NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1163 of 2024

[Arising out of Order dated 04.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, New Delhi Bench in C.P. IB (IBC) No.657/ND/2021]

IN THE MATTER OF:

Mohit Arora
(Suspended Director of Revital Reality Pvt. Ltd.) ...Appellant

Versus

Manish Aneja & Ors. ...Respondents

Present:

For Appellant: **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ishan Dewan, Mr. V. Siddharth and Mr. Shreyans Jain, Advocates.**

For Respondents: **Mr. Rishabh Jain, Advocate for RP.**

Ms. Pooja M. Saigal, Sr. Advocate with Mr. Palash S. Singhai, Mr. S. Sharma, Ms. Riddhi Jain and Mr. Nivesh Dixit, Advocates for R-1 to R-165.

Ms. Vibha Makhija, Sr. Advocate with Mr. Nikhil Kumar Jha, Advocates for Applicant in I.A. No.7226/2024 and I.A. No.2767/2025.

J U D G M E N T

Ashok Bhushan, J.

This Appeal by Suspended Director of the Corporate Debtor – M/s Revital Reality Pvt. Ltd. has been filed challenging the order dated 04.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, New Delhi Bench admitting Section 7 application filed by

Respondent Nos. 1 to 165, who had filed application under Section7 for initiating CIRP against the Corporate Debtor. Aggrieved by the order dated 04.06.2024, this appeal has been filed.

2. Brief facts necessary to be noticed for deciding this appeal are:

2.1 State Government Haryana vide Town and Country Planning Department Notification dated 19.08.2013 issued "Affordable Housing Policy 2013". Under the said policy, the Corporate Debtor was granted license by the Director General, Town and Country Planning, Haryana, Chandigarh, on 19.12.2014 for construction and development of an affordable group housing colony.

2.2 Building plan under the name and sign of 'Basera' was launched by the Corporate Debtor. In the project, allotments were made to several allottees. Project consisted of 15 towers. Units were booked from 2014 to 2017. In the project situated at Sector 79B Manesar Urban Complex, Gurugram, Haryana, Respondent Nos.1 to 165 were allotted different units and allotment letters were issued in favour of the Respondents and Flat Buyer's Agreement was entered between the Corporate Debtor and Respondent No.3, Mr. Ajay Vashnavi on 02.06.2016, in favour of Respondent No.2, Mr. Ankur Khetan Flat Buyer's Agreement was executed on 10.12.2015 and on 12.05.2016 in favour of Mr. Vishal Kumar. Similarly, Flat Buyer's Agreements were executed in favour of other Respondents. As per the

Flat Buyer's Agreement, the Corporate Debtor represented to the Allottees that possession of the units will be handed over in four years from date of approval of building plan and date of environmental clearance whichever is later. In the present case, environmental clearance was granted on 22.01.2016. The Respondents herein made payments towards the consideration. Respondents had paid about 90% to 95% of the sale consideration and some of the Respondents have paid their full sale consideration.

2.3 A Section 7 application was filed by 172 unitholders on 13.10.2021 against the Corporate Debtor seeking initiation of CIRP. The applications pleaded that Principal Amount due to the Financial Creditor is Rs.31,22,62,342/-. It was pleaded in the application that certain letters of allotment and Flat Buyer's Agreement of three flat buyers was annexed with the Section 7 application. Referring to Clause 3.1 and 3.5 of the Flat Buyer's Agreement, it was pleaded that the Corporate Debtor was to handover the possession by 22.01.2020. Several emails were sent to the Financial Creditor enquiring about the progress and status of construction, to which replies were given by the Corporate Debtor and Corporate Debtor committed default, having committed breach of the agreement with the flat buyers. In the Section 7 application, date of default has been mentioned as 22.01.2020.

2.4 In Section 7 application reply was filed by the Corporate Debtor. Corporate Debtor in addition to reply filed an affidavit dated 22.08.2022 before the Adjudicating Authority bringing on record the status of project. It was pleaded that out of total 15 towers having residential units, Tower 1 and 2 are fully complete. Details of status of the construction was mentioned in the Affidavit. A settlement proposal was also offered to the homebuyers and applicants.

