 (Filed by the `Appellants` / `Petitioners`), passed by the `Adjudicating Authority` (`National Company Law Tribunal`, Bengaluru Bench), in `dismissing`, the said `Application`.

2. Earlier, the `Adjudicating Authority` (`National Company Law Tribunal`, Bengaluru Bench), while passing the `impugned order`, dated 25.05.2023, in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018 (Filed by the `Appellants` / `Petitioners`), under Section 60(5)(c) of the

I & B, Code, 2016, r/w. Rule 11 of the NCLT Rules, 2016, the 'Adjudicating Authority', 'National Company Law Tribunal', Bengaluru Bench, among other things, at Paragraph Nos. 10 & 11, had observed the following:

10. "It is observed that the applicant has prayed to exclude Schedule B property from the Liquidation Estate of the Corporate Debtor. However, it is pertinent to note that only the assets which is charged as security interest will fall outside the purview of Liquidation proceedings. Section 3 (31) of the IBC defines security interest as right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. However, in this present case no such security interest is created in favour of the applicants since there is no such document and the sale deed was not executed. Hence the prayer for excluding the Schedule B property from the Liquidation estate of the Corporate Debtor is not tenable.

11. Hence, this Tribunal is of the considered opinion that that since no Sale Deed is registered and no security interest is created in favour of Applicants the said property falls within the purview of Liquidation Estates of the Corporate Debtor."

and finally 'Dismissed', the 'Application'.

Appellants' Submissions:

3. Challenging the 'impugned order', dated 25.05.2023 in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating Authority' / 'Tribunal', the Learned Senior Counsel for the Appellants contends that the 'Appellants', are the 'Bona fide Home Buyers' of the

Villa, Bearing Plot No.51 of 'Schedule A' Property, having purchased the same, by means of an 'Agreement of Sale' and 'Construction Agreement', dated 12.07.2011, executed by 'M/s. Samruddhi Realty Limited' / 'Corporate Debtor', after having paid the 'whole Sale Consideration', and after securing 'Possession', are 'Aggrieved', in respect of the 'impugned order', dated 25.05.2023, in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating Authority' / 'Tribunal', without application of mind, and the said 'Order', is an 'illegal' and an 'erroneous' one.

4. According to the Appellants / Petitioners, the 'Project' / 'Samruddhi Lake Drive', is a separate and an independent completed 'Project' of the 'Corporate Debtor', and that, the 'Project', being a completed 'Project', cannot be made part of the 'Liquidation Estate' of the 'Corporate Debtor'.

5. The Learned Counsel for the Appellants, points out that in the Order dated 17.06.2022 of this 'Appellate Tribunal', in the matter of Alok Sharma & Ors. v. M/s. IP Construction Pvt. Ltd., through Resolution Professional, Anju Agarwal (vide Comp. App (AT) (INS.) No.350 of 2020), 2022 SCC OnLine NCLAT 246, wherein, at Paragraph 6 (f), it is observed as under:

6. (f) ``Let us see in this case whether under real estate project whether Revenue from sale of such constructed spaces / houses will be considered under the caption "Asset" sale or will it be considered as "Revenue from operations" under Schedule -III, Part-II of the Companies Act, 2013?

Here, it is observed that in case of real estate company, such constructed spaces/houses as and when sold its sale price goes to the heading 'Revenue from operations' of the profit and loss accounts of the Company being part of its commercial operation. If this houses / constructed spaces belongs to a company which is not in real estate business and is an industrial company/manufacturing company then the impact of sale from such houses will appear in the 'Balance Sheet' of the Company as per Schedule-III Part-I- (II Assets) of the Companies Act, 2013 and any sale of this house by this industrial company, if it results into a profit or loss on the sale of such assets, then it will reflect to the extent of profit or loss on sale of this assets only in the profit and loss account under the heading "other income" and the cost value of the assets will be reduced from the assets side of the 'Balance Sheet'. For a clarity, let us see the following examples:

i. In case of a real estate company - (Ram & Mohan Company), if House No. 'A' is sold to Mr. 'X' at a value of Rs. 20 lacs, the cost of construction of Rs. 15 lakhs then in the profit and loss account of the 'Ram & Mohan Company', sale of House will come in the income side of the profit and loss accounts as Rs. 20 lakhs-Revenue from operations. The materials etc. consumed will appear at Rs. 15 lakhs in the Part-II - profit and loss account of the same year under caption (Expenses-IV) if both start and completion of the house 'A' is in the same year. Otherwise, if it is completed in the previous year's then these costs of this house which will be appearing in the " inventory" will get reduced.

