NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1974 of 2024

[Arising out of the Order dated 07.08.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi, Court-III) in I.A. No. 5939/2023 in CP/IB-113(ND)/2021]

IN THE MATTER OF:

1. **Mrs. Supriya Singh**
   D/o Shastra Pal Singh
   A-93, First Floor, Radha Krishna Lane,
   Kaushambi, Ghaziabad,
   Uttar Pradesh- 201010 **...Appellant No. 1**

2. **Mrs. Namrata Singh**
   D/o Shastra Pal Singh
   A-93, First Floor, Radha Krishna Lane,
   Kaushambi, Ghaziabad,
   Uttar Pradesh- 201010 **...Appellant No. 2**

3. **Mrs. Shilpi Sharma**
   W/o Dinesh Chandra Sharma
   SA-604, Gulmohar Towers,
   ChiranjivVihar, Ghaziabad,
   Uttar Pradesh- 201002 **...Appellant No. 3**

4. **Mr. Prabin Kumar**
   S/o Late Sh. Sheo Kumar Singh
   C1-93, Orchid Harmony,
   Applewood T-Ship,
   SP Ring Road, South Bopal,
   Ahmedabad, Gujarat- 380058 **...Appellant No. 4**

5. **Mr. Sandeep Singh Gill**
   S/o Gurmit Singh Gill
   31/75, Garden Colony, Jalandhar,
   Punjab-14403 **...Appellant No. 5**

6. **Mrs. Anjali Dabral**
   W/o Dr. Sameer Mohan Dabral
   E4/1 Sector 13, RK Puram,
   New Delhi- 110066. **...Appellant No. 6**

Versus

1. **M/s Ansal Urban Condominiums Pvt. Ltd.**
   (Through Resolution Professional
   Mr. Rajesh Ramnani)

Having its registered office at:
115, AnsalBhawan 16,
K.G. Marg, New Delhi,
Delhi, India, 110001 **...Respondent No. 1**

2. **One City Infrastructure Pvt. Ltd.**
Having its registered office at:
8-D, Hanslaya,
15 Barakhamba Road
New Delhi- 110001 **...Respondent No. 2**

Present:

For Appellant : Mr. Vivek Kumar, Advocate.

For Respondent : Mr. Shivanshu Kumar and Mr. Rajesh Ramnani, Advocates for R-1/RP.
Ms. Anuja Pethia and Mr. Rishabh Govila, Advocates for SRA.

JUDGMENT
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This Appeal is filed by six Appellants/homebuyers whose Application before the National Company Law Tribunal (NCLT), New Delhi, was rejected as per the Orders dated 07.08.2024 in IA No. 5939/2023 in CP/IB No. 113 (ND/2021), which is being impugned in this case. As per this Appeal, the Appellants are seeking, inter-alia, equitable treatment with that of other creditors in class. Specifically, they seek amendment of the Information Memorandum (IM) reflecting the units of the Appellants as cancelled and further seek that the present Appeal be allowed and the Impugned Order be set aside.

Submissions of the Appellant

2. The Appellants had entered into several flat buyer's Agreements with the Corporate Debtor on various dates, under which flats were allotted to the

Appellants. As per the Agreements, the Appellants had paid their respective consideration amount. The details of Agreement along with payments are herein below:

Sl. No.	**Name of the Allottee**	**Date of the Flat Buyer Agreement/Endorsement**	**Consideration (Amount paid to builder till date)(INR)**
1.	Shilpi Sharma	13.10.2007	35,62,609.00
2.	Supriya Singh	21.06.2013	22,93,145.09
3.	Namrata Singh	21.06.2013	23,40,852.94
4.	Prabin Kumar	03.08.2012	39,24,156
5.	Sandeep Singh Gill	20.09.2007	19,56,995
6.	Anjali Dabral	05.09.2007	22,91,533.00

3. As per the aforesaid flat buyer Agreement, the Corporate Debtor had promised to deliver the possession of the flats within a prescribed timeline. However, the possession of the respective units was never delivered to the Appellants. Aggrieved by the acts of the Corporate Debtor, the Appellants filed different complaints before the Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as UPRERA), seeking refund of the amount paid by them. The Hon'ble UPRERA passed decree in favour of the complainants (Appellants herein), the details of which are herein below:

