IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 23582 OF 2023

Honest Shelters Private Limited ... Applicant

In the matter between:
Action Barter Private Limited ... Petitioner
vs.
Shree Ram Urban Infrastructure Limited and others ... Respondents

WITH
OFFICIAL LIQUIDATOR REPORT NO. 144 OF 2023
IN
COMPANY PETITION NO. 1066 OF 2015

Mr. Mayur Khandeparkar a/w. Mr. Rubin Vakil, Ms. Sonam Mhatre, Ms. Saloni Sulakhe and Mr. Raman Deshmukh, i/b. Dhaval Vussonji & Associates for applicant.

Mr. Rushabh Sheth for official liquidator.

Ms. Shoma Maitra a/w. Ms. Samruddhi Mali, i/b. Wadia Ghandy & Co. for respondent No.3 in CP/1066/2015.

CORAM : MANISH PITALE, J.
DATE : 02nd JANUARY, 2024

P.C. :

. Heard learned counsel for the parties. The present application as well as official liquidator report shall stand disposed of by this order.

2. At the outset, the learned counsel appearing for the applicant-Honest Shelters Private Limited handed over a draft schedule of amendment, seeking amendment of the application as also Exhibit A annexed to the application, in the light of the subsequent events and particularly in the light of the order dated 06.12.2023 passed by the Supreme Court in Civil Appeal No.8093 of 2023 [arising out of SLP (Civil) No. 8674 of 2023].

3. This Court has considered the draft amendment and there is no serious objection raised on behalf of the official liquidator with regard to the proposed amendment.

4. The proposed amendment seeks to bring clarity to the contentions raised on behalf of the applicant, particularly in the light of the aforesaid order passed by the Supreme Court.

5. In view of the above, the applicant is permitted to carry out amendment to the application as per the draft schedule of amendment tendered before this Court. The draft schedule of amendment shall be e-filed within one week from today. The amendment be carried out within one week from today. Re-verification is dispensed with.

6. The contentions raised on behalf of the parties and the documentary material on record, show that a sale certificate was issued in favour of the applicant on 26.06.2019 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). A perusal of the sale certificate shows that the entire project and immovable properties pertaining to a real estate project titled 'Palais Royale' were the subject matter of the sale certificate. It was specifically recorded that the entire constructed buildings called 'Palais Royale', structures thereon, etc. alongwith first and exclusive charge on all receivables/cash flows arising from sale of the developed area under the project was sold in favour of the applicant.

7. Thereafter, the company in liquidation underwent Corporate Insolvency Resolution Process (CIRP) and the petition was admitted on

06.11.2019. In that context, the Insolvency Resolution Professional (IRP) staked claim to the assets of the said project, including 142 flats. In that light, a proceeding was initiated in this Court by the applicant herein by filing Interim Application (Lodging) No.36348 of 2022. The applicant sought specific directions against the official liquidator to furnish and disclose the assets of the company in liquidation and further to restrain the official liquidator from, in any manner, handing over any part or portion of the property. The said proceeding was contested and by an order dated 06.04.2023, this Court, *inter alia*, gave finding as follows:

> "44. These two circumstances would cumulatively indicate that, on the one hand, the company in liquidation asserted that it had sold substantial number of apartments to the flat purchasers and, on the other hand, the secured creditor positively asserted that it had given permission for sale of 142 flats by the company in liquidation and out of those 142 unis, 69 flat purchasers had mortgaged their flats to Indiabulls, and it professed to reserve the right to take action under those mortgages. An inference, therefore, *prima facie*, becomes sustainable that the company in liquidation had divested its ownership over the said 142 flats. Resultantly, the said 142 flats cannot, *ex-facie*, form part of the assets of the company in liquidation. Consequently, Respondent No.2 - IRP cannot claim right to have the custody of those 142 flats as a part of the liquidation assets."

