

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

IA No.3601/MB/2024 IN CP (IB) No.1046/MB/2023

*[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 13 of
IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]*

Mr. Dinesh Chaplot and Ors.

203/204, Shanti Niketan

S. M. Marg, Near Kurla Police Station

Kurla West, Mumbai-400070.

...Applicants

V/s

Mr. Dinesh Kumar Deora

(Resolution Professional of

M/S Snehanjali and S.B. Developers Private Limited)

B-202. ABT Apartment, Rani Sati Marg

Malad (East), Near Navjivan School

Mumbai-400097 Maharashtra

....Respondent

IN THE MATTER BETWEEN:

Mr. Santosh Ananda Shetty and Ors.

Flat No. 101, A-Wing Unique Apartments

Bhakti Dham Mandir Marg, Chunabhatti,

Sion, Mumbai-400022

....Financial Creditors

And

M/S Snehanjali and S.B. Developers Private Limited

[CIN: U45309MH2019PTC319525]

198, Ground floor, Rajpipla Linking Road

Santacruz (West), Mumbai-400054

....Corporate Debtor

Pronounced:09.10.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant : Adv. Rohit Gupta a/w Adv. Tejas Agarwal a/w Adv. Anant
Ratnaparkhi a/w Adv. Aman Agarwal a/w Adv. Kavish
Arora i/b IC Legal.

Respondent : Adv. Shyam Kapadia, Adv. Yash Dhruva, Adv. Niyati Merchant
i/b MDP Legal.

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This is an Interlocutory Application (IA) bearing No.3601/MB/2024 filed by Mr. Dinesh Chaplot (Applicant No.1), Mrs. Sneha Chaplot (Applicant No.2) and Mrs. Anita Chaplot (Applicant No.3) (hereinafter collectively referred to as "the Applicants") on 02.07.2024 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "the CIRP Regulations"). The Applicants are Financial Creditors and homebuyers of a housing redevelopment project called O2 undertaken by the Corporate Debtor, M/s Snehanjali and S.B. Developers Private Limited in the main Company Petition No.1046 of 2023. The Applicants acquired 6 (Six) flats in 2016 from "SB Developers," a partnership firm that was later converted on 14.01.2019 into a company which is now the Corporate Debtor in the main Company Petition. The Respondent is the

Resolution Professional of the Corporate Debtor appointed by this Tribunal by an order dated 07.03.2024 admitting the Corporate Debtor to Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP) in the main Company Petition bearing CP (IB) No.1046/MB/2023 filed under Section 7 of the Code.

- 1.2 The Applicants have filed this Application challenging non-decision and non-admission of their financial claims totalling Rs.17,32,90,305/- (Seventeen Crore Thirty-Two Lakh Ninety Thousand Three Hundred Five Rupees) by the Respondent.

2. AVERMENTS OF APPLICANTS

- 2.1 The Applicant No.1 was a partner in SB Developers until 09.08.2016 and also the father-in-law of Applicant No.2 and the husband of Applicant No.3. He retired as a partner from SB Developers on 09.08.2016. During this period, the Applicants expressed interest in acquiring flats under construction by SB Developers and purchased 6 flats in August, 2016 by executing Agreements for Sale dated 10.08.2016 for the same.
- 2.2 The Applicant No.1 paid full consideration for the flats purchased by him whereas only partial payments were made for the flats purchased by Applicants Nos.2 and 3. The Applicant No.2 paid Rs.4,80,000/- against a total consideration of Rs.89,00,000/- for Flat "F-701" and Rs.4,21,000/- against a total consideration of Rs.76,75,000/- for Flat "F-702". The remaining amounts of Rs.84,20,000/- and Rs.72,54,000/- respectively were agreed to be paid later as per construction

milestones. The Applicant No.3 paid Rs.41,51,000/- against a total consideration of Rs.76,75,000/- for Flat "A-805". The remaining amount of Rs.35,24,000/- was agreed to be paid subsequently based on construction milestones.

2.3 On 11.08.2016, supplementary agreements were executed by the Applicants with SB Developers containing additional terms that had not been included in the original Agreements for Sale. These terms, which were agreed upon later, included clauses regarding penalties to be paid by SB Developers to the Applicants in the event that possession of the flats was not handed over by the agreed date. It is understood that on 14.01.2019, the partnership firm SB Developers was converted into a company which is now the Corporate Debtor in the main Company Petition.

2.4 In or around 2019, the Corporate Debtor approached Applicant Nos.2 and 3 and informed them that the possession of the flats they purchased would be delayed by two years from the initial date of possession which was 31.03.2020. Based on this representation and to amicably address the anticipated delay, out of the outstanding amounts of Rs.84,20,000/-, Rs.72,54,000/- and Rs.35,24,000/- to be paid with respect to Flats "F-701", "F-702", and "A-803" respectively, a waiver of Rs.83,00,000/-, Rs.71,50,000/- and Rs.34,00,000/- respectively was granted by the Corporate Debtor to the Applicant Nos.2 and 3. The remaining amounts of Rs.1,20,000/-, Rs.1,04,000/- and Rs.1,24,000/- respectively were paid by the Applicant Nos.2 and 3 to the Corporate Debtor. The aforesaid grant of waiver came to be recorded in the further Supplemental Agreements dated 12.08.2019

executed between the Applicant Nos.2 and 3 on one hand and the Corporate Debtor on the other.

2.5 According to the further Supplemental Agreement dated 12.08.2019, the new date for the handover of possession of the flats was 31.03.2022. However, the possession of the flats was not handed over to the homebuyers by 31.03.2023 either. Subsequently, on 18.08.2023, the main Company Petition was filed by a group of homebuyers of the Corporate Debtor. On 07.03.2024, by an order of this Tribunal, CIRP was initiated against the Corporate Debtor and the Respondent was appointed as the Interim Resolution Professional (IRP).