Sl. No.	**Name of the Applicants**	**Date of issuance of Decree (Date of RC)**	**Decretal Amount**
1.	Shilpi Sharma	28.08.2019	73,04,251.74
2.	Supriya Singh	13.09.2019	37,56,023.15
3.	Namrata Singh	17.10.2019	41,17,013.21
4.	Prabin Kumar	28.11.2019	61,02,237.31
5.	Sandeep Singh Gill	25.02.2021	43,05,850.16
6.	Anjali Dabral	21.09.2020	47,05,519.84

4. Basis the above orders of UPRERA, amounts decreed in favour of the Appellants are hereunder:

Sl No.	Name of the Allottee	Amount received under the decree (INR)	Decretal Amount (INR)
1.	Shilpi Sharma	5,00,000	73,04,251.74
2.	Supriya Singh	5,00,000	37,56,023.15
3.	Namrata Singh	5,00,000	41,17,013.21
4.	Prabin Kumar	14,50,000	61,02,237.31
5.	Sandeep Singh Gill	2,50,000	43,05,850.16
6.	Anjali Dabral	3,00,000	47,05,519.84

5. It is contended by the Appellants that while they were pursuing the execution of the Decree, an Application under Section 7 of the Code was filed against the CD, which was admitted by the Adjudicating Authority (AA) on 10.03.2022.

6. Appellants, being allottees falling under the class of creditors as provided under Regulation 2 (1) (AA) of the IRP of the CIRP Regulations, 2016, filed their claims under Form-CA as provided under Regulation 8A of the said CIRP Regulation. The IRP admitted their claim, but adjusted the amount already received by the Appellants while admitting their claim. The admitted claims were as follows:

Sl No.	Name of the Applicant	Date of filing of Claim	Claim Amount	Amount Admitted
1.	Shilpi Sharma	19.04.2022	77,39,536	73,37,421.98
2.	Supriya Singh	29.03.2022	37,49,773.36	36,82,803.87
3.	Namrata Singh	29.03.2022	42,33,270.54	38,16,822.74
4.	Prabin Kumar	31.03.2022	46,52,237.00	46,52,237.00
5.	Sandeep Singh Gill	31.03.2022	40,55,850.00	38,05,850.00
6.	Anjali Dabral	08.04.2022	44,05,519.00	45,05,369.00

7. RP issued the Form –G/EOI and five EOI were received all of which were found to be defective. Form –G was revised and re-published on 23.06.2022. After various extensions in the CIRP, on 20.10.2022 in the 5th meeting of the

CoC, the matter relating to the allotment of cases similar to Appellants' cases was discussed as item no. 8 of the agenda, which is reproduced as follows:

> "……
>
> **Item No. 8**
> **Discussion on the issue of Status of Recipients of Refund Amount According to the Insolvency and Bankruptcy Code, 2016.**
>
> The RP informed the CoC Members that certain unit holders have sought refund either from RERA /Consumer Dispute Resolution forums. At the time of receipt of the partial refunds by these recipients, their units were cancelled without informing the unit holders about the same and allotted to someone else in some cases. As a result, the said recipients are no longer allotees of the said units.
>
> The Members of the Committee of Creditors with regard to determination of the status of recipients of refund either from RERA or Consumer Dispute Resolution forum(s), **whose units were cancelled without informing the unit holders** at the time of receipt of refund by them and in some cases the units were allotted to others, were of the opinion that the unilateral cancellation of the units by the Corporate Debtor on part refund of the claim amount does not stand have a legal standing and the transaction can be contested to be null and void by the unit holder as the entire claim of the buyer unit holder has not been refunded, and the claimant of the partial refund cannot prima- facie be losing the status of home buyers.
>
> The RP enquired from the Members of the Committee of Creditors that whether the said unit holders be classified as unsecured Financial Creditors or any Other Creditors but the Members of the Committee of Creditors were not clear about the answer to the question.
>
> As the matter was complicated and there could not be generalised decision on the matters, the Members of the Committee of Creditors opined that the RP and his team should try to find the legal perspective of such transactions and if felt necessary, a legal opinion be taken on the matter.
>
> ……"

