

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
**(through web-based video conferencing)**

**I.A No.64/BB/2023 in**  
**CP (IB) No. 60/BB/2020**

**IN THE MATTER OF:**

**S. Viswanathan,**

F303, Jain Heights East Parade  
7<sup>th</sup> Main, Vignana Nagar  
Bangalore – 560 037.

... Applicant.

**Versus**

**Mr. Vinay Mruthyunjaya**

Resolution Professional  
Metrik Infraprojects Private Ltd.  
VK Commerce  
8, 3<sup>rd</sup> floor, 3<sup>rd</sup> Mainroad,  
Opp. Rajajimagar IT Park, KSSIDC,  
Rajajinagar Industrial Estate  
Bangalore 560 010.

... Respondent.

**Order delivered on: 08<sup>th</sup> September, 2023**

**Coram:**

Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : S. Viswanathan

For the Respondent : Shri A.S Vishwajith

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 13.01.2023 by a Homebuyer of the Corporate Debtor under Section 60(5) of IBC, 2016 r/w rule 11 of the NCLT Regulations, 2016 interalia praying to dismiss I.A No. 373 of 2022 and for direction to the Resolution Professional for appointment

**I.A No. 64/BB/2023**

of Authorised Representative for all the Homebuyers of the Corporate Debtor and to reconstitute the CoC.

2. The Applicant herein is one of the Home buyers of the Real Estate projects of the Corporate Debtor. The Real estate project consists of 8 Towers of 9 Floors each titled A,B,C1,C2,D1,D2,E and F, and premium apartment block of 4 floors in tower titled G. Additional sanction was subsequently obtained to make Tower G also of 9 Floors. It is submitted that apartments A to F were completed and handed over to the homebuyers.
3. The main contention raised by the applicant is that the work in Towers A to F is still incomplete and the resolution plan pertains only to Tower G. The pending works as stated by the Applicant includes: superstructures of the Towers, amenities such as lifts, ingress and egress area, STP, Electricity, water supply and common public space, sports area and greenery.
4. The authorized representative of the Financial creditors in the class home buyers has filed its written submissions dated 16.05.2023 vide diary No. 2538 interalia submitting that none of the home owners have submitted any claim during the entire period of CIRP. Further, the applicant being a home owner is to be distinguished from being treated as a home buyer for the purpose of Section 5 (8) of the Code. Moreover, the moment the flat he had been allotted has been handed over, there is nothing remains for such persons to be treated as financial creditors. He has already got the time value for his money. Further, from Insolvency Commencement Date, 16.04.2021, to date of approval of the resolution plan by the CoC, 12.08.2022 roughly 14 months have elapsed and the applicant much after the expiry period of CIRP, has now come up with the instant Application dated 09.01.2023.
5. Heard both the counsels and perused the record available.
6. The Hon'ble Supreme Court in the matter of 'Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors', dated 24.03.2021, (2021) ibclaw.in 63 SC', has held that *"In our view, after approval of the resolution plan of NBCC by CoC, where homebuyers as a class assented to the plan, any individual homebuyer*

*or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance” .*

7. It is pertinent to note that only a single homebuyer has filed this instant petition against the approval of the resolution plan and the main grievances raised by the said homebuyer is only related to the amenities in the Block. Therefore the Petitioner not holding any legal grievance.
8. Further, I.A No. 373 of 2022 which is filed for approval of the resolution plan is allowed vide a separate order today, hence the present I.A seeking for dismissal of resolution plan becomes infructuous.
9. Accordingly **I.A 64 of 2023 is hereby dismissed.**

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**