

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint no.HPRERA2023016/C**

**In the matter of:-**

Shivam Yadav Son of Sh. Prabhu Nath Yadav, Resident of P-162,  
Nehru Enclave, Vishwash Khand Gomtinagar, Lucknow, Uttar  
Pradesh,226010

.....Complainant

Versus

1. UMA'S EUPHORIA, Sandwood Infratech Projects Pvt. Ltd.,  
having Registered office 1108, Arunachal Building 10  
Barakhamba Road, New Delhi-110001 also resident of Village  
Bhalori, Pargana- Jhangti, Sub Tehsil Kishangarh, Kasauli,  
Solan, Himachal Pradesh,173236
2. Smt. Uma Bagolia, daguther of Mr. Joban Bagolia, SCO 222-  
223. 3<sup>rd</sup> Floor, Sector 34-A, Chandigarh UT Pin-160022.
3. Sh. D Konda, Successful Resolution Applicant for Sandwood  
Infratech Projects Pvt. Ltd., Sector 110, Bhagomajra, Mohali,  
Punjab

.....Respondents

**Present: Sh. Shivam Yadav complainant through WebEx  
None for respondent no. 1 promoter Sandwood  
Infratech Projects Pvt. Ltd.**

**Sh. Shiv Kumar Bagolia husband of Uma Bagolia  
respondent promoter through WebEx for respondent  
no. 2**

**Sh. D Konda Successful Resolution Applicant for  
respondent no. 1**

**Date of hearing(through WebEx): 12.07.2024**

**Date of Pronouncement of Order: 07.08.2024**



## Order

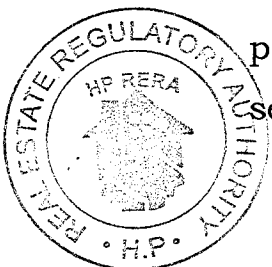
**Coram: Chairperson**

### **1. Brief facts of the complaint**

The complainant has booked a flat in Uma's Euphoria, Sandwood Infratech Project Pvt Ltd with Project Name Sandwood Uma Euphoria bearing registration no. RERAHPSOP08170002 24.06.2019 after paying an amount of Rs 3,80,000/-. The flat no 26 was allotted in his name and the loan also got sanctioned from HDFC Bank. The bank officials also visited the project site. It was alleged that the officials of the bank found that no construction work had taken place in the project. It was further contended that the complainant requested vide mail dated 16<sup>th</sup> October, 2021 to the company to cancel his allotment and refund the amount. The company accepted his request on 19<sup>th</sup> October, 2021 and he received an email that they have cancelled his allotment and his refund will be initiated. However till date he submits that no refund has been initiated. With these averments he requested for refund in the matter.

### **2. Reply by Sandwood Infratech Projects Pvt. Ltd-**

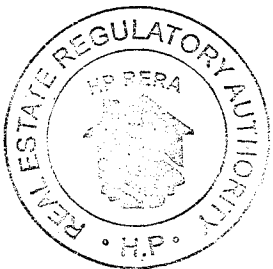
It was admitted that the complainant booked a flat no. 26, Uma's Euphoria for basic sale price of Rs 36,63,000/-. The allotment letter as well as agreement for sale was also executed on 26.09.2019. It was further pleaded out that the complainant paid a sum of Rs 3,76,238/- vide receipt number 361, 362, 365 & 368 issued by the company, though in the agreement for sale they have admitted receipt of Rs 3,80,000. It was further stated that the complainant did not pay single penny thereafter. It was further stated that the complainant sent an email dated 16.10.2021 to the respondent company



expressing his intention to cancel the allotment and adjust the booking amount of Rs 3,80,000 by allotting the Flat to Ms. Ishika Malhotra. On his request, the allotment in his favour was cancelled and the respondent no. 1 allotted the Flat to Ms. Ishika Malhotra on 19.10.2021. It was further stated that on his request the booking amount paid by him was adjusted against the allotment made in favour of Ms. Ishika Malohtra. Further it was submitted that as per agreement for sale if the allotment is cancelled on the request of the complainant the booking amount was liable to be forfeited. It was further stated that Corporate Insolvency Resolution Process has commenced against the respondent promoter as per orders of the National Company Law Tribunal, New Delhi dated 25.10.2021. As per the order, Sh. Ravinder Kumar Goel has been appointed as IRP for conducting of CIRP. The same is in progress and the resolution plan has already been approved by committee of creditors and is awaiting approval by the NCLT, Delhi. Further it was stated that the project is owned by Smt. Uma Bagolia and Sandwoods Infratech Projects Pvt. Ltd. is working only in the capacity of developer of project and for this a joint development agreement was executed interse the parties.