2.6 Thereafter, on 09.03.2024, the Respondent issued a public notice inviting financial claims against the Corporate Debtor. Applicant No.1 acting on behalf of all the Applicants submitted their respective financial claims in the prescribed form by emails dated 19.04.2024 along with proof of claims including the Agreements executed for the purchase of flats by the Applicants and proof of payment of the consideration for the flats. The claims submitted by the Applicants to the Respondent comprised the following:-

Sr. No.	Particulars	Amount (Rs.)
1	Principal amount of said 6 flats paid by Applicants	5,22,45,000/-
2	Interest @ 18% p.a. as per Supplementary Agreement (Clause 4)	11,36,53,305/-
3	Penalty/ Liquidated Damages as per Supplementary Agreement (Clause 3) @ Rs.35,000/- P.M. from initial date of promised possession	73,92,000/-
	Total	17,32,90,305/

The Applicants also claimed interest according to Regulation 16A(7) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulations") as given by the Respondent to other homebuyers. Subsequently, there have been several correspondences between Applicant No.1 and the Respondent where Applicant No.1 has answered the Respondent's queries.

- 2.7 The Respondent did not decide on the financial claims of the Applicants until the date of filing the present IA. The Respondent has already formed a Committee of Creditors and issued Form G, inviting expression of interest (EoI) from prospective resolution applicants. It is contended that according to Regulation 13(1) of the CIRP Regulations, the Respondent is obligated to verify every claim as on the insolvency commencement date within seven days from the last date of receipt of the claims. The Applicants submitted their Form CA on 19.04.2024 and a revised Form CA on 26.05.2024. However, the Respondent has neither admitted nor rejected the Applicants' claims. With the last date for EoI submission on 20.05.2024 and the provisional list due on 30.05.2024, the Applicants apprehend that they had been unfairly excluded from the CIRP. The Respondent's actions are arbitrary, intentional and aimed at keeping the Applicants out of the CIRP to their detriment.
- 2.8 The Respondent has illegally and with mala fide intent placed the Applicants' claims on hold based on observations in the Transaction Audit Report (hereinafter referred to as "the TAR") by Chartered Accountants, which suggests

that the transactions for the purchase of flats by the Applicants may be considered as "fraudulent transactions" under Section 66 of the Code. It is submitted that the investigation into the Applicants' claims is frivolous, baseless and is being conducted with the intent to exclude the Applicants from the Committee of Creditors of the Corporate Debtor. Neither the Code nor the CIRP Regulations provide any basis for withholding creditors' claims on the assumption that the underlying transaction might be fraudulent. The observations in the TAR cannot be misused by the Respondent to exclude the Applicants from the CIRP of the Corporate Debtor and from the Committee of Creditors. The Applicants having purchased 6 flats hold a significant stake in the Committee of Creditors ("CoC"). The Respondent's deliberate action of keeping the Applicants' claims on hold is aimed at excluding them from the CoC and preventing them from exercising their voting rights in CoC meetings. Moreover, the claims are required to be verified and only when the Adjudicating Authority passes an order avoiding a transaction can the claims be rejected or varied. Until such time, the Respondent cannot on his own declare the transactions as avoidable or keep the claims of the Applicants, who have, in fact, paid considerable sums towards their flats, on hold or reject them.

- 2.9 The Respondent took the stand that the payments made by the Applicants for the purchase of the said flats were transferred by S.B. Developers to Applicant No.1; that this constitutes a circular transaction and that the Corporate Debtor did not receive any money against the said Flats. In response, the Applicants clarified that the payment made to the Applicant No.1 was for his retirement from

SB Developers based on the balance lying in his capital account. It is emphasised that the transaction related to his retirement was separate and distinct from the sale of the flats which was governed by duly executed and registered agreements. The balance sheet of SB Developers for the year ending 31.03.2015, 31.03.2016 and 31.03.2017 and the personal ITR filed by Applicant No.1 for the year ending 31.03.2016 confirm that the payment was a return of capital.

2.10 The Respondent *vide* his email dated 17.07.2024 admitted only a sum of Rs.31,20,480/- out of the Applicants' total claims and unjustifiably rejected claims worth Rs.17,01,69,825/-. This rejection contradicts the registered agreements where the consideration is clearly reflected and it ignores unregistered contracts which are not required to be registered for waivers of minor amounts due to delays. If the Respondent views these as circular transactions, these can only be set aside by filing a Section 66 application under the Code which has not been done. Further, the Respondent has admitted claims from other homebuyers based on unregistered MOUs even though their principal agreements are also unregistered. Under the law, the supplementary agreement is not required to be registered under Section 17 read with Section 49 of the Registration Act, 1908.

2.11 The Auditor has unfairly targeted the Applicants. The Respondent has admitted claims from the 'Parwani family' who received flats in exchange for personal loans advanced to the Corporate Debtor's promoters, without any money being received by the Corporate Debtor for these flats. Despite this, the Auditor did not flag these transactions, issuing only a single-page observation. This

demonstrates that the Respondent has treated the Applicants differently from other homebuyers as shown in other actions by the Respondent. Further, the Respondent rejected the Applicants' claims based on the interest clause in the supplementary agreements which grants interest only if the Applicants terminate the agreement due to delayed possession. Since there was no termination in this case, the Respondent argues that interest cannot be granted. However, the Respondent has provided interest to Mr. Bipin Kabra and Mrs. Swati Kabra under similar circumstances, as shown in the published list of creditors.

2.12 Further, the Respondent rejected the waiver of Rs.1,88,50,000/- granted by the Corporate Debtor to the Applicants, while waivers granted to other homebuyers were admitted. The Applicants also raise concerns about the involvement of one Mr. Bipin Kabra, a co-founder and board member of the Insolvency Professional Entity "Stress Credit Resolution Private Limited," who is also a homebuyer in the present CIRP. On 15.05.2024, during a meeting at the Respondent's office to discuss the Applicants' claims, Mr. Kabra was present and posed more queries to the Applicant than the Respondent himself, despite having no authority to do so as a homebuyer. This raises concerns about a potential breach of IBBI Regulations by Mr. Kabra.

