

Amit Nehra & Anr. Vs. Pawan Kumar Garg & Ors.

Civil Appeal No. 4296 of 2025 · Supreme Court of India · 2025-09-09 · Sanjay Kumar · Satish Chandra Sharma · F2J-C-1534

Full judgment text

Amit Nehra & Anr. Vs. Pawan Kumar Garg & Ors.

[Civil Appeal No. 4296 of 2025]

Satish Chandra Sharma, J.

STATEMENT OF FACTS

1. This Civil Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (the "IBC") is filed against the judgment and final order dated 10.01.2025 passed by the National Company Law Appellate Tribunal, New Delhi (the "NCLAT") in Company Appeal (AT) (Insolvency) No. 1365 of 2023, whereby the NCLAT affirmed the decision of the National Company Law Tribunal, Principal Bench, New Delhi (the "NCLT") rejecting the Appellants claim for possession of their residential apartment in the real estate project of M/s Puma Realtors Private Limited (the "Corporate Debtor").
2. The erstwhile Corporate Debtor, M/s Puma Realtors Private Limited, an IREO Group company, undertook development of integrated residential townships in Punjab, including the project IREO Rise (Gardenia) situated in Sector 99, SAS Nagar, Mohali. The project, conceived as a modern residential complex, envisaged delivery of multiple residential blocks with allied amenities and facilities.
3. The Appellants both residents of Bengaluru, booked an apartment in the said project in the year 2010. On 27.05.2011, they executed an Apartment Buyer's Agreement with the Corporate Debtor for purchase of Apartment No. GBD-00-001 in Block D. Against the total sale consideration of Rs. 60,06,368/-, the Appellants paid Rs. 57,56,684/-, constituting almost the entirety of the contractual amount, the balance being agreed to be adjusted on account of delay in delivery of possession.
4. As per the buyer's agreement, possession was to be handed over on or before 27.11.2013. The Corporate Debtor, however, failed to deliver possession within the agreed period, or thereafter. Left with no option, the Appellants instituted Consumer Complaint No. 279 of 2018 before the State Consumer Disputes Redressal Commission, Chandigarh, inter alia seeking refund of the amount paid along with interest and compensation.
5. While the aforesaid proceedings were pending, on 17.10.2018, the NCLT admitted an application under Section 7 of the IBC bearing CP(IB) No. 934 (PB) of 2018 against the Corporate Debtor, thereby, commencing the Corporate Insolvency Resolution Process (the "CIRP") in respect of M/s Puma Realtors Private Limited. Considering the foregoing, the State Consumer Disputes Redressal Commission, Chandigarh, vide order dated 13.12.2018, disposed of the complaint with liberty reserved to the Appellants to pursue their claim before the competent authority in the CIRP proceedings.
6. Pursuant thereto, the Interim Resolution Professional issued a public announcement on 22.10.2018 calling upon all creditors, including homebuyers, to submit their claims in the prescribed form. The Appellants, being allottee of both a plot in the "IREO Hamlet" project and the present apartment in "IREO Rise (Gardenia)," initially submitted their claim qua the plot on 29.10.2018. In so far as the apartment is concerned, the Appellants authorised representative, Col. K.K. Verma (father of Appellant No. 2), physically submitted Form-CA together with supporting documents on 11.01.2019 at the project office of the Corporate Debtor at Mohali. The Respondent(s), however, dispute this filing, asserting that no such physical claim was received at the notified address of the Resolution Professional.
7. Be that as it may, on 31.01.2020, the Resolution Professional, citing incomplete records of the Corporate Debtor, addressed an email inviting creditors to resubmit claims. Acting thereupon, the Appellants resubmitted their claim through email on 07.02.2020. Thereafter, on 30.04.2020, the Resolution Professional published the list of financial creditors, wherein the Appellants name was reflected at Serial No. 636, with their claim duly admitted to the extent of Rs. 57,56,684/-.

8. The Resolution Plan submitted by Respondent No(s). 2 and 3/Successful Resolution Applicant ("One City Infrastructure Pvt. Ltd." and "APM Infrastructure Pvt. Ltd.") was approved by the Committee of Creditors on 23.08.2019 and subsequently approved by the NCLT vide order dated 01.06.2021. As per the Resolution Plan, the treatment of homebuyer claims was governed by Clause 18.4, with distinct provisions for timely claims and belated claims.

