

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Ins.) No. 124 of 2021

IN THE MATTER OF:

N.P. DHAMANIA

R/o: Flat D 2101,
Aakriti Shantiniketan,
Plot GH 0/1B, Sector 143B,
Noida UP- 201305

.... Appellant

Vs.

M/S ANS APARTMENTS PVT. LTD.

Off: Shop No. 108, 1st Floor,
Vardhman Mayur Market,
Mayur Vihar Phase – III,
Delhi – 110096
Through Resolution Professional:
Mr. Ram Phal Bhardwaj
310/25, Onkar Nagar – B,
Tri Nagar, Delhi 110035

...Respondent

**For Appellant: Mr. Partha Sil, Mr. Tavish Bhushan Prasad,
Advocates.**

**For Respondent: Mr. Mohit Nandwani, Advocate for RP. Mr. RP
Bhardwaj, RP. Mr. Himanshu Lilani, Mr. Rishi
Gujral, Mr. GP Madaan, Mr. Aditya Madaan,
Advocates for Resolution Applicant.**

WITH

Company Appeal (AT) (Ins.) No. 125 of 2021

IN THE MATTER OF:

MAYANK DHAMANIA

S/o. Rakesh Dhamania
R/o: Flat D 21:01,

Aakriti Shantiniketan,
Plot GH O/LB, Sector 143B,
Noida UP-201305

....Appellant

Vs.

M/S ANS APARTMENTS PVT. LTD.

Off: Shop No. 108, 1st Floor,
Vardhman Mayur Market,
Mayur Vihar Phase – III,
Delhi – 110096
Through Resolution Professional:
Mr. Ram Phal Bhardwaj
310/25, Onkar Nagar – B,
Tri Nagar, Delhi 110035

...Respondent

For Appellant: **Mr. Partha Sil, Mr. Tavish Bhushan Prasad, Advocates.**

For Respondent: **Mr. Mohit Nandwani, Advocate for RP. Mr. RP Bhardwaj, RP. Mr. Himanshu Lilani, Mr. Rishi Gujral, Mr. GP Madaan, Mr. Aditya Madaan, Advocates for Resolution Applicant.**

J U D G M E N T

Jarat Kumar Jain: J.

These Appeals are preferred against the Judgment dated 17.11.2020 passed by the Ld. Adjudicating Authority, Principal Bench, New Delhi in I.A. No. 4885 of 2020 and I.A. No. 4564 of 2020 in CP (IB) No. 1481 (PB) of 2019. Whereby dismissed the Applications filed by NP Dhamania and Mayank Dhamania respectively.

2. Brief facts of these Appeals are that M/s ANS Apartments Pvt. Ltd. (ANS) Corporate Debtor (Respondent) proposed to develop a Residential

Project of 16 Multi-Storied Towers with Project name “Alstonia” at Plot No. 10, Sector Pi-2, Greater Noida, UP. Due to financial constraints, ANS could not complete the project and therefore, ANS entered into a written MOU dated 03.12.2012 with Rajput Properties & Developers Pvt. Ltd. (RPD) to complete the construction of 5 towers i.e. D, E, F, G and K. As per the MOU, RPD has to carry out the entire construction and internal development. The ANS has already incurred a cost of construction Rs. 17,03,55,527/-. It was agreed that RPD will make payment of aforesaid amount to the ANS within 12 months as per the schedule. As per the clause 17 of the MOU, RPD is entitled to sell its share of saleable area directly and collect all dues in favour of ANS Apartments Pvt. Ltd. A/c Shri Rajneegandha Greens (Dedicated Joint Signatory Account) and the amount will be transferred to RPD as per mutually agreed mechanism. As per Clause 22 of the MOU, RPD is entitled to construct and market flats to its share in the project site in the name and style of Shri Rajneegandha Greens. The RPD decided to offer a unique self-finance scheme to sell the flats at a notional rate of Rs. 3,600 psf. Under the said scheme the Appellants NP Dhamania and Mayank Dhamania booked Flat No. 1003 and Flat No. 1002 in tower –E and each Appellant deposited Rs. 30,05,659/- to RPD. Subsequently, on 23.08.2013 the MOU dated 03.12.2012 was terminated and it was agreed between ANS and RPD that the RPD had carried out the construction worth Rs. 2,16,06,850/- and RPD has given Rs. 51,00,000/- security deposit to ANS at the time of execution of MOU. The total balance amount payable to RPD Rs. 2,50,000/-. It is also settled that ANS will settle the accounts of the RPD as per terms of the relevant clause of MOU dated 03.12.2012 and ANS shall

free to deal with the said project in any manner whatsoever and the RPD shall not claim any profit or compensation from ANS on the basis of prior dealing between the parties.