2.13 The Applicant filed an Additional Affidavit dated 31.07.2024 bringing on record the events that occurred after the filing of the present IA and responses made to the contentions raised by the Respondent. It is submitted that the Respondent has made a false statement that the Corporate Debtor did not owe any money to Applicant No.1 for his retirement from SB Developers, alleging that he never

retired from the firm and was still listed as a partner in the ITRs filed by the firm for FY 2017-18 and FY 2018-19. However, according to the Applicants, Applicant No.1 retired on 09.08.2016, when a Retirement Deed was executed and the Registrar of Firms was duly notified of his retirement. The Applicants submitted the balance sheets of SB Developers for the periods ending 10.12.2018 and 31.03.2018 which confirm that Applicant No.1 was not a partner during that time. Notably, these balance sheets were obtained from the Corporate Debtor's own virtual data room to which the Respondent had provided access. Further, both the Respondent and the Auditor had previously acknowledged multiple times that Applicant No.1 retired on 09.08.2016, with records confirming his retirement in their possession.

2.14 The Respondent's *mala fide* conduct is further demonstrated by the illegal and baseless eligibility criteria set forth in Form G issued on 06.05.2024 which prohibited "existing homebuyers and past developers associated with the Corporate Debtor as well as their related or connected entities" from submitting an EoI. The Applicant No.1 challenged this in Interlocutory Application (IA) No.3693 of 2024 and this Tribunal by an order dated 14.08.2024 held that such criteria violated the provisions of Section 25(2)(h) of the Code.

2.15 It is also important to note that the Respondent simultaneously filed an application under Section 66 alongside rejecting the Applicants' claim, while other similar transactions and applications were still pending consideration by the Resolution Professional or the Auditor. In the absence of an order under Section 66, the Respondent had no authority to unilaterally reject the claim or

deny that consideration had been received. Until the Section 66 application is adjudicated by this Tribunal, the Respondent has to admit the Applicants' claims.

3. CONTENTIONS OF RESPONDENT

- 3.1 The Corporate Debtor, originally a partnership firm named S.B. Developers, was established in 2008 and engaged in construction and redevelopment. The Sawla and Chaplot families, along with the Ahujas (the erstwhile promoters of the Corporate Debtor), were partners in S.B. Developers. The partners from Sawla family were Kishor Sawla, Jayant Sawla and their respective HUF whereas the representative of Chaplot family were Mr. Ankit Chaplot and Mr. Dinesh Chaplot.
- 3.2 Around 2013-2014, the Corporate Debtor was appointed to redevelop a dilapidated structure on land bearing CTS No.475 (Part), Kurla III, Chunabhatti, Sion-Chembur Road, under the project named "O2 Project." Since 2014, the Corporate Debtor issued allotment letters and entered into agreements for sale/MOUs with homebuyers for the O2 Project. In 2016, the Applicants, Chaplot and Sawla families retired from the partnership firm, with all Applicants having exited by 09.08.2016, leaving the Ahuja family as the remaining partners of S.B. Developers.
- 3.3 Almost immediately thereafter, on 10.08.2016, the Applicants entered into Agreements for Sale with S.B. Developers for the purchase of 6 flats in the O2 Project. The following day, on 11.08.2016, supplementary agreements were executed between the Applicants and S.B. Developers. These supplementary agreements included terms and clauses stipulating penalties payable by the firm

to the Applicants if possession of the flats was not handed over by the agreed date of 31.03.2020.

- 3.4 In January 2019, the partnership firm S.B. Developers was converted into a company, now the Corporate Debtor. On 12.08.2019, the Applicants entered into a further supplementary agreement with the Corporate Debtor to waive certain amounts due for the flats, owing to delays in possession. This agreement also set a new handover date of 31.03.2022. The Respondent argues that this supplementary agreement is fraudulent, allegedly designed by the Applicants in collusion with the former promoters of the Corporate Debtor to defraud the company and its creditors.
- 3.5 It is submitted that after the initiation of CIRP against the Corporate Debtor and the appointment of the Resolution Professional (RP), the processes were conducted including inviting of claims. The Applicants initially submitted their claims in Form CA with proof by emails on 19.04.2024, followed by a revised Form CA on 26.05.2024. On 24.05.2024, the Auditor shared the TAR concerning the transactions of purchase of flats in the O2 Project and requested the Applicants' response. The Applicants replied to the report on 17.06.2024. Thereafter on 17.07.2024, the Respondent sent an email to the Applicants, partly admitting the claim and approving an amount of Rs.31,20,480/-.
- 3.6 The claim submitted by the Applicants i.e., the Chaplot family was accordingly dealt with as under:-

- a) The Applicant Nos. 1 to 3 were homebuyers in the O2 project and are related parties to the erstwhile partners in the management of the Corporate Debtor.

The details of the transactions undertaken by the Applicants are as follows:-

Applicant No.1 Dinesh Chaplot

Unit No.	Booking Date	Amount (Rs.)	Received (Rs.)
E-802	10.08.2016	1,15,75,000/-	1,15,75,000/-
C-701	10.08.2016	82,10,000/-	82,10,000/-
C-702	10.08.2016	82,10,000/-	82,10,000/-
	Total	2,79,95,000/-	2,79,95,000/-

Applicant No.2 Sneha Chaplot

Unit No.	Booking Date	Amount (Rs.)	Received (Rs.)	Waiver (Rs.)
F-701	10.08.2016	89,00,000/-	6,00,000/-	83,00,000/-
F-702	10.08.2016	76,75,000/-	5,25,000/-	71,50,000/-
	Total	1,65,75,000/-	11,25,000/-	1,54,50,000/-

Applicant No.3 Anita Chaplot

Unit No.	Booking Date	Amount (Rs.)	Received Rs.)	Waiver (Rs.)
A-803	10.08.2016	76,75,000/-	42,75,000/-	34,00,000/-
	Total	76,75,000/-	42,75,000/-	34,00,000/-

- b) The payments for the flats were made to the Corporate Debtor's bank account by each of the Applicants. However, it appears that the funds were transferred in a circular manner involving related parties, effectively causing the sale of multiple flats without requisite consideration.
- c) Upon scrutiny of the Corporate Debtor's bank statements, it was observed that once the Applicants made payments in respect of their respective flats, the amounts received were transferred to related parties such as Mr. Dinesh Chaplot, with slight variations in amounts to avoid suspicion. This cycle was

repeated for all flats associated with each Applicant and the rightful consideration due to the Corporate Debtor was not received.

