

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

14.

C.P. (IB)/361(MB)2024

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **25.06.2024**

NAME OF THE PARTIES:

Ramson Rodrigues & Ors
Vs.

Ashvi Developers Private Limited

SECTION: 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

1. Mr. Tejas Gokhale a/w Mr. Ranjit Shetty, Adv. Risha Alva i/b Argus Partners, Ld. Counsel for the Financial Creditors present. None present for the Corporate Debtor.
2. The present company petition filed by the Financial Creditors/Homebuyers on 08.11.2023 u/s. 7 of the IBC, 2016 to initiate a Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor *viz.* Ashvi Developers Private Limited.
3. Ld. Counsel for the Financial Creditors submits that the Financial Creditor Nos.1 to 12 entered into an Agreement for Sale (“AFS”). The Financial Creditor No.13 has not entered into AFS but received Allotment Letter from the Corporate Debtor. The Financial Creditor Nos.14 to 18 filed a complaint before the MahaRERA seeking refund of their amount paid to the Corporate Debtor. The Financial Creditor Nos.14 to 18 filed a complaint before the MahaRERA seeking refund of their amount paid to the Corporate Debtor. The Financial Creditor No.19 has neither entered into an AFS nor received any Allotment Letter from the Corporate Debtor.
4. Ld. Counsel for the Financial Creditors states that out of 220 flats, 115 flats have been allotted/booked by the Homebuyers. The Corporate Debtor executed an AFS and received the amounts from the Financial Creditors for completing the project and agreed to handover the possession of their respective flats on or before 30th June 2019. An AFS provides for an extension of six months to handover possession of the respective flats of the

Financial Creditor Nos.1 to 13. Therefore, the last date for handover the possession of flats was extended till 31st December 2019. However, the Promoters failed and neglected to complete the construction of the said project within the time stipulated as per the respective AFS entered with Financial Creditor Nos. 1 to 13 and the project got stalled in 2017 due to financial difficulties of the Corporate Debtor due to which the Corporate Debtor neither completed the project nor refunded the amount received from the homebuyers, hence, the date of default is committed by the Corporate Debtor as per AFS on 31st December 2019.

5. It is submitted that the Financial Creditor Nos.14 to 18 approached the RERA Authority seeking refund of the amount paid by the Financial Creditor Nos.14 to 18 to Corporate Debtor. The RERA Authority noted that the Promoter has mentioned the revised completion date of this project as on 31.12.2023. The Ld. Authority passed an order on 28.03.2022, vide which the complaints filed by the Financial Creditor Nos.14 to 18 are allowed to withdraw from this project and it was directed that the amounts of refund along with interest shall be paid to the Complainants by the Respondent Promoter after obtaining the Occupancy Certificate ("OC") for this project or before 30.12.2023, whichever is earlier.
6. The Financial Creditor No.19 is concerned, the Corporate Debtor neither issued Allotment Letter nor executed any AFS in favour of the 19th Financial Creditor and he cancelled his booking on 09.02.2016. Hence, the Financial Creditors have filed this petition to initiate a Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor *viz.* Ashvi Developers Private Limited.
7. Heard Ld. Counsel for the Financial Creditors and perused the records.
8. This Bench observes that when the matter was listed on 04.06.2024, the Counsel for the Financial Creditors sought time to file clarification affidavit indicating the exact date of default, clarifying as to how the petition survives as per the limitation and how this petition is maintainable with reference to the threshold limit.

9. Today, this Bench heard the matter at length. The Ld. Counsel for the Financial Creditors submits that, the Financial Creditor Nos.1 to 13, as per the AFS, due date of handing over the possession including grace period of 6 months i.e. 31.12.2019. Thus, on that date, the cause of action arose for filing this petition and the date of default also mentioned in the part-IV of the petition is 31.12.2019. The limitation for filing this petition commenced on 31.12.2019. The present petition was filed on 08.11.2023. Thus, this Bench is of the view that the petition is barred by limitation.
10. Regarding the Financial Creditor Nos.14 to 18, as per directions of the RERA, the refund order is passed on 28.03.2022 that the Corporate Debtor is directed to refund the amounts along with interest to the Financial Creditor Nos.14 to 18 after obtaining OC for this project or before 30.12.2023, whichever is earlier. The Bench observes that the Financial Creditor Nos.14 to 18 filed this petition on 08.11.2023 which is one month prior to the last date given by the RERA. The petition is therefore premature as there is no cause of action on the ground of default as on the date of filing this petition.
11. The Financial Creditor No.19 is not allotted any flat nor executed any AFS and the booking is cancelled by the Financial Creditor No.19 on 09.02.2016. Hence, the Financial Creditor No.19 has no documents to prove that he is a homebuyer and he has no locus to file this petition.
12. The Counsel for the Financial Creditors cited a judgment of the ***Hon'ble NCLAT, Mist Avenue Pvt. Ltd. Vs. Nitin Batra & Ors.*** On-going through the above cited orders passed by the Hon'ble NCLAT, given on the ground of that the project was on going. Hence, the liability of the Corporate Debtor is continuity. But in this particular case, the project was stalled in the year of 2017 due to financial difficulties of the Corporate Debtor. Hence, this Bench feels that there is no continuity of liability of the Corporate Debtor. The petition is barred by limitation.
13. In view of the above narrated reasons, the petition filed by the Financial Creditors Nos. 1 to 13 is barred by limitation. The petition with reference to Financial Creditors Nos. 14 to 18 as discussed above is filed premature. The

total number of Allottees/Homebuyers of the project are 115. Even if, the claim of Financial Creditor Nos.14 to 18 is considered (despite the claim being premature) it does not fulfil the threshold limit as per Section 7 of IBC, 2016. Hence, the Company Petition is not maintainable and devoid of merits. Hence, C.P.(IB)/361(MB)2024 is **dismissed**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)