

PROCEEDINGS OF THE DAY		1
Day and Date	Monday and 23.01.2023	
Complaint No.	CR/255/2023 case titled as Puneet Gupta versus International Infratech Pvt. Ltd.	
Complainant	Puneet Gupta	
Represented through	Shri Rahul Bhardwaj Advocate	
Respondent	International Infratech Pvt. Ltd. etc.	
Respondent Represented	Shri Arun Kumar Dayma Adv. for R1 (POA filed today) Shri Vijay Kaundan Adv. for R2 Shri Rachit Ranjan Adv. for R3 (POA filed today) Shri Amit Mahaliyan Adv for R4	
Last date of hearing	Application u/s 36 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
ORDER		
The matter was heard on 20 January 2023 and is listed for order today.		
1. The present complaint has been filed against the promoters and developers namely Respondent 1, 2 and 3 as well as against Respondent No. 4, Bank of Baroda for gross violation of Section 15 of the RERA Act, 2016, as well as in violation of the notification no. 01-RERA-GGM Circular 2020 dated 29.06.2020 issued by this		
2. The Complainant Mr. Puneet Goyal, is one of the allottee who has booked a shop no- 109-OFC-03/04 having an area of 820 sq. ft. in the project		



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New PWD Rest House, Civil Lines, Gurugram, Haryana

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named as "CHD E-Way Towers" for a total sale consideration of 35,67,452/- including all the miscellaneous charges. Accordingly, the Commercial Space Buyer Agreement was executed with the Respondent No. 3 dated 12.10.2016. It was submitted that there are several other allottees who are together and were allotted their respective commercial units. The Respondent No. 3 was supposed to complete the project in a stipulated time period; however, the Respondent No. 3 failed to complete it, due to which allottees have been left in the lurch.

3. In the meantime, the Respondent Nos. 1 and 3 introduced the allottees to the Respondent No. 2, who was the new developer, and accordingly, the allottees (75% of the allottees) gave their consent to the Respondent No. 3 to go ahead with the new restructuring policy of the project. The Respondent No. 2 promised, by virtue of the collaboration agreement between the Respondent Nos. 1 and 2, that the project would be completed in a stipulated period of time. It is pertinent to mention that, having no other option, the allottees accepted the said proposal.
4. The allottees were apprised by the promoters, i.e., Respondent Nos. 1 and 2, as well as through newspaper advertisement, that the land on which the project is situated, measuring 2.025 acres in Sector 109, is being sold by Bank of Baroda by way of an electronic auction dated 24.01.2023, wherein all the allottees share their reserved rights by virtue of the Builder-Buyer Agreement entered with the promoter. It is submitted that the rights created for the allottees are absolute rights, which cannot be



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fettered by any other third party merely by selling or creating any lieu, change, or encumbrance.

5. The complainant submits that the Bank of Baroda has not only violated Section 15 of the Act but rather is trying to harass as well as jeopardise the rights of the allottees. To support this argument, the complainant relies on the judgement of ***Bikram Chatterjee vs. Union of India (2019 SCC Online 901)*** wherein the Hon'ble Supreme Court clearly established the law on the above-contended dispute, i.e., "the first right over the real-estate project is of the homebuyers/allottees and not the Bank of Baroda."
6. The complainant is seeking stay on the e-auction of the project on grounds that third party rights which have already been created on the property have not been taken into account and the interest of the allottee shall be seriously jeopardised in case the auction is allowed to go ahead. The counsel for the complainant further cites orders of this authority in case No.2145 of 2020 Deepak Chaudhary versus PNB Housing Finance Ltd. and others in support of his arguments.
7. It was argued by the counsel for respondent No.1 that the respondent No.1 had a collaboration agreement with respondent No.3 i.e. CHD Developers Ltd. who failed to develop the project and thereafter another agreement dated 28.07.2022 was signed with respondent No.2 i.e. Key Stone Community for development of the project, with consent of the allottees. A loan of Rs.12.5 crores had been sanctioned and disbursed in favour of respondent No.3, CHD Developers Ltd. by respondent No.4, Bank of Baroda and respondent No.1 was the corporate guarantor and mortgagor. Now, respondent No.3 CHD Developers Ltd is under CIRP and



