

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 257 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.2085 of 2022 in C.P.(IB) 1390 of 2020]

In the matter of:

Anuradha Grover

...Appellant

Vs.

Mr. Jayesh Sanghrajka and Anr.

...Respondents

For Appellant: Mr. Abhishek Singh, Mr. Elvin Joshy, Mr. J. Amal Anand, Ms. Alisha Sharma, Mr. Nasir Mohd., Mr. Shashwat Tyagi, Advocates

**For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Dikshat Mehra, Mr. Ashish Perwani, Mr. Chintan Gandhi, Mr. Anurag Anand and Mr. Himanshu Kaushal, Advocates for R-1.
Mr. Dhruv Mehta, Sr. Advocate with Mr. Pranaya Goyal, Mr. Dharav Shah, Mr. Dhawal Desai, 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 in IA No.2085 of 2022 filed by the Appellant which IA has been dismissed by the impugned order.

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

2.1. Appellant booked a unit in project 'Ten BKC' on 01.03.2016. Booking was given to the Appellant in Wing 7, Type III, Carpet Area 1177 sq. ft., Flat No. 0101 for total consideration of Rs.4,97,35,650/-. On 25.04.2016, Appellant was communicated about confirmation of the allotment of Flat No.0101. By subsequent letter dated 05.07.2016, Appellant was communicated that Flat No. and Wing No. are unchanged, however, Floor No. is changed from 7 to 8. A draft agreement for sale was also communicated to the Appellant on 13.02.2019. Appellant made certain payments thereafter. On 30.04.2021, Corporate Insolvency Resolution Process (CIRP) was initiated against 'Radius Estates and Developers Private Limited'. In pursuance of the publication by Interim Resolution Professional, Appellant filed a claim in Form-CA for an amount of Rs.2,73,82,869/- plus Rs. 1.10 Crore approximately. Resolution Professional after considering all claims issued a list of Financial Creditors where names of Financial Creditors in class were mentioned. Appellant was also included in the list where with regard to Wing 8, claim of Appellant was noticed for Rs. 2,73,82,869/-, out of which, verified amount along with the interest was mentioned as Rs.3,63,42,245/-. Claim of Rs.1.10 Crore which was further claimed by the Appellant was not accepted by the Resolution Professional. Appellant being included as homebuyer in class. Appellant sent several e-mails regarding her claim especially with regard to Rs.1.10 Crore. Resolution Plan filed by Respondent No.3 was approved by the Committee of Creditors (CoC) on 27.12.2021. IA No.2085 of 2022 was filed by the Appellant before the Adjudicating Authority in July 2022 where following prayers have been made:-

“110. In view of the foregoing and considering the balance of convenience and equity, it is humbly prayed that this Hon'ble Tribunal shall pending admission and hearing and final disposal of this Interlocutory Application be pleased to:

A. Direct the said RP to include the sum of Rs. 1,10,00,000 to the admitted claim of the Applicant herein as Contingent Claim, to be settled or balanced against a Credit Note to be issued by the Corporate Debtor at a later date at the time of possession of the Flat to Applicant herein.

B. Direct Respondent no. 2 to include the sum of Rs. 1,10,00,000 as the admitted claim of the Applicant herein as Contingent Claim, to be settled or balanced against a Credit Note to be issued by the Corporate Debtor at a later date at the time of possession of the Flat to Applicant herein and accordingly.

