

PROCEEDINGS OF THE DAY

Day and Date	Friday and 08.02.2019
Complaint No.	1045/2018 Case Titled As Kapil Lakhwara & Other Vs M/s Adel Landmarks
Complainant	Kapil Lakhwara & Other
Represented through	Complainant No.1 in person with Shri Kamal Sharma, Advocate.
Respondent	M/s Adel Landmarks
Respondent Represented	None for the respondent
Last date of hearing	First 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.

Arguments heard.

Complaint was filed on 20.09.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 04.10.2018, 29.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 29.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority.

From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.

In pursuance of the order passed in CP.No.IB-1083 (PB)/2018 in the matter of **Edelweiss Asset Reconstruction Company Limited vs. Adel Landmarks Ltd.** vide which Hon'ble President Shri M.M Kumar and Ms. Ina Malhotra Hon'ble Member (Judicial) have passed order dated 5.12.2018. The operative part of para nos.18 and 19 are reproduced as under:-

“Para no.18: We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Para No.19: The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT”.

In addition to this, as per judgment passed by Hon'ble Supreme Court on 9.8.2017 in CWP No.744/2017 in **Chitra Sharma and Ors. Vs Union of India, 2018(9) SCALE490**, where the Supreme Court has observed that:-

“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 the 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. 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)
8.2.2019

Subhash Chander Kush
(Member)