- d) In the case of Applicant No.2, where the sale transaction with respect to Flat No.A-701 included supplementary agreements, one of which waived Rs.83,00,000/- (more than 90% of the total consideration) citing delayed possession. Similarly, it was done for flat No. F-702. In this regard, the Respondent submits that this supplementary agreement was not registered and further, such a waiver does not seem commercially feasible, indicating collusion to defraud.
- e) The total consideration, amounts claimed, circular transactions/waiver and stamp duty payments across all three Applicants are as follows:-

Applicant No.	Total Consideration (Rs.)	Amount Claimed (Rs.)	Amount of Circular Transaction /Waiver (Rs.)	Stamp Duty Paid (Rs.)
1	2,79,95,000/-	2,79,95,000/-	2,62,32,000/-	14,89,800/-
2	1,65,75,000/-	9,03,240/-	1,54,50,000/-	8,88,750/-
3	76,75,000/-	41,52,240/-	70,98,000/-	4,13,800/-
Total	5,22,45,000/-	3,30,50,480/-	4,87,80,000/-	27,92,350/-

- f) Thus, the total amount of Rs.4,87,80,000/- used in circular transactions which includes amount under the guise of a waiver has been utilised to defraud the Corporate Debtor and other creditors and is thus covered under Section 66 of the Code.
- g) As a result, the Respondent by email dated 17.07.2024 accepted the following net claim amounts as against the Agreement Value and the balance

amounts required to be paid by Applicant Nos.1 to 3 are summarised in the Table below:-

Applicant No.	Amount of claim (Rs.)	Given by Corporate Debtor (Rs.)	Net Claim Accepted (Rs.)	Agreement Value (Rs.)	Balance Required to be paid (Rs.)
	(A)	(B)	(C)=(A-B)	(D)	(D-C)
1	2,79,95,000/-	2,62,32,000/-	17,63,000/-	2,79,95,000/-	2,62,32,000/-
2	9,03,240/-	Nil	9,03,240/-	1,65,75,000/-	1,56,71,760/-
3	41,52,240/-	36,98,000/-	4,54,240/-	76,75,000/-	72,20,760/-
Total	3,30,50,480/-	2,99,30,000	31,20,480/-	5,22,45,000/-	4,91,24,520/-

3.7 Thus, the Respondent submits that the Application is infructuous as the Respondent has already partly admitted the Applicants' claims by email dated 17.07.2024. This decision has not been challenged by the Applicants, rendering the Application unsustainable. The Respondent has admitted only the net amounts actually received by the Corporate Debtor, as the payments made by the Applicants were immediately transferred out to related parties, indicating circular transactions. These transactions were designed to defraud the creditors and manipulate the books of the Corporate Debtor. The Applicants' claims based on waived amounts, liquidated damages and interest under unregistered and unconscionable supplementary agreements are fraudulent. Interest at the rate of 18% per annum, compounded quarterly (effective rate of 19.25% p.a.), is only applicable upon termination of the principal agreement. As the Applicants have not terminated the principal agreement, there is no basis for their claim for

interest. The supplementary deed provides for pre-determined liquidated damages, meaning that any compensation for delays should be limited to liquidated damages and not interest which is only payable upon cancellation. The amounts claimed as waived, penalties or liquidated damages are not considered 'financial debt' and cannot be deducted from the balance due from the flat purchasers towards the total consideration. Therefore, these claims have not been admitted as legitimate financial debts.

- 3.8 The Respondent contends that a registered agreement can only be modified by another registered deed. In this case, the supplementary deed is not registered, no stamp duty was paid and the same was signed on a Rs.500/- stamped paper on the next day of signing a registered agreement for sale. The Respondent asserts that the supplementary deed should be viewed in the context of other related events, such as the retirement of Applicant No.1, the registered agreement and the circular movement of funds. The Applicants claim that amounts transferred out of S. B. Developers were retirement fees/ capital account repayment. However, such payments were not the responsibility of S. B. Developers and should have been made by the continuing partners, as per the Retirement Deed dated 09.08.2016. The balance standing to the credit of Applicant No.1's capital account as on 31.03.2015 was only Rs.7,000/- while the amounts transferred to his account in the circular transactions were significantly higher. Further, the Bank account of homebuyers is jointly owned by Applicant No.1 who also operated the bank account of S. B. Developers at the relevant

time and funds paid by homebuyers to S. B. Developers also belonged to Mr. Sawla, suggesting circular movement of funds under his supervision.

- 3.9 The Respondent rejects the Applicants' argument that they should be granted interest because other flat purchasers were granted interest. The Respondent submits that the flat purchasers cited by the Applicants had clauses for interest in their MOUs and agreements and thus their claims were admitted based on the contract terms. However, the Applicants' principal agreement does not contain any clause for interest and as such, there is no basis for their claim. The Respondent is bound by the commercial terms of the contracts and is not required to give equal treatment to creditors with different contract terms.
- 3.10 In the case of Mr. Kabra, Mr. Monik Gangar and Mr. Lobo, their contracts included clauses for interest payment in case of delay and none had provisions for interest upon cancellation. Therefore, the Respondent rightly admitted their claims for interest. Under the Code, the burden of proof for a claim lies with the claimant and the Applicants cannot rely on the claims of other homebuyers whose agreements were different. The Respondent and the Tribunal cannot grant interest based on equity where there is no such provision in the Applicants' contract.
- 3.11 The Applicants argue that the Respondent has no power to adjudicate whether a transaction is fraudulent and must admit claims upon verification. The Respondent cites the NCLAT decision **Umesh Kumar Vs. Narendra Kumar Sharma** [2024 SCC OnLine NCLAT 226] which held that as an officer of the court, the RP is expected to conduct the CIRP with fairness and diligence. The

Respondent submits that it correctly admitted the Applicants' claims to the extent of net amounts received by the Corporate Debtor after deducting the amounts diverted out. Further, in *Rakesh Bothra Vs. Alok Kailash Saksena*, the NCLT, Mumbai Bench emphasised that the substance of a transaction is more important than its form and accounting entries alone cannot determine its nature. Therefore, the Bench in this case should look beyond the accounting entries of retirement/ capital repayment and examine the substance of the transaction.