ii. If 'Ram & Mohan Company' is an industrial Company then the profit and loss account will reflect an income of Rs. 5 lakhs in the profit and loss account (under the heading - Part II - other income) and the value of the assets appearing at Rs.15 lakhs in the books in the assets side of the Balance Sheet will be reduced.

iii. In the short and the summary, the houses so constructed is the business of the real estate company and the value of sale of those houses will always appear in the credit side of the profit and loss accounts as "Revenue from operations". Hence, this is not an asset, in case of real estate company as it is recurrent business activity for the company & it is its business for continuation of its operation as a going concern even during CIRP.

g. Hence, we are unable to sustain the views of Respondent/RP that these houses registration will violate 'Moratorium' under Section 14 of the Code.

h. The Registration of all these houses is the 'procedural requirements', in case of 'Real Estate Company' where the Appellants are already in possession of these spaces from 2015 whereas CIRP was initiated on 11.02.2019.

i. Even the Hon'ble Apex Court in *Bikram Chatterjee v. Union of India* (2019) 19 SCC 161 has held vide para 8 and 173 as follows:

"8.... The facts of the instant case project that Noida and Greater Noida have allotted huge plots to the builders by charging a sum of approximately 10 percent and in most of the cases, thereafter no money has been paid. The large number of projects which have come up not only in Noida and Greater Noida, but most of them have not been completed by the builders/promoters and they have siphoned buyers' money in large scale. No action has been taken by the Noida and Greater Noida Authorities against builders for cancellation of leases due to violation to fulfil their obligation. Bankers have financed to builder certain loan on the condition to invest in the projects, but they have also permitted the money to be used as for other purposes as apparent from the report of the Forensic Audit in the instant case which had been submitted by Auditors - Mr. Pawan Kumar Aggarwal and Mr. Ravinder Bhatia. The facts which are projected in the Forensic Auditor Report speaks for itself."

"173. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home buyers as money of home buyers has been diverted due to the inaction of Officials of Noida / Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/ leased land/ projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in projects. Homebuyers money has been diverted fraudulently, thus, fraud cannot be perpetuated against them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida Authorities have to issue the Completion/ Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month."

j. This Tribunal has also held in Flat Buyer's Association Winter Hills - 77 Gurgaon Vs. Umang Realtech Pvt. Ltd. through the Resolution Professional - CA(AT) (Ins) No. 926 of 2019 which notes as under:

"2. During the pendency of the appeal, the Company was kept as a going concern out of investment made by the Promoters of 'Umang Realtech Private Limited' but under the supervision of the 'Interim Resolution Professional'.

3. It is submitted that many of the apartments/ flats have been completed, possession has been given, Sale Deed(s) have been executed in favour of number of allottees including Mr. Ajay Singh and Ms. Rachna Singh by the 'Corporate Debtor' through the 'Interim Resolution Professional'. However, certain work is yet to be completed such as electrical connection, supply of water etc. which can be done only after necessary permission of the Competent Authority for which applications have been moved and are pending consideration before such Authorities." All this suggests that the CIRP be positive to save the allottees and not to work as a detriment to the allottees to save the Object of the 'Code'."

6. The Learned Counsel for the Appellants, takes a plea that the 'Adjudicating Authority' / 'Tribunal', had committed an 'error', in considering the 'settled position of Law', in this regard, and passed the 'impugned order', dated 25.05.2023, in an 'incorrect manner'.