8. The operative portion of the aforesaid order dated 06.04.2023 reads as follows:

> "(i) The Application stands partly allowed.
>
> (ii) The Official Liquidator shall handover to the IRP – Respondent No.2 (a) records of the company; (b) movables stored and sealed at 4th floor of under construction building 'Palais Royale'.
>
> (iii) The Official Liquidator shall handover three common access

to the Applicant.

(iv) The Official Liquidator shall retain the custody of the flats in under construction building 'Palais Royale', which are in his possession, except Flat Nos. 65NE and 21NE subject to the orders which may be passed.

(v) The Applicant, IRP - Respondent No.2 and any other party having claim over the flats in the custody of the Official Liquidator are at liberty to take out appropriate proceedings to establish their claim/s.

(vi) The Official Liquidator shall handover possession of the flats in his custody to the parties as may be directed in the orders which may be passed in such proceedings.

(vii) If no orders as to delivery of possession of the flats are passed within a period of six months from today, the Official Liquidator shall file appropriate Official Liquidator Report seeking directions from this Court.

(viii) The expenses and charges of the Official Liquidator shall be borne by the Applicant.

(ix) Interim Application stands disposed.”

9. In pursuance of the direction granted at clause (iv) of the abovequoted operative portion of the order dated 06.04.2023, the applicant moved the Real Estate Regulatory Authority (RERA) by filing a complaint seeking a specific direction against respondent-official liquidator to handover possession of 54 flats to the applicant in its capacity as promoter of the project. The learned counsel appearing for the applicant has emphasized upon the contents of the said application, particularly paragraph Nos.4 and 5 thereof, wherein it is stated that the applicant moved the said application before RERA as an allottee of 54 flats from allottees who had defaulted on the loans from the secured creditor.

10. In the context of the aforesaid application, RERA passed an order on 19.07.2023, effectively allowing the aforesaid application of the applicant

and directing the official liquidator to handover the possession of the flats. It appears that since the said order dated 19.07.2023 was on the aforesaid application/complaint moved by the applicant before RERA, concerning possession of 54 flats, some confusion has arisen in the matter.

11. This is in the backdrop of an earlier order dated 20.03.2023 passed by RERA on complaints moved by individual allottees. Much emphasis is placed on behalf of the applicant on the aforesaid order dated 20.03.2023, wherein RERA specifically made observations at paragraph Nos.17B, 18 and 19, indicating that the applicant i.e. the respondent No.1 in the said proceeding before RERA, was under an obligation to complete the entire 142 incomplete apartments and to handover possession of the same to the respective allottees. It was submitted that the order dated 19.07.2023 ought to be read alongwith the aforesaid order dated 20.03.2023, so that the directions issued by the Supreme Court in the order dated 06.12.2023 lead to the present application being allowed in the context of the entire 142 flats.

12. In this context, attention of this Court is invited to the order dated 06.12.2023 passed by the Supreme Court. It was on a special leave petition filed by the IRP challenging the aforementioned order dated 06.04.2023 passed by this Court. By referring to the contents of the said order, it was submitted that the Supreme Court had directed the official liquidator to take necessary steps to facilitate the working out of the orders dated 20.03.2023 and 19.07.2023 passed by RERA.

13. Learned counsel appearing for the applicant submits that in the light of the order dated 06.12.2023 passed by the Supreme Court, there was no

longer any confusion and that the official liquidator ought to handover possession of the aforesaid 142 flats in the said project.

14. The present official liquidator report also refers to the aforementioned material and seeks appropriate directions from this Court. The learned counsel for the official liquidator submitted that upon the order dated 06.12.2023 passed by the Supreme Court, this Court may issue appropriate directions, which shall be abided by the official liquidator. It is indicated that in the event this Court directs possession of all the 142 flats to be handed over to the applicant, appropriate direction may be issued about the applicant bearing the expenses of the agency engaged by the official liquidator for security purpose, concerning the said project.