9. Despite the admitted inclusion of the Appellants claim in the list of financial creditors, possession of the allotted apartment was not delivered. Constrained thereby, the Appellants approached the Adjudicating Authority seeking directions to the Resolution Professional and the Successful Resolution Applicant for execution of the conveyance deed and handover of possession, which was rejected. Their appeal before the NCLAT met with the same fate and was dismissed, resulting in the impugned order now under challenge before us.

SUBMISSIONS BY THE APPELLANTS

10. Learned Counsel for the Appellants contends that the entire approach of the Adjudicating Authority and the NCLAT is vitiated by a fundamental misappreciation of facts and misapplication of the relevant clauses of the approved Resolution Plan. It is urged that the Appellants are bona fide homebuyers, who, having paid a sum of Rs. 57,56,684/- out of the total consideration of Rs. 60,06,368/-, have acquired a vested right in the apartment allotted to them in IREO Rise (Gardenia).

11. It is emphasized that the Appellants claim was first submitted through their authorized representative on 11.01.2019, immediately upon withdrawal of their consumer complaint, and in any event, was resubmitted pursuant to email of the Resolution Professional inviting homebuyers/financial creditors to resubmit claims, on 07.02.2020. The said claim stood verified and admitted, as is borne out by the list of financial creditors published on 30.04.2020, where the Appellants appear at Serial No. 636 whereby their claim stood admitted to the extent of Rs. 57,56,684/-. Once their claim was duly verified and admitted, the Appellants submit that there remained no basis for treating them under Clause 18.4(xi) of the plan, which governs cases of unverified or uninformed claims.

12. Learned Counsel submits that Clause 18.4(xi) applies only in cases where the allottee has not filed a claim with the Resolution Professional, or having filed, it has not been verified, or having been verified, it has not been informed to the Resolution Applicant. By contrast, Clause 18.4(vi)(a) governs cases of allottees whose claims stand verified and admitted. The Appellants, therefore, are entitled to delivery of possession of the apartment or an equivalent alternative unit, and not to a reduced refund of 50% of the total consideration.

13. It is further urged that the Resolution Professional himself acknowledged the difficulty of incomplete records by way of the email dated 31.01.2020, and invited resubmission of claims. Pursuant thereto, the Appellants resubmitted their Form-CA, which stood accepted. Once the Resolution Professional himself had adopted such course, the Respondent(s) cannot now be heard to allege that the Appellants claim is 'belated'.

14. Learned Counsel relies upon *Puneet Kaur v. K.V. Developers Pvt. Ltd. & Ors.*, 2022 SCC Online NCLAT 245 to contend that non-consideration of claims which are reflected in the record leads to inequitable and unfair resolution. It would now be unfair to relegate homebuyer(s) claims to the residual or discretionary category of refund.

15. Learned Counsel further submits that the NCLAT, in mechanically treating the Appellants as belated claimants, disregarded their verified inclusion in the list of creditors and thereby inflicted grave injustice by depriving bona-fide homebuyers of their rightful allotment despite substantial amount having been paid. Relegating the Appellants to a reduced refund, despite the claim being admitted by Resolution Professional, undermines both the resolution plan and the scheme of the code.

SUBMISSIONS BY THE RESPONDENT(S)

16. Per contra, Learned Counsel appearing for the Resolution Professional and the Successful Resolution Applicant (Respondent No(s). 2 and 3) submits that the Appellants failed to file any valid claim in respect of their apartment within the statutory timelines prescribed by the Code and the public announcement dated 22.10.2018. The Interim Resolution Professional categorically stipulated in the aforesaid public announcement, that claims be submitted either by electronic means or at the notified address in New Delhi. The alleged physical filing at the Mohali project office on 11.01.2019 is denied, on the ground that neither the Resolution Professional nor his staff operated from the Mohali

address.