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- moratorium. However, to the utter shock and dismay of respondent No.1, Bank of Baroda has announced the auction of the project land.
8. The counsel for respondent No.2 argued that respondent No.2 has all the intentions to develop the project and has communicated to the Bank (respondent No.4) that they wish to develop the project and clear all the liabilities with interest and have requested the Bank to provide NoC so that respondent no.2 can be included in the project as a developer and further present itself before the competent authority for completing the necessary formalities.
9. The counsel for respondent No.3 (IRP) states that M/s CHD Developers Ltd. are under CIRP vide order dated 05.09.2022 passed by NCLT Delhi Principal Bench. An appeal has been preferred before the NCLAT and vide order dated 27.09.2022 the IRP has been directed not to take any further steps in the matter. The respondent No.4 has already filed the claim of Rs.25.94 crores on 28.09.2022 with IRP of CHD Developers Ltd. and has simultaneously proceeded to auction the said property also. It is further informed by IRP that M/s IIPL is 100% subsidiary of M/s CHD Developers Ltd.
10. The counsel for respondent No.4 states that the action be taken by the Bank is w.r.t the loan outstanding against respondent No.3 but the guarantor and the mortgagor in the matter is respondent No.1 IIPL and IIPL is not under CIRP. The Bank is bound to recover public money and action taken by the bank is lawful and in public interest. Regarding change of developers, the Bank never consented to the same. He further states that the citations preferred by the complainant are not relevant in this case, as in those matters the complete payment and possession and



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occupation certificate had been issued. In the present matter, only a part payment has been made and no development work has been carried on. Only execution of an agreement does not confer title on the complainants. The notice published by the Bank also covers to the liabilities with respect to the complainant.

11. From the above sequence event, the following facts emerge:

(i) An loan of Rs. 12.5 crore was availed by Respondent no.3 from Respondent NO.4 from the bank to develop the project, Namely," CHD Eway Tower" vide Loan agreement dated 7.11.2016 wherein the project land was placed as security and a charge was created in favour of Respondent No.4. Allottees have paid their hard earned money and booked their units in the project and also signed Builder Buyer Agreements with the promoters. However, the promoters failed to execute the project and construction is at a standstill and the developer has exited from the project. It is a matter of investigation as to how the loan amount as well, as the amounts invested by the allottees has been utilized and whether there has been diversion of funds on part of the developer. Therefore, a forensic audit would be required to uncover the facts.

(ii) By investing in the project and signing a Builder Buyer Agreement, a vested right has been created for the complainant allottee and other similarly situated persons in the project and the same cannot be taken away at will of R4, which was fully aware of the status of the allottees.

(iii) RERA is an enactment subsequent to the SARFAESI Act 2002 and has been specially enacted to protect the interest of the allottees in the real estate projects. An obligation has been cast by the statute to ensure that the



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rights of the allottees are not prejudiced or jeopardized. It is also noticed that the project is unregistered and is in violation of Section 3 of the RERA Act, 2016.

(iv) It is also noted that the Respondent NO.4 Bank of Baroda has already filed its claim before the IRP for recovery of the loan amount from Respondent No.3 i.e. CHD Developers Limited and more so property being auctioned belongs to IIPL (Guarantor) and 100% subsidiary of CHD Developes Limited which is already in NCLT.

(v) It is strange to note that despite the fact that Respondent No. 1 and 2 have already approached the Respondent No.4 with assurance to settle the loan amount by way of executing the project after getting all necessary clearances and certifications from the competent authorities but the respondent no.4 is bent upon auctions the project property thereby seriously jeopardizing the project itself and rights of the allottees.

12 In view of the above, the following directions are issued under section 36 of the RERA Act,2016:-

- i) Respondent No./4 i.e. Bank of Baroda is restrained from proceedings with the e-auction dated 24.1.2023 without considering and settling the claims of individual allottees.
- ii) Forensic audit of the accounts of Respondent No. 3 i.e. CHD Developers Ltd. be got done to bring out clear picture of the utilization/diversion of funds of invested funds w.r.t. the project, if any.



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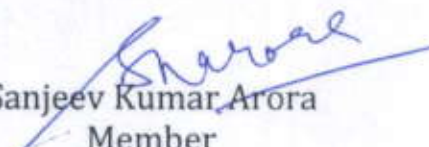
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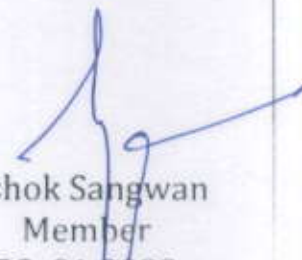
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iii) The Planning Branch is directed to initiate suo-moto proceedings against the Developers for non-registration of the above project under section 3 and 4 of the RERA Act, 2016

To come up on 23.5.2023 for further proceedings.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member
23.01.2023