2.5 The Adjudicating Authority passed various orders in the Section 7 proceeding asking the Financial Creditors to take instructions on the settlement proposal of the Corporate Debtor. The Financial Creditors, however, informed the Adjudicating Authority that proposal submitted by the Corporate Debtor is not acceptable. The Adjudicating Authority proceeded to hear the parties and by the impugned order has admitted Section 7 application. The Adjudicating Authority, in the impugned order held that the Corporate Debtor having not offered possession to the Respondents – unit holders within 48 months from 22.01.2016, default has been committed. The arguments raised on behalf of the Corporate Debtor that unless Occupation Certificate is received there is no obligation to offer possession was considered and rejected. The Corporate Debtor also raised submission that application is barred by Section 10A of the I&B Code, which too was considered and not accepted. The Adjudicating Authority admitted Section 7 application and appointed Shri Gaurav

Katiyan as Resolution Professional. Aggrieved by order admitting Section 7 application, the Suspended Director of the Corporate Debtor has filed this appeal.

2.6 The appeal came to be heard by this Tribunal on 12.06.2024, thereafter on 02.07.2024. On 02.07.2024, following interim order was passed:

> *"In the meantime, CoC may proceed to hold its meeting, however, no Form G shall be issued till the next date."*

Parties completed their pleadings and parties were heard on 06.08.2025.

3. We have heard Shri Abhijeet Sinha, learned senior counsel for the Appellant, Ms. Pooja M. Saigal, learned senior counsel appearing for the Respondents – Financial Creditors. Ms. Vibha Makhija, learned senior counsel has appeared for the Applicant in I.A. No. 7226/2024, Mr. Nikhil Kumar Jha has appeared for Applicant in I.A. No. 2767/2025 and Mr. Rishabh Jain has appeared for the Resolution Professional.

4. Shri Abhijeet Sinha, learned counsel for the Appellant in support of the Appeal submits that the Adjudicating Authority erred in admitting Section 7 application. There was no default on the part of the Corporate Debtor as per the agreement between the parties. Learned counsel for the Appellant referred to Clause 3.1 and 3.5 of the Flat Buyer's Agreement and

submitted that offer of possession within four years was subject to force majeure circumstances, intervention of statutory authorities, requirement of Occupation Certificate and allottees making timely payment of instalments. It is submitted that the present is a case where under the orders of the statutory authorities including orders of the Court and Tribunal, for 89 days there was stay on the construction. It is submitted that the possession could have been offered to the allottees only after receipt of the Occupation Certificate. No Occupation Certificate having yet been received, there can be no offer of possession. The Adjudicating Authority had not appropriately considered the Clause 3.1 and 3.5 of the Flat Buyer's Agreement. It is submitted that the Adjudicating Authority has unduly relied on the judgment of Hon'ble Supreme Court in ***Ireo Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors., 2021 (2) SCR 1,*** which judgment is in context of Consumer Protection Act and was on the deficiency of service, which is a concept applicable to Consumer Protection Act and not to the I&B Code. It is submitted that the agreement between the parties have to be read as it is and allottees for discrepancy of service and for other reliefs are free to take proceedings before the State RERA Authorities and other Authorities but unless there is default on part of the Corporate Debtor proceedings for insolvency commencement cannot be initiated against the Corporate Debtor. Only a handful of allottees (initially there were 172 Applicants) have filed the application for putting the Company into insolvency whereas there are 976 units and majority of the homebuyers are not in favour of the insolvency. It is submitted that in the insolvency of a real estate project seldom there is resolution and completion of construction. It is submitted that the timeframe for offering possession was subject to timely payment of instalment by the unitholders. Before the Adjudicating Authority, the Corporate Debtor has brought on record details of outstanding amount of various unitholders who were in default and payment of their consideration. Learned counsel for the Appellant has referred to the details of 56 allottees amongst the Applicants who has initiated the Section 7 application, where according to the Appellant, there are huge amount of default. It is submitted that dues with reference to 27 unitholders are more than Rs.1 Lakh. It is submitted that timely payment by the allottees was relevant consideration for determining default on the part of the Corporate Debtor. The Adjudicating Authority has not adverted to the said pleading, thus, the conclusion of the Adjudicating Authority that there is default in not offering possession by the Corporate Debtor is not in accordance with law. It is submitted that the period of 89 days counted from 22.01.2020, it falls within the prohibited period under Section 10A, hence, the Section 7 application ought not to have been entertained. Corporate Debtor has placed orders passed by Court, Tribunal and Statutory Authority whereby construction was halted for 89 days. Learned counsel, however, submitted that Appellant proceed on assumption that threshold as allowed to allottees is fulfilled and no arguments are being addressed on said issue, although several of the Respondents who has initiated proceeding under Section 7 were themselves in default. It is submitted that the Appellant has filed an application IA No.6177 of 2024 seeking direction of reverse insolvency process under which the Appellant can complete the construction under the supervision of the IRP. It is submitted that the Appellant has given proposal to the allottees for construction and most of the allottees agreed and given consent letters in favour of the Corporate Debtor.