- 3.12 The Applicants submitted inadequate data to the Auditor and to the Respondent. The Auditor had requested for annual accounts, retirement deeds etc. However, the Applicants chose to approach the Tribunal directly without providing the data to the Auditor. Based on the limited information available, the Auditor concluded that the transaction appeared fraudulent, leaving the Respondent no choice but to file an IA with the Tribunal which is still pending. Lastly, the Respondent submits that the claims of the Applicants were partially admitted by email dated 17.07.2024 in accordance with the law with no delay in the decision-making process.

4. ANALYSIS AND FINDINGS

- 4.1 Upon careful consideration of the pleadings and documents submitted by both parties and the arguments presented by both the Ld. Counsel for the Applicants and the Respondent, our findings are as under:-
- 4.2 At the outset, it is proposed to consider the relevant statutory provisions of the Code and the CIRP Regulations. As per Section 18 (1)(c) of the Code, the duty

of the IRP/RP is to receive and collate all the claims submitted by creditors to him pursuant to the public announcement made in this behalf. Section 25(1) of the Code lays down that it shall be the duty of the RP to preserve and protect the assets of the Corporate Debtor including the continued business operations of the Corporate Debtor. For this purpose, the RP is required to maintain an updated list of claims in terms of Section 25(1)(e). Regulation 13 of the CIRP Regulations mandates that the IRP/RP shall verify every claim as on the insolvency commencement date and thereupon maintain a list of creditors containing certain details. The IRP/RP is also entitled under Regulation 10 to call for necessary evidence or clarification from a creditor for the purpose of substantiation of whole or part of its claim. As per Regulation 14, where the amount claimed by a creditor is not precise due to any contingency or other reason, the IRP/RP shall make the best estimate of the amount of the claim based on the information available with him. Thus, the mandate of the RP includes receiving, collating and verifying the claims of creditors received by him in the course of CIRP. Thereafter, he is required to prepare a list of creditors and to publish the Information Memorandum so that a prospective resolution applicant gets an accurate idea about the amounts that have to be settled in order to take over and revive the business of the Corporate Debtor. However, it is also well-settled that the role of RP is administrative and he is not vested with any adjudicatory powers.

- 4.3 Given this mandate, it is now proposed to examine whether the Respondent in the present case has rejected part of the claims of the Applicants for sound and justifiable reasons.

PRINCIPAL AMOUNT OF FLATS

- 4.3.1 It is observed from the record that the Applicants made a claim of Rs.5,22,45,000/- towards agreement value of six flats in the housing project booked by them. Applicant No.1 booked 3 flats and Applicant No.2 booked 2 flats while Applicant No.3 booked only 1 flat. The Applicants paid principal amount of Rs.3,30,50,480/- towards the booking/ purchase of flats. It is noticed that the Respondent *vide* email dated 17.07.2024 admitted only an amount of Rs.31,20,480/- and worked out the balance amount payable by the Applicants to Rs.4,91,24,520/-. The Respondent/RP in his email addressed to the Applicants clarified that:-

“the amount paid by the claimant has been paid back to the claimant and/or related party of the claimant. Thus, only the net amount has been recognized by me. You were provided with the opportunity by the transaction auditor to explain the reasons. However, ..the explanation if any, provided to the transaction auditor were not satisfactory”.

Thus, the RP had dealt with the claims of the Applicants and admitted only a part thereof, as brought out in para 3.6 above.

4.3.2 The Respondent/RP submits that a transaction audit was got conducted with respect to the transactions related to the flats purchased by the Applicants in the O2 project. The Auditor addressed an email to the Applicants on 24.05.2024, sharing the TAR and seeking the reply of the Applicants to the observations made therein. According to the Respondent/RP, the Applicants had prima facie entered into circular transactions with the intent to defraud the Corporate Debtor and its creditors. As per the TAR, on review of transaction of sale of three flats to Mr. Dinesh Chaplot from bank statement of S.B. Developers, it was observed that S.B. Developers had received the payment from Mr. Dinesh Chaplot and transferred the same funds to Mr. Dinesh Chaplot who in turn transferred the funds to S.B. Developers. The Auditor thus concluded that all these were circular transactions and there was nothing received by the Corporate Debtor against the sale of flats. Further, with regard to waiver of substantial portion of the total consideration of two flats sold to Ms. Sneha Chaplot and one flat sold to Mrs. Anita Dinesh Chaplot, it is contended that such waiver cannot be considered as a legitimate transaction conducted at arm's length and should be treated as an attempt to defraud other creditors. In response, the Applicants clarified that the payment to Mr. Dinesh Chaplot was for his retirement from "SB

Developers”, based on the balance lying in his capital account. It is emphasised that the transaction related to his retirement was separate and distinct from the sale of the Flats, which was governed by duly executed registered agreements. The balance sheets of “SB Developers” for the years ending 31.03.2015, 31.03.2016 and 31.03.2017 confirm that the payment was a return of capital.

