(2020) 01 NCLT CK 0024

In the National Company Law Appellate Tribunal

Case No : (IB) No. 2546(ND) Of 2019

Ankur Agarwal APPELLANT

Vs

Apex Dream Home Private Ltd RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Citation : (2020) 01 NCLT CK 0024

Hon'ble Judges : Ina Malhotra, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Ahuja, Mrinal Harsh Vardhan, Kartik Sain

Final Decision : Dismissed

Judgement

Ina Malhotra, J

1. The Petitioner seeks Corporate Insolvency Resolution Process of the Corporate Debtor for failure to return the money in terms of an order of RERA, against payments made for a flat booked by them which the respondent had failed to deliver.

2. Brief facts of the case are that the Corporate Debtor is engaged in the business of developing Real Estate Projects and proposed a project under the name & style of "Apex Athena" to be developed on Plot No. GH-12A, Eco City, Sector 75, Noida. The Petitioner accordingly booked a unit in the aforesaid project and was allotted a flat vide allotment letter dated 30th October, 2013. The total sale consideration was agreed at Rs. 60,45,060/- inclusive of all charges. Payments for the said plot were construction linked and a total sum of Rs. 59,21,346/- has been paid by the Financial Creditor upto 19th February, 2015. The Corporate Debtor then raised a demand of Rs. 1,60,500/- on 10th March, 2017, being the last instalment payable on possession.

3. The Petitioner's case is that the Corporate Debtor did not obtain the occupancy certificate from the competent authority and therefore the Financial Creditor was

not inclined to take possession of the flat since the occupancy certificate was not obtained. Aggrieved by the extreme delay in completion of the project, the Financial Creditor approached the Uttar Pradesh Real Estate Regulatory Authority (UPRERA), which directed that the penalty on delayed possession be paid in terms of the RERA Act and after adjusting the same from the pending dues, the balance, if any, be paid by the Financial Creditor. It is submitted that in terms of the said order, it was also directed that if the possession was not given by the year 2019, then the Financial Creditor could seek a refund of the whole amount with interest. While the Corporate Debtor has preferred an appeal against the order of UPRERA, the petitioner has prayed for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor for its failure to deliver on time, thereby making them liable to refund the amount in terms of the order of UPRERA.

4. The Corporate Debtor on being served with the notice of this petition, entered appearance and filed their reply. It is submitted that the Occupancy Certificate has been received and the units have been ready for possession for a long time. Ld. Counsel has filed an affidavit placing on record, photographs evidencing the state of completion of the project which reflects external and internal development together with facilities of Swimming Pool, Gym, Parks, Basement Parking etc. It is further submitted that the possession of several units has been taken over by the allottees who are residing in the said project and photographs evidencing the same have also been annexed. A list of allottees in whose favour the Conveyance Deeds have been executed are on record.

5. Given the facts and circumstances of this case, this Bench is of the opinion that the Resolution of the Corporate Debtor under such circumstances is not called for. The project appears to be complete and habitable. Rights of several allottees are involved. If the Financial Creditor is aggrieved by the delay in construction, they may enforce the order of UPRERA, for recovery of any interest after offsetting the unpaid sale consideration. The proper recourse would be execution proceedings, but certainly resolution of a completed project is not called for.

6. The prayer for initiation of the CIR Process does not merit consideration and is being Rejected.