### **3. Reply filed by Smt. Uma Bagolia-**

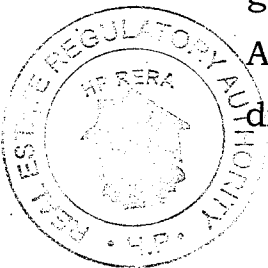
In the reply filed by the Smt. Uma Bagolia it was stated that the complainant has misrepresented all the facts. It was further submitted that the complainant booked a flat no. 26 in the project for the sale price of Rs.36, 63,000/-. Thereafter an allotment letter was issued in his favour on 26.09.2019 and on the same date the agreement for sale was also executed between the parties. The respondent herein admitted the receipt of Rs. 3,76,238/- as booking amount vide receipt no. 361,362,365 and 368 though in the agreement for sale the



receipt of Rs 3,80,000 has been admitted. It was further submitted that the complainant accepted the construction linked plan but did not pay even a single instalment despite demand notices and reminders being issued by the respondents. It was further submitted that the construction of project is almost 80 % complete. It was further submitted that the complainant sent an email on 16th October, 2021 wherein he had requested for cancellation of the allotment and to adjust the booking amount by allotting the same flat to Miss. Ishika Malhotra. On his request the respondent cancelled the allotment of flat no.26 and allotted the same to Miss Ishika Malhotra on 19.10.2021 and the confirmation of cancellation was intimated to the complainant through email on 19th October, 2021. It was further mentioned in the reply that vide the e-mail dated 19.10.2021 it was also intimated that the process of refund will be initiated subject to return of all original record documents by the complainant. It was stated that the original documents have not been returned by the complainant therefore, the process of refund could not be initiated by the respondents.

#### **4. Rejoinder by the complainant-**

In the rejoinder it was submitted that the loan amount for purchase of Flat could not be processed as there was no progress of work on the site and therefore the balance payment could not be made. It was further submitted that the flat was booked by paying 10% payment of the total amount i.e. Rs.3,76,000/- and therefore the complainant is not defaulter in the present case. It was further submitted that the loan was got sanctioned twice. Initially loan was sanctioned on 29th August, 2019 by the HDFC bank but the same was not disbursed as the surveyor of the bank was not satisfied with



the development work at the site and the sanction of the loan expired after six months. It was further submitted that on the inquiry of complainant the respondent no.1 company submitted that the work of phase no. 2 in which the flat of the complainant is situated could not be executed due to delay on account of Covid 19 pandemic. It was further submitted that the complainant again applied for the loan from the HDFC bank for the same property and it was again sanctioned in July, 2020 but the same could not be disbursed this time also for the reason that there was no progress of construction on the site. In the year 2021, the complainant demanded back the booking amount by calling one Mr. Rohit who was an employee of Sandwood Infratech. It was further submitted that complainant had intimated Sandwood Infratech and also the interim resolution professional Ravinder Kumar Goyal qua his demand for refund of the booking amount. It was further submitted that Sh. Ravinder Kumar Goyal IRP had assured the complainant on email dated 20.11.2021 that the claim has been accepted and will be dealt as per IBC 2016. It was further alleged that on October 16, 2021, Mr. Rohit called the complainant to inform him that his request for refund could not be fulfilled for technical difficulties. It was further alleged that the respondent requested the complainant to send an email to respondent no. 1's registered email address requesting that the allotment be cancelled in his favour and the remaining funds be transferred to Mrs. Ishika Malhotra, Rohit's wife. On his asking the complainant sent an email on 19<sup>th</sup> October, 2021 to cancel the allotment and transfer the amount to Mrs. Ishika Malhotra. With these pleadings it was prayed that the booking amount paid by the complainant be refunded.

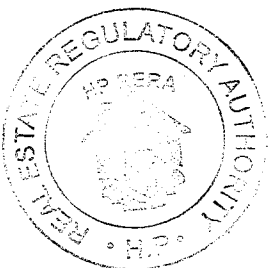


**5. Proceedings of the Authority during the pendency of the case-**

During the course of hearing(s) in the matter it transpired that the agreement for sale was executed by the complainant with M/s Sandwood Infratech Projects Pvt. Ltd. respondent no. 1 being developer of the project but the registered promoter of the project was Mrs. Uma Bagolia who also happened to be the land owner but was not impleaded as party by the complainant. When this Authority issued notice to Smt. Uma Bagolia, she appeared and filed reply through her authorised representative. From the documents appended with the reply filed by the respondent Sandwood Infratech Pvt. Ltd. it transpired that the proceedings under IBC 2016 have been initiated against developer respondent no. 1 and IRP Sh. Ravinder Kumar Goel had been appointed for conducting of CIRP. Further the resolution plan had already been approved by committee of creditors and was further also approved by the NCLT, Delhi vide its order dated 10.08.2023 in IA no. 2414/2022 in IB-292(ND)/2021 whereby Sh. D Konda has been appointed as successful resolution applicant. From the aforesaid order it transpired that Sh. D Konda has undertaken to complete the project in question at Kasauli, District Solan. Since the project has been taken over by Sh. D Konda vide the orders of Ld. NCLT therefore it was directed to the complainant to implead Sh. D. Konda as party respondent. Therefore on the affidavit of complainant Sh. D. Konda successful resolution applicant was impleaded as party in the case. He also filed reply in the case.