15. This Court has already quoted hereinabove the relevant portion of the order dated 06.04.2023 passed in Interim Application (Lodging) No.36348 of 2022, moved on behalf of the applicant herein. The observations and findings referred to in paragraph No.44 of the said order, quoted hereinabove, make it sufficiently clear that the IRP cannot interfere with the claim made by the applicant hereinabove, pertaining to the aforesaid 142 flats. In fact, the order dated 06.12.2023 passed by the Supreme Court in Civil Appeal No.8093 of 2023 [arising out of SLP (Civil) No. 8674 of 2023], confirms the said order and it has further clarified the position with regard to the aforesaid 142 flats.

16. It appears that in the interaction that took place between the applicant and the official liquidator, after the aforementioned orders were passed, there was some confusion whether the possession of 142 flats was to be handed over as the order dated 19.07.2023 passed by RERA concerned 54

flats, or the direction issued to the official liquidator in the order dated 06.12.2023 passed by the Supreme Court, covered all the 142 flats.

17. Having perused the material on record, this Court finds that the observations made by the Supreme Court in the order dated 06.12.2023, have put to rest confusion, if any, that could have existed, in the light of the order dated 19.07.2023 passed by RERA. It would be appropriate to refer to the following relevant portion of the order of the Supreme Court in the said proceeding:

> " We may note that a relevant aspect is that on 26.06.2019, a sale certificate was issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) in terms whereof while giving the description of the immovable property as collectively forming part of plots No. 5B and 6, 142 apartments in the Sky and Manor situated in Worli Estate have been specifically excluded. Reasons for this is that qua these flats the work is assigned to respondent No. 1 and there are flat buyers who made payment in respect thereof. The orders of Real Estate Regulatory Authority (RERA) dated 20.03.2023 and 19.07.2023 required to complete the project and handover possession to the flat owners. The obligations of the flat buyers would be governed by their agreements. It is perceived that the impugned order would amount to revisiting this issue by the NCLT.
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> We are of the view that since the process by the NCLT under the Insolvency and Bankruptcy Code, 2016 (the "I&B Code, 2016) commences on 06.11.2019 and the sale certificate was issued on 26.06.2019, the rights of respondent No.1 and the flat buyers cannot be affected by this process. Thus the NCLT is not to examine these aspects which apparently troubles the parties.
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> In view of our order aforesaid, we believe that there is clarity on this aspect and no further directions are required in that behalf and respondent No. 1 will proceed in

> pursuance to the RERA orders. The impugned order stands modified/clarified to that extent.
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> The Official Liquidator will take necessary action to facilitate the working out of the aforesaid RERA Orders.
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> The appeal stands disposed of.
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> All applications stand disposed of in view of order passed above."

18. This Court is of the opinion that since the Supreme Court specifically referred to both the orders dated 20.03.2023 and 19.07.2023 passed by RERA, the official liquidator is required to abide by both the orders and therefore, to handover possession of 142 flats to the applicant. It would be appropriate to refer to the relevant portion of the order dated 20.03.2023. The relevant portion of the said order reads as follows:

> "17B. The Authority would now deal with the issue at para No.8(2) that is whether the amendment application of the Complainant at Sr. No.2 is maintainable. The Complainant at Sr. No.2 has sought to amend its original application in view of certain additional facts and issues that have arisen. In brief the amendment sought are as below:
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> a. To include the flat No. 42 NW in the 142 flats with the Respondent No.2 (Official Liquidator herein);
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> b. That the Respondent No.2 is liable to handover possession to Respondent No.1;
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> c. That the Respondent No.2 be directed to handover possession to Respondent No.1;
>
> d. That the Respondent No.1 be directed to complete construction of the flat No. 42 NW and obtain OC;
>
> e. That the Respondent No.1 be directed to execute agreement for sale.

At the cost of repetition, the said Project has travelled from the Erstwhile Promoter to IHFL (lender financial institution) and from there onwards to Respondent No.1 by NO Bombay High Court. The Authority sees no reason to engage with these issues as are following the process under the SRAFAESI Act and relevant orders of the Hon'ble sought to be made out in the amendment application of the Complainant at Sr. No.2 herein as the same stands settled. However, the Authority would like to reiterate that the Respondent No.1 would comply with all the responsibilities and obligations including handing over possession under RERA that accrue upon them subsequent to taking possession of the property. With regard to the completion of the said Project and execution of various documents mandated under RERA the same need not be repeated here as they have been dealt with in the order. Thus, the issue at para No. 8(2) is answered in negative.