7. It is represented on behalf of the Appellants that the 'Adjudicating Authority' / 'Tribunal', came to a wrong conclusion, because of the fact that there was 'No Security Interest', created in respect of the 'Schedule B' Property, and the same falls within the purview of 'Liquidation Estate' of the 'Corporate Debtor'. In fact, a misleading stand, was taken by the 'Respondent', before the 'Adjudicating Authority' / 'Tribunal', indicates

a 'Lackadaisical Attitude' of the 'Respondent', in protecting the interests of 'Bona fide Home Buyers', and the interests of the 'Corporate Debtor', which is in conflict with the 'settled Principles of Law'.

8. The Learned Counsel for the Appellants, projects an argument that 'Appellants Rights', as 'Bona fide Home Buyers', cannot be affected, and adverts to the Judgment of this 'Tribunal', dated 04.02.2020 in Flat Buyers Association v. Umang Realtech Pvt. Ltd., through its Interim Resolution Professional and Ors. (vide Comp. App (AT) (INS.) No. 926 of 2019), reported in (2020) SCC OnLine NCLAT 1199, wherein, at Paragraph 25, it is observed as under:

25. "In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained."

9. It is the version of the Appellants that they cannot be dispossessed, in respect of the 'B Schedule' Property, just because the 'Sale Deed', was not 'Registered', in their favour. Furthermore, the 'Non-Registration' of the 'Sale Deed', was not due to the 'fault' of the 'Appellants', and in reality, the 'Appellants', had approached the 'Corporate Debtor', for 'Registration', but of 'no avail'.

10. On behalf of the Appellants, a plea is taken that even as per Section 53A of the Transfer of Property Act, 1882, the 'Doctrine of Part Performance', speaks that wherein the 'Transferor', the 'Respondent' herein (in place of the 'Corporate Debtor'), cannot 'dispossess', the 'Transferee', from the 'lawful' and 'continuing Possession' of the 'Transferee', just because a formality of Registration, was not completed.

11. The Learned Counsel for the Appellants, cites the decision in Narayan Das Khettry v. Jatindra Nath Roy Chowdhury, 1927 IA 218, wherein, it is held that there are 'no traces in the Laws or Customs of this Country, of the existence of an absolute Rule of Law that whatever is affixed or built on the Soil, becomes a part of it and is subject to the same Rights of the Property, as the Soil itself'.

12. The Learned Counsel for the Appellants, relies on the decision of the Hon'ble Supreme Court of India in Dr. K.A. Dhairyawan & Ors. v. J.R. Thakur & Ors., reported in (1958) SC 789, wherein the Hon'ble

Supreme Court, distinguishes, the concept of 'duality of ownership of a property', in view of Section 108 of the 'Transfer of Property, Act, 1882, as compared to 'Foreign Legislations'.

13. The Learned Counsel for the Appellants, points out that while the 'Agreement of Sale', is for the land on which, the 'Villa', is constructed, the 'Consideration Sum', was paid in respect of the 'Construction' and 'Sale'. Also that, upon 'Construction of the Villa', applying the 'Dual Ownership Principle', which is recognised in India, the 'Appellants', are accorded with the 'Ownership' of the 'Villa', and the land on which, the 'Villa', is constructed, and therefore, are seeking for the 'Conveyance of Title', to the 'Villa', since the same was already 'Completed', and only the 'formality', is the 'Registration' of the 'Schedule B' property, to and in favour of the 'Appellants'.

14. The Learned Counsel for the Appellants, comes out with a plea that after the Completion of the Construction of the 'Schedule B' Property, except, a few pending works, the 'Appellants / Petitioners', only after securing the permission of the 'Corporate Debtor', had taken 'physical possession' of the 'Schedule B' Property, since 2016. Moreover, the 'Appellants', under the 'Possession', had incurred 'expenses', at their 'own costs', towards the 'completion of the Interior Work' of the 'Residential Unit'.

15. According to the Appellants, they had made regular Quarterly payments, in respect of the 'Maintenance Charges', and by being the 'Members of the Owners Association', much earlier to the 'Commencement of the Corporate Insolvency Resolution Process' of the 'Corporate Debtor'.