17. Learned Counsel assert that the Form-CA relied upon by the Appellants itself calculates interest upto 07.02.2020, demonstrating preparation and filing only on that date. It is urged that this is clear evidence that the form was in fact prepared and filed only on that date, and any plea of an earlier submission is an afterthought to overcome limitation.

18. It is further urged that by the time the Appellants filed their claim on 07.02.2020, the Resolution Plan had already been approved by the Committee of Creditors on 23.08.2019. Consequently, the Appellants claim fell squarely within the ambit of Clause 18.4(xi) and 18.4(xix) of the Resolution Plan, entitling them only to a refund of 50% of the principal sum.

19. It is also contended that the Appellants had knowledge of the public announcement and had in fact filed a claim for their plot in the IREO Hamlet project on 29.10.2018. Having been aware of the process, they deliberately chose not to file a claim for the apartment until February 2020. Having slept over their rights, the Appellants cannot now seek parity with those allottees who filed their claims within time.

20. The Respondent(s), therefore, submit that the findings of the Adjudicating Authority and the Appellate Tribunal are unexceptionable, having correctly applied Clause 18.4(xi) of the Resolution Plan to the facts at hand. It is urged that the present appeal deserves to be dismissed.

FINDINGS OF THE NCLT

21. The Appellants, aggrieved by the failure to deliver possession of their allotted apartment despite substantial consideration being paid, filed an application before the NCLT being I.A. No. 5579 of 2021 in CP (IB) No. 934(PB)/2018, seeking, inter alia, directions to the Resolution Professional and the Successful Resolution Applicants to execute the conveyance deed in their favour and to hand over physical possession of the apartment GBD-00-001 (Block D), IREO Rise (Gardenia), Mohali.

22. Primarily, the Appellants contended that they had duly submitted their claim in Form-CA on 11.01.2019 at the Mohali project office, and in any event resubmitted it on 07.02.2020 pursuant to the Resolution Professional's email dated 31.01.2020 inviting homebuyers who had not filed their claim, to submit their claim within six months from the date of approval of the Resolution Plan by NCLT.

It was contended by the Appellants that their claim stood verified and admitted by the Resolution Professional, and was accordingly reflected in the list of financial creditors published on 30.04.2020. Hence, they could not be relegated to the restrictive treatment as per clause 18.4(xi) of the Resolution Plan, and therefore, the Appellants are entitled either the aforesaid apartment or the amount reflecting in the list of creditors along with interest till the date of realization.

23. The Resolution Professional and the Successful Resolution Applicant, however, opposed the application, denying that any claim had been filed on 11.01.2019, and asserting that the only claim filed by the Appellants was on 07.02.2020, well after the Committee of Creditors had approved the Resolution Plan on 23.08.2019. It was argued that the Appellants claim was therefore squarely covered by Clause 18.4(xi), which provided for refund of only 50% of the principal amount paid.

24. Vide order dated 26.07.2023, the Adjudicating Authority rejected the application. It recorded that there was no proof to substantiate the assertion of a claim having been filed on 11.01.2019 and held that the claim was in fact filed only on 07.02.2020, subsequent to approval of the Resolution Plan by the Committee of Creditors on 23.08.2019. Noting that the Resolution Plan had been duly approved and attained finality, the NCLT held that the Appellants claim was to be dealt with strictly in accordance with Clause 18.4(xi) of the Resolution Plan, entitling them only to refund of 50% of the principal sum.

FINDINGS OF THE NCLAT

25. Aggrieved thereby, the Appellants preferred Company Appeal (AT) (Insolvency) No. 1365 of 2023 before the NCLAT challenging the order of the NCLT. They reiterated that their claim had been submitted on 11.01.2019 and in any event resubmitted on 07.02.2020 pursuant to the Resolution Professional's communication dated 31.01.2020 inviting homebuyers who had not filed their claim, to submit their claims within six months from the date of approval of the Resolution Plan by NCLT. Relying on the list of creditors dated 30.04.2020, wherein their claim was duly admitted to the extent of Rs. 57,56,684/- the Appellants contended that they could not be placed under Clause 18.4(xi) of the

Resolution Plan. NCLAT, however, did not find merit with these submissions.

