

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

**Company Appeal (AT) (Insolvency) No. 173 of 2019**

**IN THE MATTER OF:**

**Mr. Ranjan Goyal**

**...Appellant**

**Vs.**

**Sharad Vadehra**

**...Respondent**

**Present: For Appellant: - Mr. Vivek Sibal, Mr. Rahul Sharma and Mr. Yash Patel, Advocates.**

**For Respondent: - Mr. Vipul Srivastav and Mr. Aditya, Advocates.**

**O R D E R**

**02.09.2019—** The Respondent- 'Sharad Vadehra, allottee ('Financial Creditor') filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) against 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, by impugned order dated 14<sup>th</sup> January, 2019, admitted the application giving rise to the present appeal preferred by Shareholder.

2. Learned counsel appearing on behalf of the Appellant submits that there was no such agreement between the Respondent- ('Financial Creditor') and 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor'). The Respondent- ('Financial Creditor') is an allottee of one 'M/s. Golden Peacock Residence Private Limited'.

3. On the other hand, learned counsel for the Respondent- ('Financial Creditor') referring to the records, including the Agreement reached between different parties, submitted that 'M/s. Golden Peacock Residence Private Limited' is 100% subsidiary of 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') and both, in consortium, reached an Agreement with 'M/s. Raheja Developers Limited' for development of land, pursuant to which the Respondent, allottee ('Financial Creditor') received Demand Notice on behalf of 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor'). The amount was disbursed for consideration of time value of money and receipt was also issued by 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor').

4. On hearing learned counsel for the parties and on perusal of records, it appears that 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') was incorporated on 22<sup>nd</sup> November, 2011. It constituted a wholly owned subsidiary namely 'M/s. Golden Peacock Residence Private Limited' incorporated on 27<sup>th</sup> January, 2012. 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') along with 'M/s. Golden Peacock Residence Private Limited' made a joint venture by Agreement dated 24<sup>th</sup> July, 2012 and reached Agreement with M/s. Raheja Developers Limited'.

5. Pursuant to Demand Notice dated 27<sup>th</sup> August, 2012 issued by 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor'), disbursed the amount for which different receipts were issued

by 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor'). Subsequently, Allotment Letter was issued by 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') on 4<sup>th</sup> January, 2013. Copy of demand letter dated 27<sup>th</sup> August, 2012 is as follows:

D-27/08/2012  
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**HOMESTEAD**  
**Demand Letter**

Date: 27/08/2012

Mr./Mrs. SHARAD VADEHRA  
R/o. B-483, Meera Bagh Paschim Vihar  
New Delhi-110063

REF: **Booking of a Unit admeasuring 5500 sq.ft. in our up-coming project in Sector-109, Gurgaon, Haryana.**

Dear Sir/Madam,

This is with reference to your booking of a Unit admeasuring 5500 sq. ft. in our up-coming Project in Sector-109, Gurgaon, Haryana. As per the payment plan agreed and accepted by you, the next payment of complete 20% of B&P is due for payment "WITHIN 60 DAYS OF BOOKING" from the date of booking.

In terms of the payment plan opted by you, you are requested to remit the amount as detailed below:






S.No.	Particulars	Total Due (Rs.)	Amount Paid (Rs.)	Total Outstanding Amount (Rs.)
1	Basic Sale Price (20%)	9900000.00	4000000.00	5900000.00

As stated above, we call upon you to pay an amount of Rs. 5900000 /- (Rupees Fifty Nine Lakh Only) through Cheque/D.D. in favor of "GOLDEN PEACOCK RESIDENCE PRIVATE LIMITED" on or before 11/09/2012. Please note that all delayed payments are subject to charge of interest @18% per annum for the period of delay. This amount does not include Service tax & shall be charged as per actual with the next instalment.

Thanking you,  
Yours faithfully  
For Golden Peacock Residence Private Limited

*(Signature)*  
(Authorized Signatory)

Golden Peacock Residence Pvt. Ltd.  
(Wholly owned subsidiary of Homestead Infrastructure Development Pvt. Ltd.)  
Plot No. 15, 2<sup>nd</sup> Floor, Sector-14, Gurgaon - 122001, INDIA  
Ph: 0124-4904800, 0124-4904525, Fax: 0124-4904801, www.homesteadindia.com

**TRUE COPY**  
*(Signature)*  
ADVOCATE

6. The receipt of the amount disbursed by the Respondent has been enclosed, one of which is quoted as follows:

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**HOMESTEAD™**  
Receipt

MR. SHARAD VADEHRA  
B-483, MEERA BAGH  
PASHCHIM VIHAR  
NEW DELHI 110063

Customer Id : 100015  
Receipt No. : 1800000079  
Booking No. : 13  
Receipt Date : 11.03.2015

Received with thanks payment in respect of Flat No. 1803 of 6126 Sq. Ft. in MICHAEL SCHUMACHER WORLD TOWER at Sector- 109 Gurgaon vide instrument no. 000331 dated 09.03.2015 drawn on HDFC BANK

Payment Against Installment	Charges	Particulars Amount (Rs)	Service Tax (Rs)	Amount (Rs)
On Casting of 7th Floor Slab	BSP	3,404,902.04	126,254.00	3,531,156.04
On Casting of 3rd Floor Slab	CAR PARKING	27,027.96	835.00	27,862.96
On Casting of 3rd Floor Slab	CLUB MEMBERSHIP	40,000.00	4,944.00	44,944.00
Total				3,603,963.00


Rupees: (Thirty Six Lakh Three Thousand Nine Hundred Sixty Three only.)  
Note:-


- 1 This Receipt is subject to realization of Cheque / Draft.
- 2 This Receipt does not confirm allotment which shall be subject to availability & signing of standard Buyer's agreement and adhering to all other terms and conditions as decided by the company and as mentioned in standard buyer's agreement.
- 3 This Receipt is non-transferable without written consent of the company.
- 4 For any third Party rights created by applicant, the company shall not be liable/responsible.
- 5 In any case the Company's decision shall be final and binding on all the parties concerned.