4.3.3 The Applicant No.1, on the other hand, submits that he was a partner in “S. B. Developers” and that he retired on 09.08.2016 under a Deed of Retirement. At the time of retirement of Applicant No.1, a sum of Rs.2,75,53,492/- was due to him in his capital account. According to the Retirement Deed dated 09.08.2016, the continuing partners undertook to pay, *inter alia*, to Applicant No.1 the balance of Rs.2,75,53,492/- standing to the credit of his capital account. The said amount was paid in several installments between 18.08.2016 and 06.09.2016 as consideration for his share in “S.B. Developers” on his retirement. Therefore, the funds that the Respondent/RP has claimed have been paid back to Applicant No.1 is his capital return according to his share in “S. B. Developers”.

4.3.4 The Applicants thus submit that there were two separate and distinct transactions: one being retirement of a partner from the firm and the other being transaction of sale of flats under duly executed and registered agreements where the consideration has been fully reflected and transaction has been confirmed. Therefore, the Respondent/RP has wrongly rejected part of the claims of the Applicants. If the Respondent is

of the view that these transactions are otherwise fraudulent, then he is required to approach this Tribunal to seek appropriate orders/directions. Till then, the Respondent/RP has no authority to accept or reject any document or any transaction and refuse to admit the claims of the Applicants on that basis. It is urged that the arbitrary rejection of part of the claims of the Applicant by the Respondent/ RP is thus liable to be set aside.

4.3.5 As far as waiver granted by the Corporate Debtor with respect to the flats purchased by Ms. Sneha Chaplot and Mrs. Anita Chaplot is concerned, the Applicants submit that the waiver in question was granted through the further Supplemental Agreement dated 12.08.2019, executed three years after the main Agreement. The Corporate Debtor approached both the Applicants and informed them of a two-year delay in possession, leading to a mutually agreed waiver to address the expected delay before any default occurred. It is submitted that there is no illegality in the waiver granted towards the balance payment due to the delay. Such waivers and set-offs against balance sale consideration, where the builder is liable to pay interest, are commonly permitted under RERA and recognised in law. A transaction cannot be deemed illegal simply because compensation was granted to the flat purchaser for a delay caused by the Corporate Debtor's failure to fulfill its obligations.

4.3.6 We have considered the rival submissions in the matter. We have perused the key documents such as the sample Agreement for Sale dated

10.08.2016; Payment Confirmation Receipts issued by “S. B. Developers”. Supplementary Agreement dated 11.08.2016; and further Supplemental Agreement dated 12.08.2019. It is observed that all these agreements were duly acknowledged, notarised and executed between the Applicants and the Corporate Debtor and agreement for sale was duly executed and registered. Further, these agreements were never disputed by the Corporate Debtor in the past. The Respondent's argument that the Supplementary Agreement is invalid because it was unregistered and executed shortly after the main Agreement for Sale lacks merit, because there is no legal bar preventing the parties from executing an additional or supplemental agreement, if they consider it necessary to incorporate additional clauses. Therefore, the Supplementary Agreement cannot be declared invalid simply because the Respondent/RP nurtures a suspicion about its timing of execution. While determining the Applicant's claims, we find no valid justification given by the Respondent/ RP for not accepting these agreements which were duly executed and acted upon by the parties.

- 4.3.7 Further, we find that the Respondent/RP has shown gross and willful negligence in dealing with the claims of the Applicants. It needs to be appreciated that the Respondent/RP has been endowed with the cardinal responsibility as facilitator of the CIRP under the Code. He is expected to assist in the CIRP in a fair and objective manner in the best interests of all stakeholders and to take reasonable care and exercise due diligence

while performing his duties. Contrary to his assigned role under the IBC framework, the Respondent/RP has displayed an outrightly biased, prejudiced and negligent approach in verification of Applicants' claims by conveniently disregarding the registered agreements for sale as well as payment confirmation receipts in respect of aforesaid 6 flats booked/purchased by the Applicants. The Respondent/RP has made no attempt to verify whether the sale of aforesaid 6 flats is reflected in the books of account and other records of the Corporate Debtor.

- 4.3.8 Further, the Respondent/RP has arrogated to himself the role of an adjudicator by declaring the Supplementary Agreement dated 11.08.2016 and further Supplemental Agreement dated 12.08.2019 as fraudulent and invalid. When the Applicants furnished their response to the observations of the Auditor and clarified that the funds transferred to Mr. Dinesh Chaplot represented return of his capital and repayments of loans that he had advanced to M/s/ S. B. Developers, the Respondent/ RP still took no steps to verify the claim from the books of account and Income-tax Returns of "S. B. Developers" for relevant financial years, lying in his custody and mechanically rejected the Applicants' claims. In the course of hearing of the present IA, this Bench on couple of occasions requested the Counsel for the Respondent/RP to furnish copies of ledger accounts of Applicant No.1 and other retired partners of "S. B. Developers" so as to bring out the manner of settlement of their capital and current accounts with the firm. Regrettably, no heed was paid to the same.

- 4.3.9 On perusal of the audited financial accounts of “S. B. Developers” for F.Y. 2016-17 placed on record by the Applicants, it is observed that the opening balance in Capital Accounts (both fixed and current) of Applicant No.1 was Rs.2,75,53,492/- which was withdrawn during the said F.Y. In these circumstances, it was incumbent on the Respondent/RP to take into account the substantial balance lying in the Capital Account of Applicant No.1 as per books of account of “S. B. Developers” which was due to be paid to him on his retirement and which was actually paid by the firm during F.Y.2016-17. If he as well as the Auditor had done so, neither would have misdirected his time and energy in unearthing imaginary circular or fraudulent transactions. The Respondent/RP fails to appreciate that where the loan amount (current account) is owed by the firm to the retiring partners, the same has to be returned or repaid by the firm rather than the continuing partners.
- 4.3.10 As regards the Auditor’s categorisation of the transactions as “circular”, we find that *prima facie* these transactions do not satisfy the criteria for being classified as circular transactions. First, these transactions have not taken place between entities within the same group or under the same control. Credits in the bank account of Applicant No.1 were from the firm, “S. B. Developers” in which he was no longer a partner and which was then controlled by one Mr. Gautam J. Ahuja and one Mr. Jagdish B. Ahuja (the Ahujas). At the time of settlement of retirement dues of Applicant No.1, it could not be said that he was a “related party” to the Ahujas,

because in view of his retirement from the firm, his business connection or relationship had already ceased to exist. Further, the Respondent/RP has not undertaken any due diligence to find out whether the transactions done by the Ahujas who are the immediate Suspended Directors of the Corporate Debtor were proper.

