

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 22.01.2019
Complaint No.	841/2018 Case Titled As Ms. Ishita Sharma V/S M/S ABW Infrastructure Ltd. & Ors
Complainant	Ms. Ishita Sharma
Represented through	Shri A.P.Dubey Advocate for the complainant
Respondent	M/S ABW Infrastructure Ltd. & Ors
Respondent Represented through	Shri Naveen Kumar proxy counsel for respondent No.1 and Shri Aminesh Goyal Advocate for respondent Nos.2 and 4.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

As per Delhi High Court order dated 4.7.2018 in Co.Pet.449/2016, titled as **Nitya Kukreja versus ABW Infrastructure Ltd.**, winding up order has been passed. The operative part of the order is as under:-

"In my opinion, the court has already ordered for winding up of the respondent-company and hence, the application cannot be considered. Even otherwise, keeping in view the objections of the

petitioners, I do not deem it appropriate to transfer this petition to NCLT. The application is accordingly dismissed”.

The counsel for the complainant alleged that the winding up proceedings have been kept in abeyance by the Delhi High Court by a subsequent order. However, he has not produced any document to fortify his submissions. As such, it cannot be taken on record.

It has also been brought to the notice of RERA authority that Shri Atul Bansal, Sonal Bansal and Ravi Shanker, all directors of the ABW company have been declared as absconders by Chief Metropolitan Magistrate, South, New Delhi.

In addition to this, it has also been brought to the notice of this authority that Hon’ble Supreme Court has passed a judgment on 09.08.2017 in CWP No 744/2017 in **Chitra Sharma and Ors. Vs Union of India, 2018(9) SCALE490**, wherein the Supreme Court has observed as under:-

“after the amendment brought by the Insolvency Bankruptcy(Amendment) Ordinance, 2018, the amounts raised from allottees in a real estate project are deemed to be amounts ‘having a commercial effect of borrowing’. Hence, outstandings to allottees in a real estate project are statutorily regarded as financial debts and they have been recognized as a class of financial creditors.

Accordingly, home buyers will now be entitled to a seat on the ‘committee of creditors’(CoC) of the corporate debtor. However, given the large number of home buyers for a project, they will be treated as a class of creditors and be represented in the CoC by an ‘authorized representative’

It is worth noting that Section 18 of RERA affords allottees the right to:

- Demand a refund of the entire amount advanced by the allottee(alongwith interest at the prescribed rate); or
- Be paid interest (by the promoter/developer) for every month of delay till possession is handed over.

In the insolvency proceedings, it is likely that the allottees (even where they have not withdrawn from the project) may file their claims for the entire advance amount and accrued interest.

In view of the decision taken by the National Company Law Tribunal Special Bench, New Delhi and the observation of Hon'ble Supreme Court in Chitra Sharma and Ors. Versus Union of India, 2018 (9) SCALE490 judgment, this authority has no jurisdiction to proceed in the matter further.

Since it was an assured return scheme, it does not fall within the purview of RERA authority.

Accordingly, the complaint stands disposed of with liberty to the complainant to pursue the matter before the appropriate forum. File be consigned to the registry.

Samir Kumar
(Member)
22.1.2019

Subhash Chander Kush
(Member)