8. This was also discussed in the 6th meeting of the CoC, held on 29.11.2022, and in the 7th meeting of the CoC, held on 23.12.2022, agenda item relating to the opening of the Resolution Plans was discussed. On 02.01.2023, the Appellants were sent an email with the Information

Memorandum, wherein they found that their names in the list of allottees whose units have been cancelled but these units are still vacant. The Appellant contends that, it was for the first time when the Appellants were made aware that their units have been cancelled.

9. In similar cases where unit holders, who had approached the RERA and filed their complaint, even though unit holders were paid significant amount, such units were never cancelled. In their case the units have been cancelled unilaterally and arbitrarily.

10. The RP intimated the Appellants, through the authorised representative, that their units were found cancelled in the books of accounts of Corporate Debtor, prior to the CIRP initiation and hence the same cannot be restored. It was further informed by the RP that the Appellants cannot be treated at par with other 15 homebuyers whose units were not cancelled, despite them being on the same boat.

11. The final approved Resolution Plan of Clause 6 provides that the allottees whose units have been cancelled shall be allotted unit at base selling price (BSP) of INR 4200 per sq feet of super area. Additionally, it was provided that 100% of their admitted principal amount shall be adjusted against the freshly allotted unit. The Resolution Plan further provided that the allottees shall have the option to choose from a unit within 90 days from the plan effective date. Further in the event allottees do not choose a unit for allotment as per the terms mentioned, such allottees will be entitled to refund of 50% of the principal amount in terms of Clause 6. It was also clarified that allottees

who have clear allotment and do not fall in any of the above categories, shall be allotted a unit at their original allotment rate as per their BBA or Allotment Letter.

12. Appellant contends that the AA has wrongly relied on the judgment of this Appellate Tribunal in "***Sunil Chauhan vs. Rabindra Kumar Mintri" Company Appeal No. (Ins) 407 of 2023***, to say that they could not have been treated at par with the other creditors in class. In the said judgment, the cancellation was made effective by informing the allottees. Moreover, in that case the allottees were at fault by not paying the balance amount to the Corporate Debtor. In the instant case of the Appellants, they were never informed about the cancellation. In fact, the Appellants were treated as the Financial Creditor in class, till the time the Resolution Plan was received and were also exercising their right of voting to the agendas.

13. Appellant contends that the AA has wrongly relied on the judgment of the "***K. Sashidhar vs. Indian Overseas Bank & Ors. in Civil Appeal No. 10673 of 2018***, to say that the commercial wisdom of CoC is given paramount status, when the Information Memorandum which was incorrect, basis which the Resolution Plan was approved. Had the CoC been provided with correct facts, the CoC would not have voted incorrectly. The AA has not only dismissed the Application by not following the principles of natural justice, but has also caused grave prejudice to the Appellants herein by denying their rightful ownership of the units.

14. Appellant also places reliance on the judgment of Hon'ble Supreme Court of India in the matter of "***Vishal Chelani & Ors. vs. Debashish Nanda [(2023) 10 Supreme Court Cases 395]"*** which states that

> *"to treat a particular segment of that class differently for the purposes of another enactment, on the ground that one or some of them had elected to take back the deposits together wish such interest as ordered by the competent authority, would be highly inequitable".*

Submissions of the Resolution Professional/Respondent No. 1

15. The Applicants had approached UPRERA for refund of their money along with interest from the Corporate Debtor and they secured the same Order. The Applicants went for the execution of their respective orders for refund and in turn were paid partial amount by the Corporate Debtor.

16. After initiation of CIRP, the Applicants filed their respective claims with the Resolution Professional for full amount without deducting the amount of part payment received by them from their Corporate Debtor.

17. RP carried out the verification of their claims as per the records of the Corporate Debtor and it was found that the units allotted to the Applicants were cancelled by the Corporate Debtor even prior to the initiation of CIRP period.

18. Respondent No. 1/RP admitted the balance amount to be paid to them and kept them in a separate category of creditors in a class of homebuyers.