3. The Appellants have also filed Consumer Complaint No. 341 of 2014 and 342 of 2014 before the State Consumer Disputes Redressal Commission. These proceedings are still pending before the State Commission.

4. Subsequently, CIRP initiated against the ANS and Mr. Ram Phal Bhardwaj was appointed as IRP. On 28.01.2020 both the Appellants have filed their claims before the IRP. However, IRP has rejected the claims of the Appellants holding that there is no proof showing that they have entered into an agreement with ANS (Corporate Debtor/Respondent) or paid money to ANS for allotment of flats. Being aggrieved both the Appellants have filed Applications I.A. No. 4885 of 2020 and I.A. No. 4564 of 2020 before the Adjudicating Authority and Ld. Adjudicating Authority by the impugned order dated 17.11.2020 dismissed both the Applications on the ground that none of the documents relied upon by the Appellants reflecting any kind of jural relationship between the Appellants and ANS.

5. Being aggrieved with the order, the Appellants have filed these Appeals.

6. Ld. Counsel for the Appellant submitted that the Ld. Adjudicating Authority failed to take into consideration the definition of claim and debt. The Hon'ble Supreme Court in the case of Pioneer Urban Land and Infrastructure Limited Vs. Union of India &Ors. (2019) 8 SCC 416 held that

any claim which arises, even if there is breach of contract, notwithstanding that there is no adjudication of the said breach falls within the definition of claim as defined under Section 3 (6) of the Insolvency and Bankruptcy Code, 2016 (IBC).

7. Ld. Counsel for the Appellant submitted that the MOU dated 03.12.2012 is in the nature of agency. For this purpose, he drew our attention towards the different clauses of the MOU and clause 6 of deed of termination of the MOU and submitted that the terms clearly show that the right, title and interest of the project land was agreed to be retained by the ANS (Respondent/Corporate Debtor). Minutes of meeting dated 15.04.2013 would show that ANS was only authorised to issue allotment letter. Therefore, ANS being a principal is bind by the acts of his agent RPD and obliged to honour the terms and conditions agreed between the Appellants and RPD.

8. Ld. Counsel for the Appellants further submitted that the MOU dated 03.12.2012 is not a collaboration agreement but an agency agreement. The Hon'ble Supreme Court in the case of Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr (2008) 10 SCC 345 has specifically dealt with meaning of joint venture/development agreement/collaboration agreement and held important features of such agreement. In the light of the Judgment of Hon'ble Supreme Court if we examined the facts of the present case, in the agreement, there is no element of sharing of profits and losses between ANS and RPD and no mutual accountability in the said project to each other. As per the clause 6 of deed of termination of MOU all assets liability and obligation of the project have reverted back to ANS

(Respondent/Corporate Debtor) which means any liability arising out of breach of contract between the RPD and prospective home buyers will now be the liability and obligation of the ANS.

9. It is submitted that ANS in the Reply Affidavit has not specifically denied its liability in respect of the allotment to the Appellants. Thus, it is deemed liability of the ANS. It is also submitted that it is settled principle of law that if a person has a right, he cannot be left remediless. Ld. Adjudicating Authority has erroneously held that the Appellants have failed to prove jural relationship with ANS. Therefore, the impugned order is liable to be set aside and the Appeals may be allowed.