16. In this connection, the Learned Counsel for the Appellants, refers to the Clause 22 of the 'Agreement of Sale', which mentions that, they are entitled to the 'Possession' of the 'Schedule B' Property, upon 'Payment of all Dues', under the 'Agreement of Sale & Construction Agreement'.

17. The Learned Counsel for the Appellants, points out that the Appellants cannot be made to suffer, for their failure, on the part of the 'Corporate Debtor' and the 'Respondent', to 'Register' the 'Schedule B' Property.

18. The Learned Counsel for the Appellants, points out that the 'Adjudicating Authority', had incorrectly held that the 'Schedule B' Property, forms part of the 'Liquidation Estate', and in this regard, the 'Adjudicating Authority' / 'Tribunal', had not applied its mind, in proper and real perspective.

19. The Learned Counsel for the Appellants, while summing up, prays before this 'Tribunal', for (i) 'allowing', the instant Comp. App (AT) (CH) (INS.) No. 254 of 2023, by setting aside the 'impugned order',

dated 25.05.2023 in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018, for (ii) 'Issuance of a Direction to the Respondent', to execute the 'Sale Deed', and Register 'Schedule B' Property, in favour of the 'Appellants', as per the 'Agreement of Sale & Construction Agreement', dated 12.07.2011, in an expeditious and time bound manner, (iii) in directing the 'Respondent', to 'exclude', the 'Schedule B' Property, from the 'Liquidation Estate' of the 'Corporate Debtor', (iv) the Respondent, is to be directed in 'completing', the remaining works, in respect of 'Schedule B' Property, as mentioned under 'Schedule C', (v) the 'Respondent', is to be directed to 'Refund the Excess Sum of Rs.65,191/-, paid towards the 'Sale Consideration' with interest, and (vi) to 'Award Costs' of the 'Appeal', in their favour.

Respondent's Contentions:

20. The Learned Counsel for the Respondent / Liquidator, submits that though, the 'Corporate Debtor', had handed over the Possession of the 'Property' in question, to the 'Appellants', to carry out the 'Interior Works', no 'Sale Deed', was executed by the 'Corporate Debtor', in favour of the 'Appellants', before the 'Commencement of Corporate Insolvency Resolution Process' of the 'Corporate Debtor'. Also that, 'Construction Work' worth Rs.6 Lakhs, is yet to be completed.

21. According to the Respondent / Liquidator, a mere 'Agreement to Sell' or 'Possession over a Property', does not amount to the 'Ownership of that Property'. Besides this, an 'Instrument', which purports to 'Transfer the Title of the Property', is required to be 'Registered', and that the 'Title' does not pass, till the 'Registration', is effected. An 'Execution of Sale Deed', is an 'established fact', for 'Transferring the Ownership of a certain Asset'.

22. The Learned Counsel for the Respondent / Liquidator, refers to the decision of the Hon'ble Supreme Court of India, in the matter of Narandas Karsondas v. S.A. Kamtam & Anr., reported in (1977) 3 SCC at Page 247, wherein, it is observed as under:

"A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prasad v. Ram Mohit Hazra 1967 1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963 and in section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

23. The Learned Counsel for the Respondent, places reliance upon the Judgment of the Hon'ble Supreme Court of India in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Ors., reported in AIR 2012, at Page 206, wherein, it is observed as under:

“Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

24. According to the Respondent / Liquidator, the said ‘Property’, mentioned in ‘Schedule B’, being an ‘Asset’ of the ‘Corporate Debtor’, the ‘Liquidator’, is bound to take into ‘control or custody of the said Property’, and to ‘preserve and protect’, the ‘Assets’ and ‘Properties’ of the ‘Corporate Debtor’, as per Section 35(1)(b) and (d) of the I & B Code, 2016.