**6. Reply filed by Sh. D Konda successful resolution applicant-**

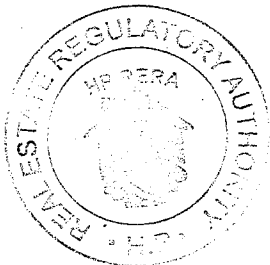
Sh. D. Konda by way of his reply submitted that he is the successful resolution applicant in the matter of Sandwood



Infratech Projects Private Limited for two projects which also include project named Uma's Euphoria Kasauli. It was further submitted that the resolution plan submitted by Sh. D. Konda was approved by AA, NCLT, New Delhi vide order dated 10<sup>th</sup> August, 2023. It was further submitted that on approval of the resolution plan, Section 31 of the IBC 2016 is applicable and no action can be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under resolution plan approved by the Adjudicating Authority under Section 31. It was further submitted that the successful resolution applicant gets the project on clean slate basis and is not at all responsible for any liability of corporate debtor for an offence committed prior to the commencement of CIRP. It was further submitted that the allotment of Sh. Shivam Yadav was cancelled by previous management prior to commencement of CIRP i.e. 19.10.2021.

#### **7. Arguments by the complainant-**

It was argued by the complainant that after paying Rs 3,76,238/- the complainant booked an apartment at Uma's Euphoria, Sandwood Infratech Project Pvt Ltd, with the project named Uma Euphoria on 24.06.2019. In his name, flat number 26 was allotted and HDFC Bank approved the loan as well. Before releasing the funds, the bank representative(s) paid a visit to the location. It was reported that bank officials discovered that there had been no construction activity related to the project. It was further argued that the plaintiff through an email on 16<sup>th</sup> October, 2021 asked the company to cancel his booking and return the sum of money. On 19<sup>th</sup> October, 2021, the company acknowledged receipt of his request and he



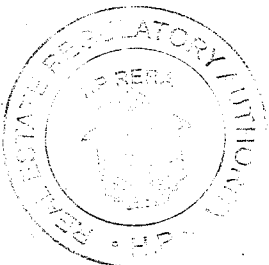
was notified via email that his allotment had been terminated and that a refund would be processed. It was argued that no refund has been issued till date. The complainant argued that whatever is due towards him should be paid either by respondent no. 1 Sandwoods Infratech Projects Pvt. Ltd., respondent no. 2 Smt. Uma Bagolia or Sh. D Konda as they are jointly liable.

**8. None for respondent no. 1 during the course of arguments-**

Since IBC proceedings have been initiated against the developer and Sh. D Konda is the successful resolution applicant therefore none represented the developer during the course of arguments.

**9. Arguments by the respondent no. 2-**

It was argued on behalf of Smt. Uma Bagolia that the complainant distorted all the facts. Further, the plaintiff purchased flat no. 26 in the complex for Rs.36,63,000. This respondent acknowledges the receipt of Rs. 3,80,000/- as booking amount. Despite demand notices and warnings from the respondents, the complainant accepted the construction linked plan but did not pay any instalments. It was also stated that project construction is nearly 80% complete. On October 16, 2021, the complainant emailed to revoke the allotment and transfer the booking amount by assigning the same unit to Miss. Ishika Malhotra. On 19<sup>th</sup> October 2021, the respondent cancelled flat no.26 and assigned it to Miss Ishika Malhotra at his request. The complainant was notified in this regard by email. It was further stated that Corporate Insolvency Resolution Process was initiated against the respondent no. 1 promoter as per orders of the National Company Law Tribunal, New Delhi dated 25.10.2021. As per the order, Sh. Ravinder Kumar Goel was appointed as IRP for



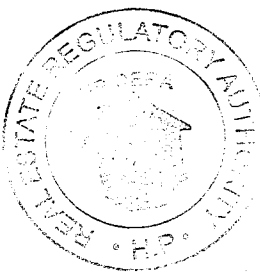


conducting of CIRP. Thereafter the resolution plan had already been approved by committee of creditors and was further also approved by the NCLT, Delhi vide its order dated 10.08.2023 in IA no. 2414/2022 in IB-292(ND)/2021 whereby Sh. D Konda has been appointed as successful resolution applicant. Sh. D Konda has undertaken to complete the project in question at Kasauli District Solan.