10. On the other hand, Ld. Counsel appearing on behalf of the Respondent (ANS) submitted that the MOU is akin to a collaboration agreement where ANS was the owner of the land and RPD was to develop and complete the project at its own cost and in return was allotted saleable area in the project. As per clause 17 of MOU, the RPD had complete freedom to sell its share of saleable area directly and collect all dues. It is submitted that the MOU does not create any agency between the RPD and ANS. Clause 42 of the MOU specifically provides that the MOU shall not be deemed to constitute a partnership between the parties and they shall not be agent of the other. Therefore, ANS is not liable for any actions/failures of RPD. As RPD was not the agent of ANS. Hon'ble Supreme Court in the case of Nabha Power Limited Vs. Punjab State Power Corporation Limited & Anr. (2018) 11 SCC 508 in para 49 of the Judgment held that explicit terms of a contract are always the final word with regards to the intention of the parties. In para 72 of the Judgment it was observed that it should not be an endeavour of

commercial courts to look to implied terms of contract. Normally, a contract should be read as it reads, as per its express terms.

11. Ld. Counsel for the Respondent further submitted that admittedly the Appellants have paid amounts to RPD for allotment of units in project Shri Rajneegandha Greens which as per the said MOU constitutes of the area allowed to RPD. The rights and liabilities with respect to this project are on account of RPD and even otherwise RPD undertook to indemnify ANS against any claim of allottees like the Appellants. Since, the payments were made to RPD for allotment of unit, in case of any dispute between RPD and ANS, the remedy of Appellants would lie against RPD. Ld. Adjudicating Authority has rightly held that there is no jural relationship between the Appellants and ANS (Respondent). Thus, the Appeals are liable to be dismissed.

12. After hearing Ld. Counsels for the parties, we have minutely examined the documents on record.

13. Following issues arise for our consideration.

(a) Whether RPD being agent of ANS collected the part sale consideration from the Appellants?

(b) Whether there is jural relationship between the Appellants and ANS?

Issue No. (a)

Whether RPD being agent of ANS collected the part sale consideration from the Appellants?

14. We have considered the MOU, on 03.12.2012 ANS entered into a MOU with RPD to complete the construction of five towers i.e. D, E, F, G &

K. ANS has already incurred the construction cost of Rs. 17,03,55,527/-. It was agreed that RPD shall complete the construction and for the due performance of the contract, RPD agreed to pay interest free security amount of Rs. 5 Crores in four instalments to ANS (as shown in clause 13 of MOU) and also agreed to pay already incurred cost of Rs. 17,03,55,527/- to ANS within 12 months in four instalments (as shown in clause 6 of the MOU). Clause 17 of the MOU provides that RPD shall sell its share of saleable area directly and collect all dues in favour of ANS and deposit in the A/c Shri Rajneegandha Greens (Dedicated Joint Signatory Account) and the said amount will be transferred to RPD as per mutual agreed mechanism.

15. Clause 22 of the MOU provides that RPD shall construct and market flats to its share in the project site in the name and style of Shri Rajneegandha Greens. Clause 31 of the MOU provides that RPD and ANS both parties shall collect the sale proceeds from the sale of their respective areas in the name of ANS Apartments Pvt. Ltd. A/c Shri Rajneegandha Greens only. Clause 42 of the MOU provides that this MOU shall not be deemed to constitute a partnership between the parties hereto nor shall make one an agent of the other. The parties shall have individual liabilities for their taxes.

16. The MOU is an admitted document between the parties. There is the explicit terms and conditions of the MOU that the MOU shall not be deemed constitute a partnership between the parties hereto nor shall make one an agent of the other. Thus, we are unable to convince with the argument of Ld. Counsel for the Appellants that RPD has collected the amount from the Appellants being an agent of ANS. Actually, this is an agreement to complete

the construction of five towers i.e. D, E, F, G & K and after completion of construction, RPD and ANS were free to sell their saleable area directly and collect the consideration. However, they have to deposit the sale proceeds from the sale of their respective areas in the account in the name of ANS Apartments Pvt. Ltd. A/c Shri Rajneegandha Greens only.

Issue No. (b)

Whether there is jural relationship between the Appellants and ANS?