4.3.11 Secondly, a “circular transaction” as generally understood is an artificial transaction designed to inflate turnover without involving any actual exchange of goods or services. However, the transactions between Applicant No.1 and “S.B. Developers” were not found to be artificial but real transactions entered with a view to settling his retirement dues. Likewise, the transactions between the Applicants and “S.B. Developers” also could, by no stretch of imagination, be treated as artificial transactions because these transactions were undertaken by the Applicants for booking and purchasing flats in the ongoing housing project O2 of the said firm. It is not a case where dues of the retired partners were settled or purchase of flats was recorded merely by passing some book entries. Rather, it is noticed that each transaction was accompanied by actual transfer of money between the parties, as evidenced by the respective Bank Statements/ Pass Books.

4.3.12 Merely because Applicant No.1 has a joint account with Applicant No.3, his wife and provided some funds to her for purchasing the flat from S.B. Developers, it will not become a circular transaction. Similarly, the Respondent/RP has failed to demonstrate the element of fraud, if any,

involved in the aforesaid transactions before treating these as fraudulent transactions. It is not a case where the flats purchased by the Applicants already stand allotted or sold to other parties. Pursuant to the above transactions, "S.B. Developers" discharged the existing liability arising upon retirement of Applicant No.1 and simultaneously, it received consideration from the Applicants towards purchase of flats, thereby giving rise to a new liability towards the Applicants to provide possession of flats along with other attached obligations.

4.3.13 It is noticed from the record that the RP *vide* email dated 17.07.2024 rejected the claim of the Applicant Nos.2 and 3 on the ground that "*the Supplementary Agreement submitted by you has not been accepted by me and therefore the waiver document issued under the same has not been taken into account while admitting your claim. In any case, the waiver document not being a disbursed amount, the same cannot be admitted as claim under the regulations....*". On perusal of the supplemental agreements dated 12.08.2019, it is evident that Applicant No.2 and Applicant No.3, as purchasers of the flats, were granted waiver of Rs.1,17,00,000/- and Rs.71,50,000/- respectively by the Corporate Debtor/Developer for delayed possession. However, we find that waiver cannot be treated as 'financial debt' within the meaning of Section 5(8) of the Code and hence, this claim is not admissible.

4.3.14 The TAR submitted by the Respondent/RP under the heading "3. GENERAL LIMITATIONS" on page 15, the Auditor categorically states

inter alia that “we have expressed our opinion on the basis of information and details provided by us, we shall not give any testimony or appear in Court/Tribunal/Legal Proceeding can be initiated against us based on this report under any law/act”. Further, the Auditor makes it clear that “No responsibility is assumed for matters of legal nature. We are not required to carry out a legal audit or review”. We, therefore, hold that such an opinion of the Auditor cannot be considered as definitive and an expert opinion within the meaning of Section 39 of the Bharatiya Sakshya Adhiniyam, 2023. Hence, we are not inclined to consider the same. Further, reliance of the Respondent/RP on decision of co-ordinate Bench of this Tribunal in *Rakesh Bothra* (supra) will be of no help, because it is the Respondent/RP himself who is misled by the form of the transactions and conveniently omits to look at the substance thereof.

- 4.3.15 In view of above discussion and findings, we are of the considered view that the rejection of Applicants’ claims with regard to the principal amount paid towards purchase of flats by the Respondent/RP was arbitrary, unjustified and without application of mind by him. **Therefore, we deem it appropriate to direct the Respondent/RP to verify the same with reference to the books of account and other records of the Corporate Debtor and admit the balance principal amount of claim as a financial debt accordingly.**

CLAIM OF INTEREST (Rs.11.36.53.305/-)

4.4 It is observed from the record that the Applicants have claimed interest amounting to Rs.11,36,53,305/- @ 18% p.a. as per Clause 4 of the supplementary agreement dated 11.08.2016 executed with the Corporate Debtor. It is noticed that the RP vide email dated 17.07.2024 rejected the claim of the Applicants for interest as “*invalid as the same has been made in accordance with supplementary agreement which has not been accepted by me*”. In this connection, it would be pertinent to refer to Clause 4 of the said Agreement which reads as under:-

“Without prejudice to the entitlement of the Purchaser under Clause 3 hereof or at law, in the event if the Developer is not able to obtain the Occupancy Certificate in respect of the Premises and hand over possession of the Premises to the Purchaser on or before 31.12.2020, the Purchaser shall as it sole discretion be entitled to terminate the Principal Agreement, whereupon the Developer shall be liable to refund forthwith to the Purchaser all amounts paid by the Purchaser to the Developer in respect of the said Premises and otherwise as may have been expended by the Purchaser in furtherance/pursuance of the Principal Agreement, along with interest on such amounts calculated at the rate of 18 % (Eighteen percent) per annum with quarterly rests (to be

calculated from the date of payment by the Purchaser to the Developer till the actual date of refund to the Purchaser”.

4.4.1 On perusal of the aforesaid Clause, it is evident that the Applicants being purchasers of flats were entitled to interest @ 18% p.a. only under the following conditions and circumstances:-

- a) The Corporate Debtor/Developer failed to obtain the Occupancy Certificate in respect of the project and hand over possession of the flats to the Applicants on or before 31.12.2020 and
- b) The Applicants decided to terminate the Principal Agreement/Agreement for Sale dated 10.08.2016 and seek refund of the amounts paid to the Corporate Debtor/Developer in respect of the said flats.