26. Vide judgment dated 10.01.2025, the NCLAT dismissed the appeal. It observed that the Appellants had admittedly not filed their claim within the period stipulated in the public announcement. It further noted that the plea of physical filing at the Mohali office on 11.01.2019 was unsupported by any contemporaneous record, and that in terms of the public announcement, claims were to be submitted only through electronic means or at the New Delhi address of the Resolution Professional.

27. On the aforesaid premise, the NCLAT held that the claim of the Appellants could be recognised only from 07.02.2020, when it was resubmitted by e-mail. Since by that date the Resolution Plan had already been approved by the Committee of Creditors on 23.08.2019, the Appellants case, according to the NCLAT, fell within the ambit of Clause 18.4(xi) of the Resolution Plan. As per the said clause, such belated claims were to be dealt with at the discretion of the Resolution Applicant, and only to the extent of 50% refund of the principal amount paid. The NCLAT thus concluded that the Appellants were not entitled to possession of the apartment, but only to refund of 50% of their deposit, i.e., Rs. 28,78,342/-, payable in Quarter 13, as envisaged in the approved Resolution Plan.

ANALYSIS AND REASONING

28. We have given our anxious consideration to the submissions advanced at the bar and perused the material placed on record. The central question which falls for our determination is whether the Appellants, being allottees of an apartment in the project IREO Rise (Gardenia), Mohali developed by the erstwhile Corporate Debtor M/s Puma Realtors Pvt. Ltd. and having admittedly paid a sum of Rs. 57,56,684/- out of the total consideration of Rs. 60,06,368/-, are to be treated as belated claimants entitled only to refund of 50% of their principal deposit under Clause 18.4(xi), or whether, their claim having been duly verified and incorporated in the list of creditors, they are entitled to possession in terms of Clause 18.4(vi)(a) of the Resolution Plan.

29. At the outset, it is not in dispute that the Appellants are bona fide homebuyers, having booked an apartment with the Corporate Debtor as far back as 2010, and having executed a Buyer's Agreement on 27.05.2011. A sum of Rs. 57,56,684/-, constituting almost entirety of the sale consideration, stands paid. The balance was contractually adjustable against penalty for delay in handing over possession.

30. The case of the Appellants rests on two principal pillar(s): first, that their claim was initially submitted on 11.01.2019 in physical form at the project office at Mohali; and second, that pursuant to the Resolution Professional's email dated 31.01.2020 inviting homebuyers who had not filed their claim, to do so, they resubmitted their Form-CA on 07.02.2020 by way of an e-mail. Their claim was thereafter duly verified, admitted and incorporated in the list of financial creditors published on 30.04.2020 at Serial No. 636.

31. The Respondent(s) have strenuously disputed the alleged filing of 11.01.2019, contending that no such claim was received at the notified address, and further that the Form-CA itself computes interest up to 07.02.2020. While this factual dispute has occupied considerable attention before the fora below, it appears to us that resolution of the present appeal does not hinge upon the disputed assertion of 11.01.2019.

32. The admitted and undisputed position remains that the Appellants claim was resubmitted on 07.02.2020; that it was duly verified by the Resolution Professional; and that it was incorporated in the published list of creditors dated 30.04.2020. Once such verification and incorporation occurred, the claim acquired full legal recognition within the CIRP process.

33. We are unable to countenance the approach of the NCLAT in brushing aside this admitted position, and in treating the Appellants as if they had not filed any claim at all. The publication of the list of financial creditors is an act in discharge of a statutory duty by the Resolution Professional. It cannot be reduced to a meaningless formality. Learned Counsel for the Appellants has rightly placed reliance on *Puneet Kaur v. K.V. Developers Pvt. Ltd. & Ors.*, 2022 SCC Online NCLAT 245, wherein it was observed as follows:

"However, we are of the view that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the corporate debtor, ought to have been included in the information memorandum and resolution applicant, ought to have taken note of the said liabilities and should have appropriately dealt with them in the resolution plan.

Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the appellant, we thus, are of the view that ends of justice would be met, if direction is issued to the resolution professional to submit the details of homebuyers, whose details are reflected in the records of the corporate debtor including their claims, to the resolution applicant, on the basis of which the resolution applicant shall prepare an addendum to the resolution plan, which may be placed before the committee of creditors for consideration."