C. Reject and remand the Resolution plan to the Committee of Creditors for their review and reconsideration;

D. Direct the RP to direct Respondent no. 2 to present a revised Resolution Plan upon presenting a fair and proper valuation report of securities and financial assets before the CoC;

E. Grant a stay on the implementation of the Resolution Plan till further orders of this Hon'ble Tribunal in either rejecting or approving the Resolution Plan under Section 31 of the Code;

F. Restrain the said RP and /or, the Respondent no. 2 from sanctioning, commencing, carrying out and / or continuing with any construction or related

activities at the Project site till further orders from this Hon'ble Tribunal;

G. Direct Insolvency and Bankruptcy Board of India to initiate a disciplinary action against the said RP for misconduct, for violating the provisions of the IBC, 2016, for acting beyond the authority & powers granted to him by law, for conducting himself against the interest of the stakeholders of the project, especially the Applicant herein, and for conducting himself at behest of Respondent no. 2,

H. For ad-interim / interim reliefs in terms of prayer clauses (A) to (G); and

I. Such further and other orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.”

2.2. Resolution Professional filed Reply to the Application refuting the claim of the Appellant. It is submitted that the claim of Rs.1.10 Cr. was unverified claim which was not admitted. Appellant's claim was admitted for Rs.3,63,42,245/- and her name was reflected in the list of Financial Creditors. Appellant has filed IA on 11.07.2022 whereas the plan was approved on 27.12.2021 by the CoC. The Creditors in class which included the Appellant has also approved the Resolution Plan. The Adjudicating Authority by impugned order rejected the Application filed by the Appellant. The Adjudicating Authority returned following findings by rejecting the Application in paragraph 23, which is to the following effect:-

“23. Having thoughtfully considered the matter and after going through the record, we are of the considered view that merely on the basis of the letter

dated 14.03.2016 (Annexure 5), the Applicant cannot be held entitled towards discount of Rs. 1.10 Crores to be adjusted against the cost of the flat. If there was a discount of Rs. 1.10 Crores as stated in the Letter dated 14.03.2016, the Applicant should have insisted upon incorporating a clause to that effect in the sale agreement (Annexure 6). We are also of the considered view that the real terms and conditions between the parties culminated into the agreement of sale (Annexure 6) wherein while mentioning the total cost of the flat of Rs. 4,97,35,650, there is absolutely no mention of any discount of Rs. 1.10 Crores having been offered to the Applicant in case she opted to get flat without any interior outfits. That being so, the claim raised by the Applicant in the application is not maintainable and has been rightly dealt with and rejected by the Resolution Applicant.”

3. We have heard Shri Abhishek Singh, Learned Counsel for the Appellant, Shri Arun Kathpalia, Learned Senior Counsel for the Respondent No.1 and Shri Dhruv Mehta, Learned Senior Counsel for the Respondent No.2.

4. Learned Counsel for the Appellant submits that immediately after booking was made on 01.03.2016, letter dated 14.03.2016 was written to the Appellant by the Corporate Debtor where it was communicated that the Appellant shall be given a discount of not more than Rs.1.10 Crore and shall be handing over possession of the said flat in a cold/bare shell without any interior fit outs. The said letter was also acknowledged by the Appellant and claim of Rs.1.10 Crore in addition to amount paid by the Appellant was made on that basis which has wrongly not been accepted by IRP/RP. It is submitted

that the Adjudicating Authority also committed error in dismissing the Application. It is submitted that the letter dated 14.03.2016 is in fact a contract between the Appellant and the Developer to which contract developer is fully bound. It is submitted that although the stage of handing over possession has not yet arrived but the Appellant is entitled for remission in the cost of flat to the extent of Rs.1.10 Crore since the Appellant shall herself carry out fit out work in flat.

5. Shri Arun Kathpalia, Learned Senior Counsel appearing for the Respondent No.1 submits that the letter dated 14.03.2016 was never issued nor the said letter is on the record of the Corporate Debtor. The letter dated 14.03.2016 which is basis of claim of the Appellant was never filed with claim form by the Appellant. It is further submitted that in the confirmation letter dated 25.04.2016, there is no reference to the letter dated 14.03.2016 or any remission in consideration, hence, letter dated 14.03.2016 is not substantiated. It is further submitted that on 05.07.2016, when Wing No. of the Flat No. allotted to the Appellant was changed, there is no reference of any remission in the consideration. It is submitted that the letter dated 14.03.2016 was never part of the claim form submitted by the Appellant. Reliance of the said letter is wholly incorrect. It is submitted that the agreement to sale which is circulated to the Appellant also did not contain any condition regarding remission in the consideration on account of fit out which prove that there was no such agreement between the parties.

