

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

**CORAM:**

**(IB)-609(ND)/2017**

**PRESENT: MR. L. N. GUPTA**  
**HON'BLE MEMBER(T)**

**MS. INA MALHOTRA**  
**HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW  
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON  
14.01.2020**

**NAME OF THE COMPANY: SE Investments Ltd. Vs. Soni Realtors Pvt.  
Ltd.**

**SECTION: 7 of IBC, 2016**

<b>S.NO.</b>	<b>NAME</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
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	<b>Present for the Petitioner:</b>	<b>Mr. P. Nagesh, Mr. Harshal Kumar and Mr. Shivam Wadhwa, Advocates</b>		
	<b>Present for the Respondent:</b>	<b>Mr. Saurabh Jain and Mr. Smarth Arora, Advocates Mr. Abhindra Maheswari and Mr. Rajiv, Mr. Manoj Kulshreshta, Advocates for RP</b>		

**ORDER**

A resolution plan has been submitted by the Resolution Professional and has been pending consideration for some time before this Bench. There were various objections raised by the claimants and the project has been mired with controversy as there have been multiple allotments made over the same plot, with each allottee clamouring against the other to ensure that the plot is duly transferred to him. Before giving due consideration to the proposed plan, it therefore became necessary to overcome these objections. Claims for plots filed by the allottees were rejected by the Id. RP who has classified them as financial creditors. Aggrieved by the decision of the RP, Id. Counsels appearing for these objectors have argued that having booked and paid the entire sale consideration towards their allotted plot in the year 2010-2011, 2014-2015 these allottees cannot be told today to take money and be treated as financial creditors in a project which is undergoing a resolution

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process. It is argued that the rights of these applicants cannot be considered subservient to the rights of a subsequent allottees. To surmount this objection and keeping in view the large number of disgruntled applicants before this Bench, it was considered expedient to appoint a Local Commissioner to classify home buyers and financial claimants separately. Directions were given that due notice would be effected on any person whose rights were being prejudicially effected.

2. This exercise was undertaken by the local commissioner appointed by this Bench, who after scrutiny of documents has filed his report. However, not being satisfied with the report of the Local Commissioner, CAs 994/2019 and 964/2019 and 1238/2019 have been filed by way of objections to the Local Commissioner's report. This report is also challenged on grounds that due notice was not effected on the concerned parties whose rights and interest in the properties have been upset. No publication was made inviting objections and therefore was contrary to the principles of natural justice. It therefore becomes expedient to dispose of these objections before proceeding further in this case. Though this Bench cannot look into the individual grievances of all objectors, we are broadly laying down the principles on which the resolution professional will categorise the plot allottees in preference to unsecured financial creditors in the following manner:

- (i) Allottees in whose favour sale deeds, if any, have already been executed, irrespective of when the payment was made, shall have the first right over the allotted plot. This direction is given since the right and title of the allottee has been crystallised and confirmed on execution of the conveyance deed which cannot be cancelled except by a Civil Court on limited grounds.
- (ii) Allottees who have made bookings against specific plots and have remitted money (partial or full) shall have a lien over the plot in order of priority. This may be substantiated by execution of any agreement, MOU, remittance made through banking channels or any other document executed in their favour. This is being directed in view of



vague documents executed by the promoters who have duped unsuspecting allottees by making multiple sales over plots.

- (iii) Any payment which remains due and outstanding shall be demanded within a specific period, failing which the allotment shall be made to the next in line in order of priority of booking and upon payment of full consideration. Before cancelling any prior allotment, notice of demand shall be served on the defaulting allottee. Failure to pay the full amount shall disentitle the prior allottee of his lien over the booked plot

It is further directed that an endeavour shall be made to get the conveyance deeds executed in favour of those allottees who have made full payment and these plots shall not be included for being offered to the Resolution applicant for the purpose of raising finances for completion of the project.

3. It is submitted on behalf of some allottees whose rights may be prejudicially effected that since there are multiple bookings over the same plots, agreements for allotment and booking of plots are fabricated and ante dated. No substantial fact has been brought to our notice to corroborate their submission. In the absence of any concrete document, these assertions remain mere averments. On the contrary, we have perused the original agreements/MOU on stamp papers which have been issued in the year of execution along with payment made through banking transactions. There is nothing for us to conclude that the agreements are ante dated or fabricated. A document has to be taken at its face value unless something to the contrary is shown to this Bench to arrive at a different conclusion. Impugning these documents for the sake for staking a better claim on the allotted plot on averments of it being fabricated or antedated is a little farfetched. We therefore direct that the rights of these applicants as allottees against a specific plot shall be determined in terms of the directions given above.

4. It is further stated that the dispute is only in respect of 67 such plot holders and there are probably sufficient number of plots available for accommodating applicants whose rights are subsequent to another allottee in order of priority. The RP shall scrutinise the claim in respect of every allotted

plot in terms of the directions given above and prepare a fresh list. Those allottees whose claim over any particular plot is set aside on grounds of prior allotment, shall be offered allotment of an alternate plot on a first come basis, provided of course the full payment is tendered.

5. Despite notice, the promoters have failed to assist the RP or appear in court. Fresh notice be issued requiring their presence before this Bench, failing which coercive steps shall be taken. Since buyers have been duped in this project, it would also be in the fitness of things to refer the matter to the EOW cell of the Delhi Police for due investigation.

6. Report be prepared and submitted before this Bench. In the meantime, the Resolution plan be relisted for arguments on 15<sup>th</sup> January 2020.

**(L. N. Gupta)**  
**Member (T)**

  
**(Ina Malhotra)**  
**Member (J)**