17. To prove this fact, the Appellants have placed reliance on following documents:-

i. MOU	03.12.2012
ii. Minutes of Meeting	15.04.2013
iii. Minutes of Meeting	15.04.2013
iv. Termination of Deed of MOU	23.08.2013
v. Letter send by RPD to ANS for issue of credit note.	18.02.2014
vi. Request by RPD to ANS for issuing allotment letter in favour of the Appellants.	18.02.2014

18. We have considered the relevant clauses of MOU, clause 17 and 31 of the MOU provides that RPD shall sell its share of saleable area directly and collect all dues in favour of ANS Apartments Pvt. Ltd. A/s Shri Rajneegandha Greens (Dedicated Joint Signatory Accounts) and the same will be transferred to RPD as per mutually agreed mechanism. It is also agreed that both the parties shall collect the sale proceeds from the sale of their respective areas in the name of ANS Apartments Pvt. Ltd. A/c Shri Rajneegandha Greens only. After execution of MOU between ANS and RPD, there was a meeting held on 15.04.2013 in which documentation and allotment procedure is decided. Thereafter, another meeting was held on

11.05.2013. The Minutes of the meeting is Annexure A-4. The Minutes which are relevant for the purpose of these Appeals are as under:-

“1.....

2.....

3. All proceeds of dues from flats of tower G,F,K,D,&E will henceforth be deposited in joint A/c ANS Apartments Pvt. Ltd. A/c Shri Rajneegandha Greens and statement will be provided to RWA at the end of every month.

4.....

5.....

6.....

7.....

8. List of all flats allotted to Shri Rajneegandha Greens will be made available to RWA and whenever any refund is made will be made known to RWA.”

19. From the aforesaid documents as per terms of MOU and Minutes of meeting, RPD was free to sell its share of saleable area directly and collect all dues in favour of ANS and the same is required to be deposited in the bank A/c of Shri Rajneegandha Greens (Dedicated Joint Signatory Account). As per the minutes of meeting dated 15.04.2013, the RPD was required to send printed agreement in triplicate pre-signed by the costumers to ANS and ANS was required to return two copies with in two working days. There is no such flat buyer agreement placed on record. In clause 3 of minutes of meeting dated 11.05.2013 the same condition was reagitated in the minutes of meeting and no document has been placed on record to show that the list of all flats allotted to Shri Rajneegandha Greens be made available to RWA.

20. Now we have considered the letter dated 18.02.2014 sent by RPD to ANS for issue of credit note in favour of the Appellants and request by RPD to ANS for issuing allotment letters in favour of the Appellants dated 18.02.2014. For ready reference, the copies of these letters are as under:-

The Director

M/S ANS APARTMENTS Pvt. Ltd.

78 B, Sector D2, Gharoli,

Mayur Vihar Phase-III,

Delhi-110096

RAJPUT
GROUP OF COMPANIES
An ISO 9001 : 2008 Certified Company

Date- 18/02/2014

Sub: For issue of credit note of Rs 30,05,659/- in favour of Mr N P Dhamania

Dear Sir

We request you to please issue a credit note of Rs 30,05,659/-(Rupees: Thirty lac five thousand six hundred & fifty nine only), in favour of Mr. N P Dhamania S/o Shri G M Dhamania R/o 68, Vinayak Apartment, C 58/1 Sector 62, Noida, for part sum payable to M/S Rajput Properties and Developers Pvt. Ltd. against full and final bill of construction and other dues settled with you.

The above amount against the said booking/ installment of flat allotted/ to be allotted to Mr N P Dhamania shall be adjusted against our construction bill & other dues settled with you.

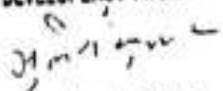
Thanking You

For M/S Rajput Properties and Developers Pvt. Ltd.

Sunil Rajput

(Director)

For RAJPUT PROPERTIES & DEVELOPERS PVT. LTD.


Managing Director

CS Scanned with CamScanner



Dated: 18/02/2014

As per MOU Certification No. 0250695656498435K Dated 01-12-2012 And MOU Certification No. IN-DL50695910522340K Dated 01-12-2012 between M/s. Rajput Properties & Developers Pvt. Ltd. Corporate office at C 56/34, 2nd floor, Magtech tower, Sec-62, Noida And M/s. ANS APARTMENT PVT.LTD. Corporate office at B - 111, Sector - 5, Noida, Gautam Budh Nagar (U.P.) for group housing project named "Shri Rajneegandha Greens" at site address Plot No. 10, Sector-Pi-2, Greater Noida, UP.

