

Case Snippets

Volume 03, Number 05 (January 29, 2020)

Navin Raheja Vs. Shilpa Jain and Others (22nd January 2020) (NCLAT)

In this case Respondent no. 1 & 2 had booked an apartment in the Residential Project- 'Raheja's Sampada' being developed by the 'Corporate Debtor'. In pursuance of the same, the 'Corporate Debtor' issued a joint allotment letter dated 3rd August, 2012 and executed a Flat Buyer's Agreement dated 3rd August, 2012. They disbursed total Rs.86,62,691/- to the 'Corporate Debtor' on different dates .

It was alleged that as per Clause 4.2 of the Buyer's Agreement, possession of the Apartment was to be provided within 36 months commencing from 3rd August, 2012 which came to an end on 3rd August, 2015 but the construction was not completed. As per Clause 4.2, in case the construction is not complete within time the 'Corporate Debtor' is under obligation to pay the allottee(s) compensation @ Rs.7/- per sq. ft. of the super area per month for the entire period of such delay.

On filing of the application under Section 7, the 'Corporate Debtor' took specific plea that the notice of possession was issued as back as on 15th November, 2016 and in spite of repeated request to take possession, the allottees have refused to take possession.

Further, the 'Corporate Debtor' stated that as far as the processing of its application for obtaining an Occupation Certificate was concerned, the same was under the control of the concerned Government/ Competent Authority and any delay on account of the actions inactions and omissions on the part of the Government/ or Authority it was beyond the reasonable control of the 'Corporate Debtor'/ Promoter. In the circumstances, in terms of Clause 4.2 of the Flat Buyer's Agreement a 'force majeure' condition will be applicable.



The questions arose for considerations in the present appeal were:

- i. Whether the 'Corporate Debtor' can be held to have committed default, if apartment/ flat/ premises is otherwise ready but offer of possession was delayed due to the reasons beyond the control of 'Corporate Debtor' such as absence of clearance by the Competent Authorities/ Government(s), etc.? and;
- ii. Whether application under Section 7 was filed by the 1st and 2nd Respondents 'fraudulently or with malicious intent for any purpose other than for the resolution of insolvency or liquidation' as defined under Section 65 of the 'I&B Code' called for any penal action?

NCLAT held in this case that before admitting such case, it will be desirable to find out whether the allottees have come for refund of the money or to get their apartment/ flat/ premises by way of resolution. If the intention of the allottees only for refund of money and not possession of apartment/ flat/ premises, then the 'Corporate Debtor' may bring it to the notice of the Adjudicating Authority as held by the Hon'ble Supreme Court. The Adjudicating Authority before admitting an application under Section 7 filed by allottee(s) will take into consideration the decision of the Hon'ble Supreme Court in "Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors"

NCLAT further held that If the delay is not due to the 'Corporate Debtor' but force majeure, as noticed above, it cannot be alleged that the 'Corporate Debtor' defaulted in delivering the possession.

While deciding on second consideration, NCLAT held that although the case of the 1st and 2nd Respondents is covered by Section 65 of the 'I&B Code' and are liable for imposition of penalty. However, taking into consideration of facts and circumstances of the present case no penalty is imposed on the respondents, who even in presence of this Appellate Tribunal refused to accept the money in terms of the Agreement and also refused to take possession of the flat.