In this backdrop, the Resolution Professional rightly admitted the claim of the Appellants to the extent of Rs. 57,56,684/- and reflected it at Serial No. 636 in the list of financial creditors.

34. It is next necessary to examine the structure of Clause 18.4 of the Resolution Plan, which prescribes distinct treatments for different categories of allottees. Clause 18.4(ii) stipulates that where the claim has been filed and admitted by the Resolution Professional, and the allotment letter issued, the claim shall be honored in full. Clause 18.4(vi)(a) sets out the payment plan for existing allottees, providing for handover of units or execution of conveyance.

By contrast, Clause 18.4(xi) is residuary in nature, applying where no claim has been filed, or if filed, not verified C. A. No. 4296 of 2025 Page 16 of 18 by the Resolution Professional, or if verified, not communicated to the Resolution Applicant; such allottees are extended only a reduced benefit of refund of 50% of the principal amount deposited. Clause 18.4(xix) clarifies that belated claims filed between submission of the plan and its approval by the Adjudicating Authority are to be dealt with 'in the manner elucidated above and relevant to their case'.

35. The Appellants case, on admitted facts, does not fall within Clause 18.4(xi). Their claim was filed, verified, and informed to the Successful Resolution Applicant, as is evidenced by the entry at Serial No. 636 in the list of creditors dated 30.04.2020, admitting their claim to the extent of Rs. 57,56,684/. Once so admitted, their case squarely falls within Clause 18.4(ii) read with Clause 18.4(vi)(a) of the Resolution Plan.

36. The Respondent(s) reliance on Clause 18.4(xi) is misconceived. That clause is intended to apply only to allottees who had defaulted in filing or pursuing their claims. The Appellants cannot be so characterised, having paid nearly the entire consideration, submitted their claim, and had it duly verified and admitted by the Resolution Professional.

37. What is critical to note is that this is not a case of entertaining a fresh claim beyond the Resolution Plan. It concerns an allottee whose claim was verified and admitted by the Resolution Professional and reflected in the list of financial creditors well before approval of the Plan by the Adjudicating Authority. To disregard such an admitted claim and confine the Appellants to the limited benefit under Clause 18.4(xi) is not to preserve the binding effect of the plan but to misapply it. Clause 18.4 itself draws a clear distinction between verified claims and belated or unverified claims; to obliterate that distinction would render the scheme otiose. Relegating bona fide allottees, who have paid substantial consideration years in advance, to the status of mere refund claimants runs contrary to the very object of the legislative framework.

38. The facts of the present case highlight the plight of individual homebuyers, who invest their life savings in the hope of securing a roof over their heads. The Appellants had paid nearly the entire sale consideration as far back as 2011. To deny them possession today, despite their claim having been duly verified and admitted, would inflict unfair and unwarranted prejudice.

CONCLUSION AND DIRECTIONS

39. In light of the foregoing analysis and reasoning, the appeal merits acceptance. The judgment of the NCLAT dated 10.01.2025 passed in Company Appeal (AT) (Insolvency) No. 1365 of 2023, as well as the order of the NCLT dated 26.07.2023 passed in I.A. No. 5579 of 2021 in CP (IB) No. 934(PB)/2018, are hereby set aside.

40. Respondent(s) shall execute the Conveyance Deed and hand over possession of Apartment No. GBD-00-001, Block D, IREO Rise (Gardenia), Mohali to the Appellants within a period of two months from today.

41. Notedly, Civil Appeal No. 5892 of 2023 titled "Paramjeet Kaur & Anr. v. Puma Realtors Pvt. Ltd. & Ors.", was dismissed by this Court on 25.03.2025. Accordingly, I.A. No. 151506 of 2025 in Civil Appeal No. 4296 of 2025 is rejected.

42. The relief(s) sought by the Appellants in the present appeal are thus granted in the terms aforesaid. The appeal stands allowed.

Pending application(s), if any, stand disposed of. No order as to costs.

.....J. [Sanjay Kumar]

.....J. [Satish Chandra Sharma]

New Delhi

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