19. The details of the flat buyer Agreement, date of RERA Order, date of cancellation of the units by the Corporate Debtor and data submission of claims with the RP are as follows:

S.No	Name of the Allottees	Date of the Flat Buyer Agreement	Date of issuance of RERA Order	Date of Cancellation of Units by CD	Date of admission of CIRP of the CD	Date of Submission of Claim with RP
1.	Shilpi Sharma	13.10.2007	24.07.2018	15.11.2019	10.03.2022	19.04.2022
2.	Supriya Singh	21.06.2013	14.03.2019	04.01.2021		29.03.2022
3.	Namrata Singh	21.06.2013	12.04.2019	04.01.2021		29.03.2022
4.	Prabin Kumar	03.08.2012	07.02.2019	04.01.2021		31.03.2022
5.	Sandeep Singh Gill	20.09.2007	20.09.2007	20.01.2022		31.03.2022
6.	Anjali Dabral	05.09.2007	11.12.2018	31.08.2021		08.04.2022

20. It is claimed by the Resolution Professional that the Applicants had come to know about the cancellation of units through the Information Memorandum only on 02.01.2023. RP contends that Appellants could have very well obtained this information even earlier from the RP.

21. The Resolution Plan submitted by Respondent No. 2/SRA was being discussed by the homebuyers and the Financial Creditors in various CoC meetings starting from the 7th CoC meeting on 23.12.2022, till its approval in the 12th CoC meeting, which was held on 03.08.2023. The CoC approved the Resolution Plan of Respondent No. 2/SRA after thorough discussion and application of their commercial wisdom. It was approved with 100% voting share including the approval from 285 homebuyers on 09.08.2023.

22. The Resolution Plan also provides for the treatment of such allottees/ Appellants whose units have been cancelled as per Clause 3.9 (11) (C) of the approved Resolution Plan.

23. It is to be noted that the units were cancelled pre-CIRP and the Appellants had full knowledge for about 10 months but they did not raise their grievance. They waited till the time the Resolution Plan provided specific treatment as dismissed in earlier paragraphs for the categories of allottees whose units were cancelled and which was approved by the CoC by 100% majority.

24. Hon'ble NCLT is concerned only with the matters relating to CIRP of the CD and any cancellation of the units done by the CD prior to the initiation of CIRP cannot be challenged before this Hon'ble NCLT.

25. RP relies upon the Judgment of Hon'ble NCLAT in ***Sunil Chauhan vs. Rabindra Kumar Mintri (supra)*** in which it was has held as follows:

> "11. The order cancelling the allotment of the Appellant has been brought on the record which indicate that the allotment was cancelled due to non-payment of balance amount by the Appellant. As noted above, the Resolution Plan contains a clause which deals with the claims which have been filed as well as which have not been filed before the Resolution Professional. As observed above, in event, the Appellant is entitled for refund of part of its amount, it is always open for the Appellant to make a request to the Resolution Professional after approval of the plan, to deal his claim as per the Resolution Plan."

26. Further IRP/RP is required to only collate all the claims filed before him and verify the same from the books of the CD as per the provisions of the Insolvency and Bankruptcy Code, 2016. The RP lacks adjudicatory powers on the claims filed before him. The RP could not have reversed the actions of cancellation taken by the Corporate Debtor prior to the initiation of CIRP.

27. It is further to be noted that the Applicants in the instant case had gone into the execution of the Order of refund of money and were made part payments by the CD prior to the initiation of CRIP.

Submissions of Respondent No. 2/SRA

28. One City Infrastructure Pvt Ltd is the Successful Resolution Applicant (SRA) in the instant case. It is claimed by the SRA that basis invitation of expression of interest (Form-G) on 21.06.2022, they filed their expression of interest. The allotment of the Applicants was shown as cancelled in the Information Memorandum. In fact, this was cancelled by the erstwhile management of the Corporate Debtor, much prior to the commencement of CIRP of the CD. However, when the CoC and the RP requested the SRA to address the concern qua the cancelled allotment in the Resolution Plan, the Respondent agreed to provide fair and equitable treatment to the said cancelled allotments. Accordingly, the cancelled units have already been dealt by the SRA under Clause 3.9 (11) (C) of the Resolution Plan.

