

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION

OFFICIAL ASSIGNEE REPORT NO.3 OF 2024
IN
INSOLVENCY PETITION NO.10 OF 2017

RE : SHAHANAWAZ SARFARAZ KHAN)...INSOLVENT
(OWN PETITIONER)

Mr. Anil Bagwe, Advocate for the Insolvent.

Ms. C.J. Bhatt, Official Assignee, a/w Mr. Arun Kesarkar, Deputy Official Assignee, present in Court.

Ms. M.R. Parkar, Insolvency Registrar, present in Court.

CORAM : ABHAY AHUJA, J.

DATE : 19 MARCH, 2024.

PC. :

1. This Official Assignee's Report seeks the following prayers :

“(a) that this Hon’ble Court be pleased to declare that the Agreement for Sale dated 1st March, 2016 which was executed between M/s. Sagar Developers & Realtors through its proprietor Shahanawaz Sarfaraz Khan, the Insolvent and Mr. Rohit Sevaklal Jaiswal, purchaser in respect of residential premises i.e. Flat No.208, Second floor, building known as Akash Sagar Apartment, Plot No.21, Hissa No.12, Housing No.1154, Unit No.0009, Section 12D, Gaothan Bonkode, Koperkhairane, Navi Mumbai is null and void and not binding on the Official Assignee;

(b) if prayer clause (a) is in affirmative, the Official Assignee may be permitted to take formal/physical possession of Flat No.208 from whomsoever found in possession with the help of the concerned police station.

(c) if prayer clause (a) & (b) is in affirmative, the Official Assignee may be permitted to sell the said Flat No.208 by public auction or private treaty to recover the amount as per present market rate for the benefit of general Creditors of the Insolvent and may be permitted to appoint valuer from the panel of office of the Prothonotary and Senior Master for valuation of the said Flat No.208 and his professional fees for such valuation may be borne by Insolvent.

(d) if the prayer (a) is in affirmative, the Official Assignee may be directed to issue show cause notice as to why an order for his committal to jail should not be made against the Insolvent viz. Shahanawaz Sarfaraz Khan for having failed to disclose the information about Flat No.208 during the private examination and for not complying the requisitions as well as not filed schedule of assets and liabilities and for not attending and co-operating with the Official Assignee in Insolvency Proceeding.

(e) If prayer Clause (a) is in negative, the Insolvent be directed to deposit the total consideration amount as per market value of the said Flat No.208 as per present market rate with the Official Assignee;

2. It has been submitted that after the Insolvent had been declared as such by order dated 14th June 2018, transactions had come to the knowledge of the Official Assignee which have taken place within two years prior to the Insolvent being adjudged as such and therefore the same be declared to be void.

3. In respect of one such transaction, it has been submitted on behalf of the learned Official Assignee that residential Flat No.208 on 2nd floor of building known as Akash Sagar Apartment (the “said Flat”) on Plot No.21,

Hissa No.12, Housing No.1154, Unit No.0009, Section-12D, Gaathan Bonkode, Koperkhairane, Navi Mumbai, had been agreed to be sold by Agreement for Sale dated 1st March 2016 by the Insolvent as proprietor of M/s.Sagar Developers and Realtors to one Mr.Rohit Sevaklal Jaiswal. Since the said transaction falls within the two year clawback period, a direction is sought that the said transaction be declared void and not binding on the Official Assignee and that the Official Assignee be permitted to take formal /physical possession of the said flat from whomsoever found in possession with the help of the police and thereafter to sell the same either by public auction or by private treaty to recover the amount for the benefit of general creditors and for other connected reliefs.

4. Mr.Bagwe, learned Counsel, appears for the Insolvent and submits that the purchaser of the said flat has already sold the said flat to one Mr.Ataur Rahman Anisur Rahaman Shaikh, who is at present in occupation of the said premises, and therefore, this Court issue notice to the said purchaser as well.

5. Learned Official Assignee has, however, drawn the attention of this Court to a communication dated 13th December 2023 from Mr.Ataur Rahman Anisur Rahaman Shaikh to the Official Assignee where the said

Mr.Shaikh, with respect to the Insolvency Petition No.10 of 2017, has submitted that he is authorized person of Mr.Ujjain Rohit Jaiswal and had submitted the registered agreement dated 1st March 2016 between M/s.Sagar Developers and Realtors and Rohit Sevaklal Jaiswal and also the authorization letter dated 8th December 2023.

6. *Prima facie*, it appears that Mr.Rohit Sevaklal Jaiswal has created third party interest only to obstruct the insolvency proceedings pursuant to the adjudication of the Insolvent as such.

7. Accordingly, issue notices to Mr.Rohit Sevaklal Jaiswal, Mr.Ujjain Rohit Jaiswal as well as Mr.Ataur Rahman Anisur Rahaman Shaikh to remain present in this Court on the next date. List on **16th April 2024**.

8. In the meanwhile, all concerned are directed not to in any manner, whatsoever, deal with or dispose of the said flat either by themselves or through their agents / attorneys.

(ABHAY AHUJA, J.)