18. Further, the Complainant at Sr. No. 1 has also sought reliefs under Section 19 which essentially relates to obtaining information on various aspects of the said Project including stage wise completion and various time schedules for the same. The Authority would hereby direct the Respondent No.1 to provide the Complainant at Sr. No. 1/ Allottee with sanction plans, layout plans and also a detailed stage wise completion time schedule. Needless to say, the Respondent No.1 shall also abide by the provisions of RERA with respect to formation of Society and handing over of common amenities / facilities.

19. That the Respondent No.1 has raised the issue of the Complainant at Sr. No. 1 not having paid a certain sum of money. The Authority observes that the Complainant at Sr. No. 1 has paid up that amount but into an account which is not a designated account as declared by the Respondent No.1 herein. The Authority hereby directs the Complainant at Sr. No. 1 to ensure that all sums due are paid into the designated account as specified by the Respondent No.1 herein. It is also noted that all

> payments due and payable towards the apartments/flats booked under the said Project by the Complainants shall become due and payable to the Respondent No.1 as the Respondent No.1 is also committed to complete the 142 incomplete apartments pre- sold by the Erstwhile Promoter and handover possession to the respective Allottees within the time lines submitted before this Authority i.e. on or before 31.12.2023. Needless to say, that Respondent No.1 shall endeavour and shall be solely responsible to handover possession to the Allottees who are in compliance to the agreement for sale by the date now given on the MahaRERA project registration webpage of the said Project."

19. A perusal of the abovequoted portion of the order dated 20.03.2023 of RERA, shows that RERA specifically took note of the obligation cast upon the applicant to complete the said 142 incomplete flats and to handover possession of the same to the respective allottees.

20. Therefore, this Court finds that the official liquidator, while abiding by the directions issued by the Supreme Court in the order dated 06.12.2023, ought to hand over possession of all the 142 flats in the said project. In fact, in the light of the aforesaid order of the Supreme Court dated 06.12.2023, the applicant has sought appropriate amendment in the present application, which has been already granted by this Court hereinabove.

21. It is evident that reference to 54 flats in the order dated 19.07.2023 pertains to only those flats in respect of which, the applicant was constrained to approach RERA as an allottee of the said flats. This aspect need not create any confusion as regards entitlement and obligation of the applicant as per sale certificate dated 26.06.2019. When the aforesaid aspect of the matter is appreciated in the light of the order dated 20.03.2023 passed by

RERA, read with order dated 06.12.2023 passed by the Supreme Court, there is no scope for any further confusion.

22. In view of the above, the present application is allowed in terms of prayer clause (a), which reads as follows:

> "a. This Hon'ble Court be pleased to order and direct Respondent No.1 (i.e. the office of the Official Liquidator) to handover possession of the Subject Flats more particularly identified in Exhibit A to the Applicant within a period of 7 days;"

23. As regards the specific request made on behalf of the official liquidator, pertaining to costs of engaging the security agency, it is brought to the notice of this Court that the applicant has already paid such charges upto 30.04.2022. It is submitted on behalf of the applicant that although the liability to make payment towards security agency, is not that of the applicant, the dues, as may be claimed by the official liquidator from 01.05.2022 onwards, shall be paid. It is submitted that the applicant may be granted liberty to raise appropriate claim in that regard in CIRP proceeding as CIRP or liquidation charges under the Insolvency and Bankruptcy Code, 2016. In that light, the applicant is directed to make payment, as demanded by the official liquidator, to the security agency with liberty, as aforesaid.

24. It is further directed that the additional affidavit on behalf of the applicant dated 20.12.2023 shall be e-filed within one week from today.

25. The interim application and the official liquidator report stand disposed of in above terms.

(MANISH PITALE, J.)

PRIYA KAMBLI *Priya Kambli*