6. Shri Dhruv Mehta, Learned Senior Counsel for the Respondent No.2 has also adopted submissions of Shri Arun Kathpalia and submits that the Adjudicating Authority has rightly rejected the Application of the Appellant.

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

8. The Appellant's claim for only Rs.3,63,42,245/- was accepted by the Resolution Professional and the claim of Rs.1.10 Crore towards fit out was not accepted by the Resolution Professional. Appellant herself has relied on list of Financial Creditors of 'Radius Estates and Developers Private Limited' as on 23.07.2021 which does not include the claim of Rs.1.10 Crore towards fit out. Appellant at no point of time challenged non-admission of claim of Rs.1.10 Crore. The Resolution Plan of the Corporate Debtor was approved by CoC on 27.12.2021. Appellant being homebuyer in class was represented through Authorised Representative who also voted in favour of the plan. The Application which was filed by the Appellant being IA No.2085 of 2022 was filed in July, 2022 much after approval of the Resolution Plan. The above sequence of the fact indicate that no grievance was raised by the Appellant when claim of Rs.1.10 Crore towards fit out was not accepted by Resolution Professional. When Appellant has not challenged the non-acceptance of claim, it cannot be a ground to raise the issue after approval of the Resolution Plan by CoC.

9. Now we come to the claim of the Appellant as advanced before us by the Learned Counsel for the Appellant. Appellant's case is that after booking on

01.03.2016, letter dated 14.03.2016 was written to the Appellant by Developer. It is useful to notice the entire letter dated 14.03.2016, which is to the following effect:-

Date: 14th March 2016

*"Mrs. Anuradha Grover.
Mr. Ravi Grover,
A-1/405,
Lokmilan, Chandivali,
Farm Road, Andheri (East).
Mumbai 400072*

Dear Sir/Madam,

Re: Your application for allotment of one Flat in our proposed project located at M.I.G. Colony, Bandra.

We refer to your application dated 29th February 2016 ("said Application") for allotment of one Flat bearing No.101 ("said Flat") admeasuring 1177 sq.ft. carpet area on the 1st floor of Wing 7 in Zone B of our project at MIG Colony, Kalanagar, Bandra bearing CTS No. 549, 649/1, to 649/48, of Bandra division, Bandra (East), Mumbai 400050.

You have now informed us that you wish to carry out the interior work of the said Flat by yourself as and when the building is ready for carrying out fit out works and sought remission in the consideration in proportion to the work to be carried out by you.

In this regard we wish to inform you as follows:-

- 1. We have no objection for you to carry out the Interior fit out works as desired by you when the building is ready for carrying out fit works.*
- 2. Regarding the remission in the consideration for the said Flat, presently we are unable to give the exact cost of fit out works, which shall be allowed as discount since we will be taking up the interior fit out works after 6 months from the*

commencement of the project. However, tentatively we can assure you that you shall be given a discount of not more than Rs.1,10,00,000/- (Rupees One Crore Ten Lakh Only) from the total consideration. 3. In the event of you opting for the option as stated above,

a. We will be handing over possession of the said flat in a cold/bare shell without any interior fit outs.

b. You will be issued a Credit Note for the agreed amount as above when the building is ready for carrying out fit out works and you shall not be required to pay the aforesaid sum of Rs.1,10,00,000/- (Rupees One Crore Ten Lakh Only) when we offer you possession of the said flat for carrying out fit out works. It is expressly clarified and agreed between us that the aforesaid Credit Note will be issued to you only at the time the building is ready for carrying out fit out works and you expressly agree that you shall not be permitted to adjust/deduct any amounts from any of the instalments payable by you as per the terms of the Agreement for Sale to be executed by you.

We hope the above arrangement would meet with your requirement and in token thereof kindly return a copy of this letter duly acknowledging and agreeing to the terms herein.