5. Ms. Pooja M. Saigal, learned senior counsel appearing for the Respondents – allottees refuting the submission of learned counsel for the Appellant submits that environmental clearance certificate having been issued on 22.01.2016, four years' period came to an end and default was committed by the Corporate Debtor on 22.01.2020. The Corporate Debtor has failed to procure Occupation Certificate till date. The submission of the Appellant that unless Occupation Certificate is received Corporate Debtor cannot be said to have committed any default, if the interpretation of the Appellant is accepted of various clauses of Flat Buyer's Agreement as contended, there will never be default on part of the Corporate Debtor. It is submitted that the application was filed by the Applicants in 2021 and as on date about four years have elapsed, however, till date neither construction has been completed nor possession has been offered. It is submitted that before the Adjudicating Authority, the Corporate Debtor itself has filed an affidavit which indicate that all towers except 1 and 2 Tower were not constructed, even according to the Appellant's case. The project under which the allottees were allotted units was an affordable group housing project in which carpet area of flat is 310 sq. ft. onwards. Most of the allottees who were allotted flats have taken financial assistance for making

payment of the consideration and for last more than five years they are waiting for their units to be handed over. The project is not in habitable condition. The Corporate Debtor has neglected the units and failed to make endeavours to complete the construction in order to qualify enough to obtain the Occupation Certificate. The possession of the units is still not delivered, even after more than five years from 22.01.2020 on which date possession was to be offered to the allottees. Even if, allowance of 89 days is granted to the Appellant during which construction was halted and given a grace period of further six months, the default is continuing and when default is continuing in nature, Appellant cannot be heard to say that since there was no default on 22.01.2020, application under Section 7 deserve to be rejected. The threshold of the allottees was fully complete, even after settlement with few allottees, there were 142 members who fulfil the minimum threshold. The submission of the Appellant that allottees have defaulted in payment of their instalment, it is submitted that some of the unitholders has paid 100% of their consideration and most of them have paid 90-95% of their consideration. Unitholders have also paid amounts to the Corporate Debtor as per the demand letters issued from time to time. It is submitted that even as on date construction is not complete and project is standing stand still. It is submitted that for resolution of the Corporate Debtor insolvency process is eminent and the unitholders can get their units through mechanism as provided in the I&B Code. The Adjudicating Authority after considering all aspects of the matter has correctly admitted the Section 7 application. The submission of the Appellant is wrong that several hundred people are already offered possession. There is no Occupation Certificate, it cannot be accepted that units are complete to be offered.

6. Ms. Vibha Makhija, learned senior counsel submits that approx. 200 homebuyers have given their consent letter, who are Applicant in IA No.7226 of 2024, accepting the resolution plan given by the Promoters. It is submitted by learned counsel that homebuyers are interested in completion of project and insolvency of the Corporate Debtor shall cause hardship for the unitholders to get possession of their units. The suspended management has provided a plan in which the construction shall be completed within stipulated time under supervision of a committee having homebuyers as members and Resolution Professional. It is submitted that on the application filed by handful of homebuyers the Corporate Debtor cannot be put under insolvency.