25. The Learned Counsel for the Respondent / Liquidator, points out for the purpose of ‘Liquidation’, the Liquidator, shall form an ‘Estate of the Assets’, over which, the ‘Corporate Debtor’, has ‘Ownership Rights’. In this regard, the Learned Counsel for the Respondent points out that the provisions of Section 36(3) of the I & B Code, 2016, includes in ‘Liquidation Estate’, all ‘Assets’, over which, the ‘Corporate Debtor’, has ‘Ownership Rights’ (including Assets subject to determination of Ownership by Court or Authority), whether such ‘Assets’, are ‘Tangible’ or ‘Intangible’, whether such ‘Assets’ are ‘Encumbered’ or

`Unencumbered'. Further, the `Liquidator', upon forming the `Liquidation Estate', under Section 36 of the `Code', shall prepare an `Asset Memorandum', in accordance with Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, within 75 days from the `Liquidation Starting Date'.

26. According to the Respondent / Liquidator, the `Appellants / Petitioners', in the `Liquidation Proceedings', filed their `Claim' in `Form – G', for a Sum of Rs.6,65,191/- for the `unfinished work', in the subject Property. Also that, the `Liquidator', had enquired from the `Appellants / Petitioners', if the Possession of the `Subject Property', is with them, and that the `Appellants / Petitioners', had informed the `Liquidator' that they do not have Possession of the `Subject Property', and that the `Sale Deed', was not `Registered', as the `Construction Work', amounting to Rs.6 Lakhs, is yet to be completed.

27. The Learned Counsel for the Respondent / Liquidator, brings to the notice of this `Tribunal', that the `Appellants / Petitioners', were directed to prefer the `Claim' in `Form – D', for the `whole Sum', which they have paid to the `Corporate Debtor'. Later, the `Appellants / Petitioners', have filed their `Claim' in `Form – D', dated 28.05.2020, for a Sum of Rs.1,39,72,756/-, which was admitted by the `Liquidator', and

the 'Appellants', were directed to handover the control and custody of the 'Subject Property', as per the ingredients of the I & B Code, 2016.

28. The Learned Counsel for the Respondent / Liquidator, points out that the 'Relief', prayed for the 'Appellants / Petitioners', to keep the 'Asset' of the 'Corporate Debtor', outside the 'Liquidation Process', is neither 'maintainable' nor the same is 'tenable', under the I & B Code, 2016. Further, there is no such provision, to carve out an exception, as prayed for, by the 'Appellants / Petitioners', to exclude the 'Property', from the 'Liquidation Estate'.

29. Added further, according to the Respondent / Liquidator, only an 'Asset', being a 'Security Interest', charged to a 'Secured Creditor', can be left outside the 'Liquidation Estate', as per Section 52 of the I & B Code, 2016. Furthermore, the said Units, are not charged to the 'Appellants / Petitioners'. As such, the 'Relief', prayed for the 'Appellants / Petitioners', is outside the purview of the I & B Code, 2016.

30. The Learned Counsel for the Respondent / Liquidator, refers to the Judgment of the Hon'ble Supreme Court of India, dated 24.03.2021, in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. (vide Civil Appeal No. 3395 of 2020), wherein, at Paragraph 4.3, it is observed as under:

4.3. ``Rajesh Gupta and 2 others:

These three persons, said to have entered into respective agreements with the corporate debtor, carry their own grievance against the prescription in the resolution plan where the resolution applicant has reserved its right to cancel such agreements/sub-lease deeds. They seek direction for entering into sale deed/s of plot/s in Jaypee Greens Wish Town or for refund. They had also filed an appeal before NCLAT against the said order dated 03.03.2020, being Company Appeal (AT) (Insolvency) No. 547 of 2020 that stands transferred to this Court and is registered as T.C. (C) No. 241 of 2020.

Points for determination

15. Having drawn a brief sketch and outline of the matter and having introduced the principal parties to this litigation with their respective interests, we may now indicate the major points, which arise for determination in view of diverse propositions advanced before us, coupled with the stipulations in the resolution plan in question and the modifications ordered by NCLT and NCLAT by way of the orders impugned. The principal points calling for determination in this batch are:

G. As to whether the stipulation in the resolution plan for cancellation of certain agreements/sub-leases is unfair and the Adjudicating Authority has erred in not modifying the same?