In other words, the Applicants were not entitled to claim interest @ 18 p.a. for the period of delay in handing over possession of the flats beyond 31.12.2020 unless they exercised their right to terminate the Principal Agreement and claim refund of the amounts paid towards purchase of flats. However, we find that in case of other home-buyers, the Respondent/RP had allowed interest for the delay in handing over possession of the flat on or before 31.12.2020 based on the specific clause forming part of the relevant Agreements for Sale. As per this clause, in the event “S.B. Developers” failed to abide by the time schedule for completing the project and for handing over the flat to the allottee on or before 31.12.2020, the

allottee shall be entitled to payment of interest at the Interest Rate (SBI's highest Marginal Cost of Lending Rate as prevailing at the relevant time plus 2%) for every month of delay till the date of offering to hand over possession of the flat. Since there is no such clause in the Agreements for Sale executed by the Applicants with "S.B. Developers", the Applicants cannot claim parity with other homebuyers because claim of interest will be governed by the terms of the relevant agreement for sale in each case.

4.4.2 As stated above, the Respondent/RP summarily rejected the claim of interest made by the Applicants on the ground that the supplementary agreement dated 11.08.2016 submitted by them had not been accepted by him. However, in his email dated 17.07.2024, the Respondent/RP has not given any reasons or justification for not accepting the said supplementary agreement. It is settled law that examining the validity of any contractual agreement lies outside the purview of the charter of duties and responsibilities of the RP. In fact, determination of the tenability/validity of a contractual agreement falls in the realm of a civil dispute and, therefore, outside the scope and jurisdiction of both the Adjudicating Authority and the Appellate Tribunal, as held by the Hon'ble NCLAT in **Umesh Kumar** (supra).

4.4.3 Be that as it may, we find that the Applicant's claim for interest @ 18% p.a. amounting to Rs.11,36,53,305/- is not in consonance with the terms of Clause 4 of the supplementary agreement and hence, the Respondent/RP

even otherwise could not have entertained or accepted the same which is accordingly held against the Applicants.

4.4.4 However, we find merit in the alternative plea of the Applicants for grant of interest @ 8% p.a. according to Regulation 16A(7) of the CIRP Regulations which reads as under:- *“the voting share of a creditor in a class shall be in proportion to the financial debt which includes interest at the rate of eight per cent per annum unless a different rate has been agreed between the parties”*. It is pointed out that the Respondent/RP has already granted such interest to the other home buyers. The Applicants are financial creditors who fall under the class of financial creditors viz., real estate project allottees. **In view of above, the Respondent/RP is directed to admit and include interest @ 8% p.a. in the individual claims of the Applicants.**

CLAIM OF PENALTY/ LIQUIDATED DAMAGES (Rs.73.92.000/-)

4.5 It is observed that the Applicants have claimed penalty/ liquidated damages of Rs.73,92,000/- in terms of Clause 3 of the supplementary agreement dated 11.08.2016 executed with the Corporate Debtor. It is noticed from the record that the RP vide email dated 17.07.2024 rejected the aforesaid claim of the Applicants for penalty/liquidated damages as *“invalid as the same has been made in accordance with supplementary agreement which has not been*

accepted by me". In this connection, the relevant Clause 3 of the supplementary agreement is reproduced as under:-

"... .. it is agreed upon between the parties that without prejudice to the entitlement of the Purchaser under Clause 4 of this Agreement or at law, in the event if the Developer is not able to obtain the Occupancy Certificate in respect of the Premises and hand over possession of the Premises to the Purchaser on or before 31.12.2020, subject to clause 9.2, 9.2.1, 9.2.2, 9.2.3 and 9.2.4 of the Principal Agreement, then and in such an event, the Purchaser shall be entitled to receive a penalty in the form of pre-estimated liquidated damages from the Developer of a sum of Rs.35,000/- (Rupees Thirty Five Thousand Only) per month of delay or part thereof by the Developer in obtaining the occupancy certificate and handing over possession of the Premises to the Purchaser".

4.5.1 On perusal of the aforesaid Clause, it is evident that the Applicants being purchasers of flats were entitled to receive penalty/liquidated damages @ Rs.35,000/- per month in case the Corporate Debtor/Developer failed to obtain the OC in respect of the project and hand over possession of the flats to the Applicants on or before 31.12.2020 otherwise than for reasons beyond the control of the Corporate Debtor/Developer. Here again, the Respondent/RP has not given any reason in his email dated 17.07.2024

for not accepting the supplementary agreement dated 11.08.2016 which is duly signed and executed between the parties.

4.5.2 Be that as it may, we find that penalty/ liquidated damages cannot be treated as 'financial debt' within the meaning of Section 5(8) of the Code and hence, this amount of claim is not admissible.

4.6 In the result, the IA No.3601/2024 is **partly allowed** in terms of directions contained in **paragraphs 4.3.15 and 4.4.4** above.

4.7 The Respondent/RP has not controverted the allegations made by the Applicants that one Mr. Bipin Kabra, Director of Insolvency Professional Entity 'Stress, Credit Resolution Private Limited' is one of the homebuyers of the Corporate Debtor along with his wife and was present at the meeting of the Applicant No.1 with the RP on 15.05.2024. It is alleged that Mr. Kabra represented himself to be a team member of the Respondent/RP and sought clarifications from the Applicant No.1. This indicates that the Respondent/RP is carried away by extrinsic considerations and subjecting himself to be influenced by others. An Insolvency Professional is required to conduct the process under the Code independent of external influences in terms of the Code of Conduct under Schedule I to Regulation 7(2)(h) of the IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations). We had occasion to remind the Respondent/RP of his duties and functions under the Code, while disposing of IA No.3693/2024 in the Main Application. We, therefore, are constrained to direct

the Respondent/RP to abide by the Code, Rules, Regulations including the Code of Conduct and the guidelines under the law at all times during the processes in terms of Regulations 7(2)(a) of the IP Regulations. As an officer of the court vested with administrative powers, he is expected to conduct the CIRP in a bona fide, fair, honest and dispassionate manner displaying a high sense of integrity and responsibility.

4.8 This IA is disposed of in terms of the above.

4.9 Copy of this order may be forwarded to the IBBI for their information and record.

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Deepa & JNK

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**