7. Another IA No.2767 of 2025 has been filed by one Pawan Kumar Kaushik, a unitholder who has also referred to the resolution plan submitted by the Promoters. It is submitted that before the Adjudicating Authority also 180 homebuyers have filed an application for deferment. The plan provided by the suspended management need to be accepted in which their 70% amount will be used for construction.

8. We have considered the submissions of learned counsel for the parties and perused the record.

9. We have already noticed above that project in question i.e. 'Basera' is a project under Affordable Housing Scheme floated by Government of Haryana in 2013. Licences were granted to the Corporate Debtor in the year 2014 and the building plan approved. As per the scheme of the Government of Haryana, development of colony under Affordable Housing Scheme was to be done so that unitholders will get small units of 310 sq ft and more. All the applicants were allotted different units in different towers. There is no dispute between the parties that the four years' period under which construction was to be completed and units to be handed over to the unit holders commenced on 22.01.2016 on which date environmental clearance was granted. As noted above, issue that the Applicants (Respondent herein) who had filed application under Section 7 fulfil the necessary threshold being more than 100 allottees is not being questioned. We, thus, need to proceed on the premise that Section 7 application was filed by the Applicants who fulfil the threshold as provided under Section 7 proviso.

10. The submission which has been pressed by learned counsel for the Appellant is that there was no default on the part of the Corporate Debtor so as to initiate insolvency resolution process against the Corporate Debtor. The submission which has been pressed by learned counsel for the Appellant is that as per the Flat Buyer's Agreement entered between the Corporate Debtor and the unitholders period of 48 months under which the Corporate Debtor has to offer the possession was subject to four conditions i.e. (i) force majeure circumstances; (ii) intervention of statutory authorities;

(iii) requirement of Occupation Certificate; and (iv) completion of obligation by allottees including timely payment of their instalments. Submission of learned counsel for the Appellant is that the Adjudicating Authority has completely ignored the contractual clauses between the parties, hence, has come to the erroneous conclusion that default has been committed by the Corporate Debtor.

11. The clauses of Flat Buyer's Agreement which falls for consideration and has been relied by learned counsel for the Appellant are clause 3.1 and 3.5. We need to need to notice Clause 3.1 and 3.5 from the Flat Buyer's Agreement dated 10.12.2015 entered between the Corporate Debtor and Mr. Ankur Khetan, which was part of the Section 7 application filed by the Respondents. Clause 3.1 and 3.5 are as follows:

> *"3.1 Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement , including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter*

referred to as the "Commencement Date"), whichever is later.

3.5 The Developer shall endeavor to handover possession of the Said Flat within a period of four years (48 months) from the Commencement Date, subject to timely payment by the AIlottee/Buyer towards the basic sale price and other charges, as demanded in terms of this Agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all installments and completion of formalities required."

12. The submission which has been pressed by learned counsel for the Appellant is that 4 years' period which is provided in Clause 3.1 was subject to force majeure, intervention of statutory authorities, requirement of Occupation Certificate and allottees making timely payment of instalments. The submission of the Appellant is that details of 89 days during which construction was halted along with relevant orders was produced before the Adjudicating Authority. It is submitted that in event 89 days period is extended, the default shall fall within the period prohibited under Section 10A. It is well settled principle of construction of contract that all clauses of the contract has to be given a harmonious construction and parties' intent need to be find out from the clauses of the contract.

13. Two clauses i.e. 3.1 and 3.5 of the Flat Buyer's Agreement are relevant. We need to first take up the submission of timely payment of

instalments by the allottees, which according to Appellant was not done by the Respondents. A chart showing default on the part of 56 allottees out of 171 allottees has been referred to by learned counsel for the Appellant, according to which there are more than Rs.1 Lakh dues of 27 allottees.

