

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 422/2020

GAJRAJ JAIN & ORS.

Appellant(s)

VERSUS

SHIVGYAN DEVELOPERS PRIVATE LIMITED

Respondent(s)

O R D E R

Heard learned counsel for the parties.

Learned counsel for the respondent relied upon the judgment in Pioneer Urban Land and Infrastructure Ltd. & Anr. vs Union Of India & Ors.¹ to urge that when a certain class of allottees persistently default in their commitments and do not make payment in time, cannot seek remedy under the Insolvency and Bankruptcy Code, 2016².

The judgment in Pioneer at one place undoubtedly indicates that recalcitrant allottees would not be tolerated as they are expected to perform part of the bargain. At the same time in the later part of the judgment, the Court refused to read down the amendment Act of 2018³ holding that it was constitutionally valid. The Court also considered and took note of its previous

1 [for short ' Pioneer' (2019) 8 SCC 416]

2 ['IB Code' for short]

3 [Insolvency and Bankruptcy Code [Second Amendment) Act, 2018

decision in M/S. Innoventive Industries Ltd vs ICICI Bank & Anr. ⁴ And Swiss Ribbons Pvt. Ltd. & Anr. vs Union ⁵of India & Ors.

In the facts of the present case, the record would indicate that the total consideration agreed was Rs. 83,50,000/- pursuant to which a Tripartite Agreement was entered into. In addition, further sum of Rs.14,19,500/- was payable.

Furthermore, concededly, the sum of Rs.97,36,261 was paid to the Corporate Debtor/respondent. No pleadings on the point urged on behalf of the respondent to the effect that the appellant can be characterized as "recalcitrant allottees" was brought to the notice of the Court.

Having regard to these facts, we are of the opinion that the impugned order of the NCLAT affirming the view taken by the NCLT cannot be sustained. It is accordingly, set aside. The application preferred by the appellants shall now be taken up adjudication by the NCLT which shall issue notice of hearing within four weeks to the parties.

It is further clarified that the requirement of impleading 10% of allottees, shall be fulfilled by the appellant within 30 days of notice by the Adjudicating Authority.

4 (2018) 1 SCC 407

5 [(2019) 4 SCC 17

The Civil Appeal is allowed in the aforesaid terms. No costs.

.....J.
(S. RAVINDRA BHAT)

.....J.
(SUDHANSHU DHULIA)

New Delhi,
May 18, 2022

ITEM NO.10

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 422/2020

GAJRAJ JAIN & ORS.

Appellant(s)

VERSUS

SHIVGYAN DEVELOPERS PRIVATE LIMITED

Respondent(s)

(IA No. 10937/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No. 10946/2020 - EXEMPTION FROM FILING O.T.; IA No. 10947/2020 - PERMISSION TO FILE APPLICATION FOR DIRECTION; IA No. 10940/2020 - STAY APPLICATION)

Date : 18-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Arjun Singh Bhati, AOR
Ms. Urja Pandey, Adv.

For Respondent(s) Mr. Arunabh Chaudhary, Sr. Adv.
Ms. Archana Pathak Dave, AOR
Mr. Kumar Prashant, Adv.
Mr. Avnish Dave, Adv.
Ms. Vanya Gupta, Adv.
Mr. Parmod Kumar Vishnoi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(ANJU KAPOOR)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)