In this project M/s. Rajput Properties & Developers Pvt. Ltd. has allotted a flat bearing no. **E 1003** to Mr. **N P Dhamania S/o Shri G M Dhamania** address **68, Vinayak Apartment, C58/1 Sector 62, Noida** on this 16th day of January Year 2013 And in this reference M/s. Rajput Properties & Developers Pvt. Ltd. has taken **Rs. 30,05,659/- (Rupees Thirty lac five thousand six hundred and fifty nine Only)** as an Area booking amount, details of the same are as under :

Date:-	Amount:	Cheque No	Receipt No.
16/01/13	Rs 5,00,000/-	408877	704
23/01/13	Rs 5,00,000/-	379751	708
4/02/13	Rs 7,65,626/-	408879	711
2/09/13	Rs 3,70,033/-	829354	902
2/09/13	Rs 1,30,000/-	025181	903
2/09/13	Rs 2,40,000/-	564392	901
12/09/12	Rs 4,00,000/-	587916	651
12/09/12	Rs 1,00,000/-	000058	654

This aforesaid amount had been completely taken by M/s. Rajput Properties & Developers Pvt. Ltd. and the same has been deposited in the bank account of the company.

The dispute in respect to the MOU between M/s. Rajput Properties & Developers Pvt. Ltd. And ANS Apartment Pvt. Ltd. has been subsisting since 05/09/2013.

Now M/s. ANS Apartment Pvt. Ltd. is liable to pay the building and the construction dues including all other cost to M/s. Rajput Properties & Developers Pvt. Ltd. It is relevant here to mention that the amount **Rs. 30,05,659/-** will be deducted from the due cost at the time of final settlement between M/s. Rajput Properties & Developers Pvt. Ltd. And M/s. ANS Apartment Pvt. Ltd. It is further stated that in this regards M/s. Rajput Properties & Developers Pvt. Ltd. requests M/s. ANS Apartment Pvt. Ltd. to release the original allotment letter in favour of **Mr. N P Dhamania** for their booked Area **1605/- Sq.ft** unit No **E1003** at against their booking amount **Rs. 30,05,659/-** (Deposited in the official bank account of M/s. Rajput Properties & Developers Pvt. Ltd.) AS per meeting held on May 2013

Sincerely Yours,

RAJPUT PROPERTIES & DEVELOPERS PVT. LTD

Suneel Kumar Rajput(M.D)
Rajput Properties & Developers Pvt. Ltd.

Managing Director

Declaration

M/s. Rajput Properties & Developers Pvt. Ltd. will not have any obligation in future with regard to the allotment Area/flat Sq.ft /no **E 1003** to **Mr N P Dhamania** by M/s. ANS Apartment Pvt. Ltd.

21. On perusal of these letters, it is apparent that RPD has collected the part consideration i.e. Rs. 30,05,659/- from each Appellant for booking flats and deposited the same in their bank A/c i.e M/s Rajput Properties and Developers Pvt. Ltd. In the aforesaid letter, RPD requested the Director ANS for issue of credit note of the aforesaid amount in favour of the Appellants and it is stated that the amount deposited by the Appellants will be adjusted against the full and final bill of construction. There is another letter dated 18.02.2014 as aforesaid in which details of amount received from the Appellants by RPD is mentioned and the same has been deposited in the bank A/c of RPD. It is stated that the amount will be deducted from the due cost at the time of final settlement between RPD and ANS. It is requested that the allotment letters be issued in favour of the Appellants. Thus, it is clear that part consideration has been collected from the Appellants but the same has not been deposited by the RPD in the A/c of Shri Rajneegandha Greens as per clause 17 and 31 of the MOU. There is nothing on record to show that in response to these letters ANS has issued credit note and allotment letters in favour of the Appellants.

22. With the aforesaid discussion, we are of the considered view that RPD has not deposited the amount collected from the Appellants in the A/c of Shri Rajneegandha Greens as agreed terms of the MOU and therefore, the ANS has not issued any credit note/allotment letters in favour of the Appellants. Thus, Ld. Adjudicating Authority has rightly held that there is no jural relationship between the Appellants and ANS. The RPD has not collected the part sale consideration from the Appellants as an agent of ANS.

23. With the aforesaid, we are of the view that the RP as well as Ld. Adjudicating Authority has rightly rejected the claims of the Appellants. Hence, no interference is called for in the impugned order dated 17.11.2020. Thus, these Appeals are dismissed. However, no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

New Delhi
18th November, 2021.
SC