14. The present is a case where it is the submission of the Appellant that all applicants who have filed Section 7 application are in default. Learned counsel for the Appellant during submission has referred to 56 allottees who according to the Appellant are in default. In this context, we notice the judgment of Hon'ble Supreme Court in ***"Manish Kumar vs. Union of India, (2021) 5 SCC 1"*** where the Hon'ble Supreme Court had occasion to elaborately consider the provision of Section 7 of the I&B Code in reference to the allottees who initiate proceeding under Section 7 against a real estate company. It was held by the Hon'ble Supreme Court that it is not necessary that all Applicants who have initiated proceeding under Section 7 need to prove that default has been committed with respect to each of them by the Corporate Debtor. It is submitted that any allottee, who is Financial Creditor of the Corporate Debtor for default of any other Financial Creditor by virtue of explanation to Section 7(1) can initiate proceeding. Thus, in a case where Corporate Debtor commits default, failing to handover possession of unit to allottee who is a Financial Creditor and has paid his 100% consideration, no capital can be made by making submission by the Corporate Debtor that there are some other allottees who are party to the application who had not paid their 100% consideration. In this context, we

refer to Para 170 and 171 of the judgment of Hon'ble Supreme Court in ***Manish Kumar's case***, which is as follows:

> *"**170.** It is indisputable that in order to successfully move an application under Section 7 that there must be a default which must be in a sum of Rs 1 crore. It is equally clear that the amount of Rs 1 crore need not be owed by the corporate debtor in favour of the applicant. It must be noted that the Explanation existed even prior to the provisos being inserted. It is open to a financial creditor, to move an application in the company of another financial creditor or more than one other financial creditor. In fact, a perusal of the Rules, which we have already extracted, would indicate that irrespective of the number of applicants the court fee would remain Rs 25,000. This answers the alleged vagueness about court fees where the provisos are given effect to. Thus, dehors the impugned provisos in terms of the Explanation in Section 7(1), a financial debt need not be owed to the applicant and as joint application by more than one applicant was and is contemplated, the resultant position would be that any number of applicants, without any amount being due to them, could move an application under Section 7, provided that they are financial creditors and there is a default in a sum of Rs 1 crore even if the said amount is owed to none of the applicants but to any another financial creditor. This position has not undergone any change even with the insertion of the provisos. In other words, even though the provisos require that in the case of a*

real estate project, being conducted by a corporate debtor, an application can be filed by either one hundred allottees or allottees constituting one-tenth of the allottees, whichever is less, if they are able to establish a default in regard to a financial creditor and it is not necessary that there must be default qua any of the applicants. We have taken an extreme example to illustrate how the Code can possibly be worked.

171. *In practice, it may be unlikely, however, that persons would come together as applicants under the Code, if they are real estate allottees, particularly knowing what the admission of application under Section 7 entails, and the destiny of an application which has reached the stage of compulsory winding up under Section 33. However, taking a more likely example viz. of the corporate debtor operating in the real estate sector and an allottee moving an application upon there being amounts due to him, prior to the amendment, undoubtedly, a single allottee could set the ball in motion and all he had to satisfy is default to him or any other financial creditor. The change that is brought about is only that apart from establishing the factum of default, he must present the application endorsed by the requisite number introduced by the proviso. Since, default can be qua any of the applicants, and even a person, who is not an applicant, and the action is, one which is understood to be in rem, in that, the procedures, under the Code, would bind the entire set of stakeholders, including the whole of the allottees, we*

> *can see no merit in the contention of the petitioner based on the theory of default, rendering the provisions unworkable and arbitrary."*

15. Thus, the submission of the Appellant that some of the allottees have not made timely payment of their instalments cannot be accepted to ignore the default committed by the Corporate Debtor against those applicants who have made payment of their full consideration and claiming default in not handing over possession by the time given in the Flat Buyer's Agreement.

16. The second limb of the argument of the Appellant is that Clause 3.1 clearly stipulate that offering the possession is subject to requirement of Occupation Certificate. The Adjudicating Authority has examined the said submission in Para 13 of the order. The averment made by the Corporate Debtor was not accepted observing that *"If such a contention of the Corporate Debtor is taken into consideration, then, it would lead the tendency of intentional prolonged delays on the part of the Corporate Debtor for an uncertain period in order to avoid handing over the possession to the respective allottees".*

17. The Occupation Certificate is issued by the Regulatory Authority to a Corporate Debtor after completion of the construction. In a case where Corporate Debtor does not complete construction, it cannot shield itself on the ground that no Occupation Certificate has been issued, therefore, its obligation to handover possession shall not commence. Clause 3.5, as noted above contemplate handing over possession within 48 months from

the commencement date subject to force majeure and timely payment of all instalments. When we read Clause 3.1 and 3.5 together, period of 48 months has been contemplated for handing over possession subject to only force majeure and payment of instalments. No case of force majeure except halting of construction for 89 days has been contended, which falls in the expression 'intervention of statutory authorities'. Clause 3.5 does not stand any fetter in handing over possessing or receipt of Occupation Certificate.