\*\*\*\*\* This is a computer generated document hence doesnot require any signature. \*\*\*\*\*


**Homestead Infrastructure Development Private Limited**  
CIN: U65923DL2011PTC227771  
Corporate Office: Plot No.15, 2<sup>nd</sup> Floor, Sector-44, Gurgaon (Haryana)-122001  
Registered Office: Unit No. 502, Building D Mall, Netaji Subhash Place, Pitampura, New Delhi-110034  
Phone: 0124-4904800, Fax: 0124-4904801, Website: www.homesteadinfra.com


Affiliations


  
FIABCI

  
THE GREEN BUILDING COUNCIL

  
WRI

  
American Real Estate Society


  
IBERE  
Institute for Behavioral and Experimental Real Estate

  
Gold Homes Alliance

**TRUE COPY**  
*[Signature]*  
**ADVOCATE**

7. Allotment Letter dated 4<sup>th</sup> January, 2013 is also under the heading 'Homestead' is extracted below:

ANNEXURE - A-5  
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**HOMESTEAD**

**ALLOTMENT LETTER**

Dated: 04/01/2013

To,

Mr./Mrs. SHARAD VADEHRA  
R/o. B-483, Meera Bagh,  
Paschim Vihar,  
New Delhi-110063

Subject: Allotment of Unit against your booking in our Project "Michael Schumacher World Tower", in Sector-109, Gurgaon, Haryana

**Dear Sir/Ma'am,**

In response to your application dated 27/06/2012, we hereby allot to you Unit No. 1803, admeasuring 6126 sq. ft. (tentative) in the said project "Michael Schumacher World Tower", in Sector-109, Gurgaon, Haryana.

The allotment of said Unit No. 1803 is subject to terms and conditions as mentioned in standard Flat Buyer's Agreement, which will be sent to you in due course of time.

For any further information or clarifications, please feel free to get in touch with us on our Customer Care email-id [customercare@homestead-india.com](mailto:customercare@homestead-india.com)

Thank you for your investment in our esteemed project.


**For Golden Peacock Residence Pvt. Ltd.**

*Lishan*  
(Authorized Signatory)


*Allotment letter sent through Speed Post dated 11/01/2013*

**Golden Peacock Residence Pvt. Ltd.**  
(Wholly owned subsidiary of Homestead Infrastructure Development Pvt. Ltd.)  
Plot No. 15, 2<sup>nd</sup> Floor, Sector-44, Gurgaon - 122001, INDIA.  
Ph.: 0124-4904800, 0124-4904899, Fax: 0124-4904801, [www.homestead-india.com](http://www.homestead-india.com)


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IBERE



American Real Estate Society



IBERE  
Institute for Behavioral and Experimental Real Estate



Good Homes Alliance

**TRUE COPY**

*AD*  
**ADVOCATE**

8. From the aforesaid allotment letter, demand notice, allotment letter and receipt, we find that there is a joint venture between 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') and 'M/s. Golden Peacock Residence Private Limited' and, therefore, the Appellant cannot take the plea that 'Homestead' is not a 'Corporate Debtor'.

9. The Adjudicating Authority noticed the relevant facts, including an e-mail dated 7<sup>th</sup> June, 2014 on behalf of 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') asking the 'Financial Creditor' to draw the cheque in the name of 'M/s. Golden Peacock Residence Private Limited', which reads as follows:

*"Tanya Bector [Tanya.bector@homestead-india.com](mailto:Tanya.bector@homestead-india.com)*

*To: Sharad Vadehra [vadehra666@gmail.com](mailto:vadehra666@gmail.com)*

*Dear Mr. Vadehra*

*Greetings for the day,*

*Please find below the RTGS details of Golden Peacock:*

*Golden Peacock Residence Private Limited*

*A/C No. 912020031148652*

*IFSC Code: UTIB0000056*

*Swift Code: AXISINBB056*

*Bank: Axis Bank*

*Please intimate us with the status as to coordinate with the bank.*

*Warm regards,*

*Tanya Bector."*

10. From the aforesaid facts, as we find that 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') reached

agreement jointly with 'M/s. Golden Peacock Residence Private Limited' have entered into the development agreement with 'M/s. Raheja Developers Limited' on 24<sup>th</sup> July, 2012 and for all purposes it is a joint venture with 'M/s. Golden Peacock Residence Private Limited' who is a subsidiary company and reached agreement with Respondent, but asked to pay the amount to 'M/s. Golden Peacock Residence Private Limited', we hold that the application under Section 7 against 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor') is maintainable.

11. Learned counsel for the Appellant informed that 'M/s. Raheja Developers Limited' has sold its all the rights to 'M/s. Golden Peacock Residence Private Limited' in the year 2015, but that will not change the complexion of the matter as in place of 'M/s. Raheja Developers Limited', 'M/s. Golden Peacock Residence Private Limited' will be the Developer jointly with 'M/s. Homestead Infrastructure Development Pvt. Ltd.'- ('Corporate Debtor').

In absence of any merit, we dismiss the appeal. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

Ar/g