29. The Resolution Plan was approved by the CoC with 100% majority in their 12th CoC meeting held on 03.08.2023. It is contended by the SRA that the Resolution Plan has been prepared and filed by the Resolution Applicant in compliance with Section 30 of the Code, only after looking into the claims collated and provided by the Resolution Professional in the Information Memorandum. Even though the allotments were cancelled by the erstwhile management of the Corporate Debtor, the Respondent has provided treatment to the said cancelled allottees.

30. The Resolution Plan has been duly approved by the CoC in their commercial wisdom and it is trite law that commercial wisdom of the CoC is paramount in nature and once the Resolution Plan is approved by the CoC in its commercial wisdom it is deemed to be feasible and viable.

31. It is also submitted that Section 19 of the RERA provides that an allottee can either claim the possession of unit or refund of the amount paid at the time of the booking, along with interest in the event the promoter fails to handover the possession of the units in terms of the builder buyer Agreement.

32. In the present case, the Applicant had already approached UPRERA seeking the refund of their entire amount along with interest which was awarded to them in terms of the RERA. The Applicant had admittedly accepted the partial amount from the erstwhile management, which implies that the Applicants by accepting the partial refund had acquiesced to the cancellation of the allotment. It can be presumed that once the allottee has accepted the refund, it has accepted the cancellation of the allotment. It cannot be given a colour of unilateral cancellation of the allotment.

33. Even though the Applicants were aware of the cancellation of their units, they could have approached the Hon'ble Tribunal prior to the approval of the Resolution Plan by the CoC, which they did not.

Appraisal

34. Appellant mainly seeks amendment of the Information Memorandum, which reflects that the units of the Appellant are cancelled and also

restoration of their units which were shown to be cancelled in the records of the Corporate Debtor. This is noted in their prayers at page 36 of APB, which is reproduced as follows:

> "…..
>
> (a)Allow the present Appeal;
>
> (b) Set aside the Impugned Order dated 07.08.2024 passed in IA No. 5939/2023 in CP IB-113(ND)/2021 by the Hon'ble National Company Law Tribunal, New Delhi, Bench –III.
>
> (c) Pass a direction restoring the units no. D03/08/01, D02/04/01, D03/08/03, D11/04/02, D09/05/02, D11/02/03 back to the Appellants (original allottee) in terms of the builder buyer agreement executed between Appellants and the Corporate Debtor.
>
> (d) direct the Respondent No. 1/Resolution Professional to modify/amend the Information Memorandum and include the units of the Appellants under the same category as that of the other unit holders.
>
> (e) Direct the Respondent No. 2 to make appropriate amendment in the Resolution Plan and treat the Appellants at par with the other allottees having clear allotment and allot units no. D03/08/01, D02/04/01, D03/08/03, D11/04/02, D09/05/02, D11/02/03 to the Applicant (original allottee) in terms of the builder buyer agreement executed between Appellants and the Corporate Debtor; and
>
> (f) Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the given case…"

35. It is noted that the Information Memorandum was prepared by the RP basis the records of the Corporate Debtor. On receipt of all claims, along with those of the Appellants, the Resolution Professional carried out their verification as per the records of the Corporate Debtor. It was found by the RP that the units allotted to the Applicants were cancelled by the Corporate Debtor, much prior to the initiation of CIRP against it, which becomes quite apparent from the details as reproduced below:

S. No	Name of the Allottees	Date of the Flat Buyer Agreement	Date of issuance of RERA Order	Date of Cancellation of Units by CD	Date of admission of CIRP of the CD	Date of Submission of Claim with RP
1.	Shilpi Sharma	13.10.2007	24.07.2018	15.11.2019	10.03.2022	19.04.2022
2.	Supriya Singh	21.06.2013	14.03.2019	04.01.2021		29.03.2022
3.	Namrata Singh	21.06.2013	12.04.2019	04.01.2021		29.03.2022
4.	Prabin Kumar	03.08.2012	07.02.2019	04.01.2021		31.03.2022
5.	Sandeep Singh Gill	20.09.2007	20.09.2007	20.01.2022		31.03.2022
6.	Anjali Dabral	05.09.2007	11.12.2018	31.08.2021		08.04.2022

36. It is to be noted that it is the duty of the RP to collate all the claims filed before him and verify the same from the books of the Corporate Debtor. We agree with the submission of the RP that it lacks adjudicatory powers on the claims filed before him. The RP could not have reversed the action of cancellation taken by the Corporate Debtor prior to the initiation of CIRP.