Thanking you,

Yours faithfully,

*For Vishwaroop Estates & Developers Pvt. LTD.
(Authorised Signatory)*

I/ We acknowledge, accept, and agree with the contents of this letter

*_____
Sd/-
(Flat Purchaser)”*

- 10.** The above letter indicates that Appellant was communicated that the Developer shall be handing over possession of the flat in a cold/bare shell

without any interior fit outs and the Appellant will be issued Credit Note for the agreed amount when the building is ready for carrying out fit out works and Appellant shall not be required to pay Rs.1.10 Crore. A perusal of the letter dated 14.03.2016 relied by Appellant indicate that Application was dated 29.02.2016, the booking form which is relied by the Appellant is 01.03.2016 which was mentioned in all subsequent correspondence between the parties. The booking form dated 01.03.2016 came to be confirmed on 25.04.2016. Letter dated 25.04.2016 issued by the developer communicating confirmation refers to application form dated 01.03.2016.

11. Letter dated 25.04.2016 does not mention any remission in consideration to the Appellant. We may extract the entire letter of 25.04.2016, which reads as follows:-

“Date: 25th April 2016

To,

*Ms. Anuradha Grover
Mr. Ravi Grover
A-1/405, Lokmilan,
Chandivali, Farm Road,
Andheri (East),
Mumbai-400072
Contact No: 9833353583/9892605533*

Dear Sir/Madam,

Re: Application Form dated 1st March 2016 in respect of Flat No. 101, Wing 7, Project Bandra, MIG Colony - Group 1, Opp. MHADA Office, N. Dharmadhikari Road, Ghandhinagar, Bandra (W), Mumbai - 400 051.

We are pleased to confirm receipt of the entire Application Monies in respect of the captioned Flat, together with the applicable Service Tax.

We hereby confirm the Allotment of the captioned Flat in your favour on the terms and conditions as agreed under the captioned Application Form, a copy of which is enclosed as countersigned by us.

In case you have any queries or need any assistance in relation to your Allotment, please feel free to get in touch with our customer relations team at 919167515211 or email kinjols@radiusdevelopers.com.

*Yours truly,
Project Bandra
For Vishwaroop Estates & Developers For MIG Bandra Realtors
and Pvt. Ltd. Pvt. Ltd.*

(Authorized Signatory)

(Authorized Signatory)"

12. The Confirmation Letter indicate that allotment of the flat is confirmed on the terms and conditions as agreed under the captioned Application Form. A captioned Application Form i.e. 01.03.2016 does not contain any condition for any remission of Rs.1.10 Crore towards fit out. Letter dated 14.03.2016 which is relied by the Appellant does not find any confirmation. Further agreement for sale between the parties regarding Flat No.0101 was circulated which has been filed in the Appeal as Annexure A7 does not contain any clause regarding remission of Rs.1.10 Crore which is claimed by the Appellant in the IA before the Adjudicating Authority. Thus, the claim of remission of Rs.1.10 Crore in consideration only finds place in letter dated 14.03.2016 as claimed by the Appellant which does not find place either in confirmation letter dated 25.04.2016 or the agreement for sale circulated by the parties. Had there been any remission claim, the same ought to have been included in the agreement for sale between the parties. Adjudicating Authority has

rightly come to the conclusion and held that had there been any claim on the basis of letter dated 14.03.2016, the Appellant should have insisted upon incorporating a clause to that effect in the sale agreement. Adjudicating Authority has further held that in agreement to sale where total consideration is mentioned as Rs.4,97,35,650/-, there is absolutely no mention of any discount of Rs.1.10 Crore.

13. Learned Counsel for the Respondent No.1 has also stated that letter dated 14.03.2016 has not found in the record of the Corporate Debtor nor the same has been filed with the claim form.

14. In the facts of the present case, we are fully satisfied that the Adjudicating Authority did not commit any error in rejecting IA No.2085 of 2022 filed by the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

New Delhi
Anjali