I. (i) As to whether, after approval of the resolution plan of NBCC by the Committee of Creditors, where homebuyers as a class assented to the plan, any individual homebuyer or any association of homebuyers could maintain a challenge to the resolution plan and could be treated as a dissenting financial creditor or an aggrieved person?

(ii) As to whether the stipulations in the resolution plan stand in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016?

(iii) As to whether the resolution plan is violative of the requirements of CIRP Regulations?

(iv) As to whether any housing project which has been completed or is nearing completion ought to be kept out of the purview of the resolution plan?

158. The relevant aspect for the present point for determination is that apart from such dissenting financial creditors, a few of the associations of homebuyers and some of the individual homebuyers carry their own grievances against the resolution plan and seek to submit that their interests have not been safeguarded and they are being denied of their legal rights. These dissatisfied associations and individual homebuyers seek to contend that

the resolution plan is lacking in various requisite arrangements; is violative of the CIRP Regulations; and is also violative of the provisions of RERA and therefore, it could not have been approved. One block of such objectors is rather differently dissatisfied for the reason that according to them, the housing projects which have been completed or are nearing completion ought to be kept out of the purview of this plan of resolution. In counter, it is contended on behalf of the resolution applicant that these dissatisfied homebuyers or associations have no right to maintain any objection as if being the dissenting financial creditors because the homebuyers have voted as a class in favour of the resolution plan and are bound as a class with 'drag along' provisions in the Code. The objections have been refuted on merits too. These rival submissions have led to the formulation of four different questions in this point for determination.

59.4.1. It is submitted on behalf of this association that the construction of all 4228 flats in 26 towers of the project "Jaypee Greens Aman" is complete and only the finishing works for Tower Nos. 23, 24, 25 & 27 are pending due to delay in execution of the agreements. It is also submitted that out of 18153 homebuyers of the corporate debtor forming part of the financial creditors, only 459 homebuyers in Project Aman (which amount to 2.53 %) were part of the creditors at the time of voting for the resolution plan. According to this association, "Jaypee Greens Aman" is an inhabited project where more than 1500 families have already started living and it is situated over 10 kms away from the location of "Wish Town" and hence, should be considered as an independent housing colony and ought to be separated from the resolution plan; and any order on the resolution plan should not have an adverse impact on this project. It is submitted that in relation to the project in question, the resolution applicant is only to complete the finishing work which could be carried out by the IRP himself to avoid further delay whereas, if the resolution plan is followed, these homebuyers shall have to wait for another 18 months to receive possession of the completed flats which would add to their mental agony.

169.1. For the same reasons as above, the suggestion to keep any housing project which is already complete or nearing completion out of the purview of the resolution plan is required to be rejected. When approval of the resolution plan is to be voted by CoC; and its composition is specified by the Code, there is no such concept of keeping any particular homebuyer out of CoC even if the relationship of creditor and debtor subsists between him and the corporate debtor."

31. The Learned Counsel for the Respondent / Liquidator, points out that after selling the 'Assets of the Corporate Debtor', distribution of the 'Sale Proceeds', shall be made as per Section 53 of the I & B Code, 2016. Moreover, according to the Respondent / Liquidator, the 'Ownership of the Subject Property', lies with the 'Corporate Debtor', in the absence of any 'Registered Sale Deed', which is a requirement, for 'Transfer of Right, Title and Ownership of the Property', and further that the 'Appellants / Petitioners', are not entitled to any 'relief', as prayed for, by them.