37. Even then, basis the grievance of the Appellants, RP took up the matter in the CoC, to address the concern qua the cancellation of the allotment. The grievance of the Appellants was deliberated upon in various CoC meetings. Eventually, the cancelled units were dealt by the Successful Resolution Applicant (SRA) in the Resolution Plan as per Clause 3.9 (11) (C), which is once quoted here:

> "11-For the following categories of Allottees whose claim have been admitted
>
> a. Allottees who have not been allotted a unit or not have not been provided with a cost of the unit by the corporate debtor,
>
> b. For Allottees who have a decree in their favour, and the original unit as per BBA is not available,
>
> c. **For Allottees whose unit had been cancelled prior to plan effective date, and the refund due to them had not been made, or only partial refund has been made,**

d. For Allottee whose unit is not available with the corporate debtor.

e. For Allottee with a unit in the Unsold towers as per IM,

These allottees do not have a unit allotted to them or if allotted, the allotment is invalid not available. Therefore, fresh allotment shall be done only for these cases. These Allottees/Decree Holders can choose from available units with the Corporate Debtor at a Base Selling Price (BSP) of INR 4200 per square feet of Super area. 100% of their admitted Principal Amount shall be adjusted against the freshly allotted unit. These Allottees shall have to choose from a unit within 90 days from the Plan Effective Date. In the event Allottees do not choose a unit for allotment as per the terms mentioned, such Allottees will be entitled to refund of 50% of the Principal Amount in terms of clause 6. It is clarified that Allottees who have clear allotment and do not fall in any of the above categories, shall be allotted a unit at their original allotment rate as per their BBA or allotment letter".

38. Even though the allotment were cancelled by erstwhile management of the Corporate Debtor, the Resolution Plan had provided treatment to the said cancelled allottees. And this Resolution Plan was approved by the CoC with 100% majority in their 12th CoC meeting held on 03.08.2023.

39. Resolution Plan was prepared and filed by the Resolution Applicant in compliance with Section 30 of the Code and later it has been duly approved by the CoC in its commercial wisdom. It is well settled position of law that the Resolution Plan, duly approved by the COC as per their commercial wisdom has a very limited scope of judicial review and which is circumscribed by the provisions contained in Section 31 of the Code.

40. It is factual position that the Appellants had approached UPRERA, which in turn had ordered for refund of their amounts. As per Order of UPRERA, some amounts were also paid to the Appellants by the erstwhile management as contained in their own submissions at page 14 of the appeal paper book.

41. For better appreciation of claims of the Appellants, it would be appropriate to look into the provisions of Section 19 of the RERA Act, which are extracted as follows:

> "19 (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."

In the instant case, the Appellants had already approached UPRERA, seeking refund of their entire amount, along with the interest which was decreed in their favour. The Applicant had accepted partial amount paid to them from the erstwhile management. The conduct of the allottees in accepting the refund towards their allotment, indicates that allottees have accepted the cancellation of the allotments. In this conspectus, we agree with the submissions of the Respondent that the refund, which was initiated by the erstwhile management at the instance of the Appellants, cannot be given a colour of unilateral cancellation of allotment.

42. With respect to the claim that the principles of natural justice have not been followed, the Appellants always had opportunities to raise the objections

either at the stage when they were getting part money based on the UPRERA Order or at the very beginning when CIRP process was going on and when they had an opportunity to raise the objections. It is to be noted that the Information Memorandum was based on the Corporate Debtor's record and the Appellants by participating in the CoC meetings were deemed to have the knowledge of the information contained therein. Even though they had brought out their grievances before the RP, who in turn took it up in the meeting of the CoC, they cannot claim that they did not have the knowledge of the cancellation of their units till the time of the 5th CoC meeting and there was violation of principles of natural justice.