10. It was further argued that the role of Smt. Uma Bagolia was over once the IBC proceedings were initiated i.e. 25 October, 2021. Further it was argued that Smt. Uma Bagolia respondent no. 2 never received any payment from the complainant and the entire payment was received on behalf of the company respondent no. 1 who is under IBC and successful resolution applicant has been appointed in its behalf. It was further argued that the complainant has not lodged any claim under the IBC proceedings and therefore his claim cannot be entertained now at this stage. It was argued that the allotment in favour of the complainant was cancelled at his own request and he was apprised that if any dues are payable towards the complainant after forfeiting the booking amount the same shall be refunded to him. It was further argued that after deducting 10 % of the booking amount nothing was due and payable on behalf of the company to the respondent. It was further argued that there is no employee of respondent no. 1 with the name of Mr. Rohit Malhotra and he was just a mediator. It was further argued that Smt. Uma Bagolia is also under insolvency under the IBC and the moratorium has been declared.

**11. Findings of the Authority-**

The admitted case of the complainant is that he had booked a flat in Uma's Euphoria, Sandwood Infratech Project Pvt Ltd



with Project Name Sandwood Uma Euphoria bearing registration no. RERAHPSOP08170002 24.06.2019 after paying an amount of Rs 3,80,000/-. The flat no 26 was allotted to him. There after the complainant alleged that since there was not much construction on the project site the complainant requested to the company to cancel his allotment and refund the amount. The version of respondent no. 1 Sandwood Infratech Project Pvt Ltd is that they admitted allotment of flat in the project in question in favour of the complainant and also admitted receipt of an amount Rs 3,80,000/- which is also mentioned in the agreement for sale dated 26<sup>th</sup> September, 2019. But it was the defence of respondent no.1 the allotment was cancelled on the request of the complainant himself. Therefore as per their version if the allotment is cancelled on the request of the complainant the booking amount was liable to be forfeited as per the agreement for sale. The respondent no. 2 the landowner Smt. Uma Bagolia contends that she is not privy to the agreement for sale executed between complainant and respondent no. 1 developer and the entire dealing of the complainant was with the developer/ respondent no. 1.

- 12.** From the perusal of record it transpires that agreement for sale was executed between the complainant and respondent no. 1 only and an amount of Rs 3,80,000/- was also received by respondent no. 1 as is apparent from the copy of four receipts issued by respondent no. 1 appended with the complaint. Further it is a matter of record that Corporate Insolvency Resolution Process has commenced against the respondent no. 1 promoter and the resolution plan had been approved by the NCLT, Delhi vide its order dated 10.08.2023 in IA no. 2414/2022 in IB-292(ND)/2021 whereby



Sh. D Konda has been appointed as successful resolution applicant and SRA has undertaken to complete the project in question at Kasauli District Solan.

- 13.** It is an admitted case that the claim of the complainant is not a part of resolution plan mentioned above. Section 31 of the IBC 2016 reads as under :

*Section 31 of the IBC 2016 Approval of resolution plan.*

*(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.*

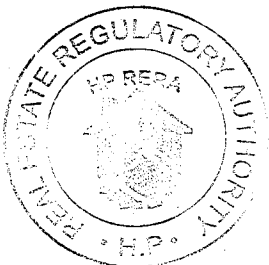
*[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]*

*(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan. (3) After the order of approval under sub-section (1),--*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*2[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain*



the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

14. Further the Hon'ble Supreme Court in the case titled as **Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.** 2021 4 Supreme 145 ; 2021 0 Supreme(SC) 273 has held as under:

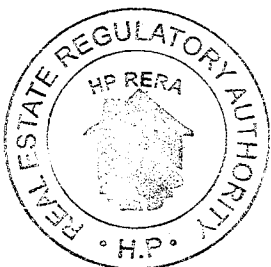
*"Conclusion*

95. *In the result, we answer the questions framed by us as under:*

(i) **That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;**

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the



*resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”*

- 15.** Therefore in view of the law laid down here in above by the Hon'ble Supreme Court where in it has been held that on the date of approval of resolution plan by the Adjudicating Authority under the IBC 2016, all such claims, which are not part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. Admittedly the complainant's claim was not a part of the resolution plan. Therefore, in view of the law laid by the Hon'ble Supreme Court once resolution plan has been approved under Section 31 of the IBC 2016, no proceedings under the Real Estate (Regulation and Development) Act, 2016 are maintainable before this Authority.

SKand

**Dr. Shrikant Baldi**  
**CHAIRPERSON**