Assessment:

32. Before the 'Adjudicating Authority', the 'Appellants / Petitioners' in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018 (Filed under Section 60 (5) (c) of the I & B Code, 2016, read with Rule 11 of the NCLT Rules, 2016), had prayed for the relief of (i) in directing the 'Liquidator' to exclude 'Schedule B' Property, from the 'Liquidation Estate' of the 'Corporate Debtor' (ii) in directing the 'Liquidator', to execute the 'Sale Deed', and Register 'Schedule B' Property, in favour of the 'Appellants', as per the 'Agreement of Sale & Construction Agreement', dated 12.07.2011, (iii) in directing the Liquidator (Respondent in Appeal), to complete the remaining works, in respect of

`Schedule B' Property, as mentioned under `Schedule C', (iv) in directing the `Liquidator', to `Refund the Excess Sum of Rs.65,611/-, paid towards the `Sale Consideration' with interest, and (v) to `Award Costs'.

33. Be it noted, as per definition ``Section 3 (31) of the I & B Code, 2016, *`Security Interest', means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*

Provided that security interest shall not include a performance guarantee;''

34. In the instant case on hand, it is crystalline clear that `No Security Interest', is created to and in favour of the `Appellants / Petitioners', considering the fact that admittedly, `no Registered Sale Deed', was `executed', by the `Appellants / Petitioners' and the `Corporate Debtor'.

35. It cannot be disputed that the `Appellants / Petitioners', are in `Possession of the Property', in a permissive manner, because of the latent and patent fact that the `Corporate Debtor', gave the key of the Villa to the `Appellants / Petitioners', so as to enable them to start the `Interior

Work’, and that the ‘Appellants / Petitioners’, had incurred an ‘Expenditure’ of Rs.4,63,000/-, in this regard.

36. It cannot be gainsaid that only the ‘Assets’, that are charged as ‘Security Interest(s)’, will fall outside the ambit of ‘Liquidation Proceedings’. Furthermore, this ‘Tribunal’, bears in mind that the ‘Ownership of the Subject Property’, rests with the ‘Corporate Debtor’. Also, it cannot be brushed aside the ‘Appellants / Petitioners’, had in ‘Form – G’, preferred a Claim of Rs.6,65,191/- for the ‘remaining work’, to be completed in the ‘Subject Property’.

37. Suffice it, for this ‘Tribunal’, to make a pertinent mention that the ‘Units’, are not charged to the ‘Appellants / Petitioners’. The candid fact is that, an ‘Agreement to Sell’ or being in ‘Possession’, in respect of an ‘Immovable Property’ in ‘Law’, will not confer any ‘Ownership Right’, upon a ‘Person’.

38. It cannot be gainsaid that in respect of a ‘Sale of an Immovable Property’, which is in ‘Value of more than Rs.100/-’, it is to be ‘compulsorily Registered’, as per Section 17(1)(b) of the Registration Act, 1908, in the considered opinion of this ‘Tribunal’.

39. One cannot remain in oblivion of the primordial fact that the term 'Conveys' in 'Section 5 of the Transfer of Property Act, 1882', only meant for conveying 'Ownership', which visualises a 'Completion', only in respect of an 'Execution' and 'Registration' of the valid 'Deed of Conveyance'.

40. Be that as it may, in the light of the foregoing detailed discussions, this 'Tribunal', keeping in mind of the surrounding facts and circumstances of the instant case, on a careful consideration of respective contentions, advanced on either side, without 'haziness', comes to a resultant conclusion, that 'to and in favour' of the 'Appellants / Petitioners', 'No Security Interest', is created, especially, the admitted fact being, 'no Registered Sale Deed', was 'executed', and as such, 'no relief(s)', can be granted to the 'Appellants / Petitioners', as prayed for, by them in IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018. Viewed in that perspective, the 'dismissal' of IA No. 343 / BB / 2021 in CP (IB) No. 189 / BB / 2018 (Filed by the 'Appellants / Petitioners'), by the 'Adjudicating Authority' ('National Company Law Tribunal', Bengaluru Bench) through an 'impugned order', dated 25.05.2023, is free from any 'Legal Flaws'. Accordingly, the 'Appeal' sans merits and it fails.

Conclusion:

In fine, the instant Comp. App (AT) (CH) (INS.) No. 254 of 2023, is 'Dismissed'. No costs. The pending connected IA No. 807 of 2023 ('For Stay'), is 'Closed'.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

28 / 08 / 2023

SR / TM