43. It is to be noted that the Appellants did not challenge their cancellation of allotment, which was pre-CIRP. It is also clear from records that they have accepted the partial payments basis the decretal amount of UPRERA. Now their primary grievance is qua the cancellation of their respective units. Since earlier they had accepted the money and while filing their claims they misrepresented and filed full claim and are now seeking the revocation of the cancellation of the units. If they were aggrieved from pre-CIRP cancellation of their units, they could have immediately approached the NCLT. However, they first participated in CIRP by participating in CoC meetings and waited till the time the Resolution Plan provided specific treatment to these categories of allottees, which was approved by the CoC with 100% majority on 09.08.2023. If they were aggrieved of the cancellation, as noted earlier they could have challenged immediately.

44. It is also contended by the Appellants that there is a violation of the UPRERA Decree. The Appellants contend that as per UPRERA Decree, only partial payment was made and therefore the Corporate Debtor has not complied with the Orders of the UPRERA. On the contrary, it is to be noted that the Respondent had acknowledged that a Decree was passed under UPRERA in favour of the Appellants. However, we agree with their argument that Decree did not specifically override the cancellation of the units or prevent the Corporate Debtor from taking action under the Insolvency and Bankruptcy Code, 2016. In fact, this Decree was prior to institution of insolvency and part payment was also made by the erstwhile management. The CoC, RP could not have revoked the cancellation as it was beyond their jurisdiction. In fact, they had gone ahead as per the information collated from the records of the Corporate Debtor. Therefore, the contention of the Appellant that there is a failure to comply with the UPRERA Decree cannot be accepted.

45. Appellant also contends that the Information Memorandum which was used to determine the Resolution Plan contained incorrect facts regarding the Appellant's unit. They argue that, had correct information been provided, the CoC may not have approved the Resolution Plan. Per contra, the Respondents argue that the Information Memorandum reflected the status of the Appellant's claim including the cancellation of their units. The CoC had access to this Information Memorandum, and made an informed decision based on the available data. Therefore, this contention also cannot be accepted.

46. Now we look into the judicial precedents cited by the contrasting parties. It is contended that the AA has wrongly relied on the judgment of this Appellate Tribunal in ***"Sunil Chauhan vs. Rabindra Kumar Mintri" (supra)***, wherein the cancellation was made effective by informing the allottees. Appellant claims that the said case is the case where the allottees were at fault by not paying the balance amount to the Corporate Debtor. The facts of the two cases are distinguishable and we accept the contention of this Appellant that this judgment cannot be relied upon in the facts of the case. But even then it doesn't support the cause of the Appellant due to different facts as noted in other parts of this judgment.

47. We find that the reliance placed by the Appellant on the judgment of Hon'ble Supreme Court in "***Vishal Chelani (supra)***" also doesn't support the present case as in the said case the units allotted to the homebuyers were not cancelled and in that case the Resolution Professional had not admitted the claims of the allottees under the category of creditors in a class. But in the present case the units allotted to the Appellants were already cancelled prior to the initiation of CIRP of the Corporate Debtor and the RP has already admitted the claims of the Applicants in the category of creditors in a class.

48. It is further contended by the Appellant that the AA has wrongly relied on the judgment of "***K. Sashidhar vs. Indian Overseas Bank (supra)"*** to say that the commercial wisdom of CoC is given paramount status. We cannot find justification in the claim of the Appellants that the Information Memorandum was based on wrong facts and therefore commercial wisdom

cannot be paramount as we don't find an infirmity in the Information Memorandum.

Conclusion and Order

49. As per the analysis noted herein, the cancellation of the units was based on the UPRERA's Order which was not challenged. The Information Memorandum contained this information and CoC could not have revoked the cancellation and acted within its commercial wisdom approving the Resolution Plan. We, therefore, cannot find any fault in the due process which was followed by AA. The Appeal lacks merit and is therefore dismissed. There are no orders as to cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
25th November, 2024.

pawan/sr