

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 808 of 2024
& I.A. No. 2633, 2914 of 2024

IN THE MATTER OF:

Devesh Raminklal Thakker

...Appellant

Versus

Arun Kapoor

...Respondent

Present:

For Appellant: Mr. Shubhranshu Padhi, Mr. Aman Verma and Ms. Riya Wasade, Advocates.

For Respondent: Mr. Dhaval Deshpande, Mr. Amir Arsiwala, Advocates.

O R D E R
(Hybrid Mode)

24.05.2024: There is delay of 12 days in filing the Appeal. Sufficient cause has been shown in the application to condone the delay. Delay in filing the appeal is condoned.

2. Heard learned counsel for the Appellant. This appeal has been filed against order dated 19.12.2023 passed by the Adjudicating Authority rejecting the I.A. No.2218 of 2022 filed by the Appellant for acceptance of his claim. The Appellant has filed its claim in the CIRP of the Corporate Debtor claiming to the homebuyer, along with claim form Agreement for Sale dated 13.01.2016 and payment receipt was submitted. The Resolution Professional asked the Appellant to give the details of the Bank used for making payment, failing which claim was rejected. Appellant filed application before the

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Adjudicating Authority for acceptance of his claim which has been rejected by the impugned order. Applicant also claimed that consideration was paid in cash.

3. Learned counsel for the Appellant submits that as per the Agreement for Sale, payments have been made and he has referred to Clause 1.4 of the Agreement for Sale. He further submits that along with the Agreement, payment receipt was also there. He submits that Adjudicating Authority subsequently in two other cases has accepted the claim of the homebuyers.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. The copy of the Agreement for Sale has been filed by the Appellant along with the Appeal. Para 5.1 provides for 'Mode of Payment', which is as follows:

"MODE OF PAYMENT

5.1 The Allottee agrees and undertakes to make all payments on time as detailed in the terms of the Schedule of Payments and as may be demanded by the Builders from time to time, through A/c Payee Cheque(s)/Demand Draft(s) payable at INDIAN BANK, Ulhasnagar Branch in favour of Monarch Brookefields LLP. The Allottee confirms that all payments shall be made promptly without any requirement of the Builders to send any notice or demand for the payments."

6. The receipt which was attached with the Agreement for Sale is to the following effect:

“RECEIPT

Received of and from Mr. Devesh Ramiklal Thakker the PURCHASER sum of Re. 27,00,000/- (Rupees Twenty Seven Lacs only) on or before the execution of this Agreement for Sale being the part payment towards sale of Flat bearing No. 603 on 6th Floor in its Wing "Arizona" having 32.289 sq. mtrs. plus 9.187 sq. mtrs. Terrace in the Building to be constructed on Plot No. 3, adm. about 9999.81 Sq. Mtr. Situated at Sector 20, Kalamboli, Navi Mumbai.

Payment Details:

<i>S. No.</i>	<i>Date</i>	<i>Cheque No.</i>	<i>Bank & Branch</i>	<i>Amount</i>
<i>1.</i>	<i>11/01/2016</i>	<i>366551</i>	<i>Indian Bank, Ulhasnagar</i>	<i>6,00,000/-</i>
<i>2.</i>	<i>14/01.2016</i>	<i>366552</i>	<i>Indian Bank, Ulhasnagar</i>	<i>10,00,000/-</i>
<i>3.</i>	<i>18/01/2016</i>	<i>366553</i>	<i>Indian Bank, Ulhasnagar</i>	<i>11,00,000/-</i>
			<i>Total</i>	<i>27,00,000/-</i>

Date:

Place:

M/S. MONARCH BROOKEFILEDS LLP
(Partnership Firm)”

7. The receipt which was attached along with the Agreement for Sale is receipt of payment vide three cheques. Clause 1.4 on which reliance has been placed has referred to payment as per the receipt. The payments were required to be made by cheques/demand draft as per Agreement for Sale. We may refer to the application which was filed by the Appellant before the Adjudicating Authority. In the Application, the Appellant has referred to Para 4.3, which is as follows:

“4.3 The Impugned Email has been addressed in complete ignorance of the fact that sale has been executed in favour of the Applicant for which Applicant has paid the consideration in cash as is reflected in the receipt annexed to the Sale Deed.”

8. When we look in to Para 4.3, it is mentioned that consideration has been paid in cash. However, the receipt attached to the Agreement to Sale mentions payment by three cheques and there is no mention of cash payment nor there is any other material on the record to prove the cash payment.

9. We are of the view that the Adjudicating Authority committed no error in not accepting the claim of the Appellant, Appellant having failed to provide proof of payment. As far as submission of the Appellant that claim of two other homebuyers has been admitted, those orders may have been passed which are based on the facts of each case, which cannot be relied by the Appellant who miserably failed to prove payment of consideration.

10. Learned counsel for the Appellant submits that the payment was made in cash by the Appellant. Be that as it may, payment of consideration having not been proved, the Resolution Professional has not committed any error in not accepting the claim of the Appellant. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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