18. We now need to notice Affidavit dated 22.08.2022 which was filed by the Corporate Debtor before the Adjudicating Authority where status of project has been given. According to own case of the Corporate Debtor out of total 15 Towers only Tower 1 and 2 are fully complete and rest 13 Towers were yet to be completed. In Para 9, a detailed chart outlining the status of project has been given. In Para 10 of the Affidavit following has been stated:

> *"10. In view of the ongoing work and continuous measures being taken by the CD to complete the project timely, the said project is endeavoured to be completed by June 2023. However, till date total No. of 452 units have been offered for possession. Copies of photographs reflecting the status of the project/towers is annexed herein as Annexure R-1.*
>
> *A detailed chart reflecting the status of possession offers is reproduced herein below for ready reference:"*

SR. NO.	**PHASES**	**TOWER NO**	**TOWER CONFIGURATION**	**TOTAL NO OF FLATS**	**POSSESSION OFFERED**	**EXPECTED DAT OF POSSESSION**

1	Phase 1	Tower 1	G+12	130	130	Possession on going
2		Tower 2	G+12	130	130	Possession on going
3	Phase 2	Tower 3	G+14	120	48	Possession on going
4		Tower 11	G+13	112	48	
5		Tower 12	G+14	120	48	
6		Tower 13	G+14	120	48	
7	Phase 3	Tower 4	G+14	150		Possession will be offered in September 2022
8		Tower 6	G+17	144		Possession will be offered in Oct 2022
9		Tower 7	G+17	144		Possession offered in Oct 2022
10		Tower 8	G+17	144		Possession offered in Nov 2022
11		Tower 9	G+15	128		Possession in Dec 2022
12		Tower 5	G+15	128		Possession in Feb 2023
13	Phase 4	Tower 10	G+14	150		Possession in May 2023
14		Tower 14	G+15	128		Possession in June 2023
15		Tower 15	G+15	128		Possession in April 2023
TOTAL				**1976**	**452**	

According to, thus, own case of the Corporate Debtor, possession was to be handed over by June, 2023.

19. At this stage, we also need to notice I.A. No.6177 of 2024 filed by the Appellant. In which application the Appellant has made following prayers:

"PRAYER

In view of the facts and circumstances of the case and in the interest of justice this Hon'ble Appellate Tribunal may graciously be pleased to:

a) *Direct the Respondent No. 166 to take such necessary steps as may be required to continue the Corporate Debtor as a going concern, including by continuing the constructions activities;*

b) *Permit the ex-management of the Corporate Debtor to assist the Respondent No. 166 in completing the construction activities under the supervision of the Respondent No. 166;*

c) *Pass directions to the complete the Project by Promoter in reverse insolvency mechanism;*

d) *Pass any other order (s) which this Tribunal may deem fit."*

20. The application itself indicates that construction of the project is not complete and Appellant seeks leave of the Court to proceed with the construction of the project under the supervision of the IRP. In the application, it has been submitted that Appellant is negotiating with one M/s Raveneek Homes for joint development of concerned land. It is useful to notice that a reply has been filed by the Resolution Professional in IA No.6177 of 2024 where the Resolution Professional has stated that HRERA registration has already expired in November, 2020 and further there is dispute with Directorate of Town and Country Planning, Haryana (DTCP) on renewal of licence and the Corporate Debtor has filed a Writ Petition. It was further pleaded that the Corporate Debtor claim to offered possession without obtaining Completion Certificate/ Occupation Certificate and also

without having basic amenities. It is useful to extract Para 5(a) and (b) of the reply, which is as follows:

> *"a. The contents of para 8(a) are denied in toto. It is denied that Resolution Professional placed any negative agenda for discontinuance of construction before CoC. The same is evident from the notice, agenda and explanatory statement to 2nd CoC meeting. Copy of notice, agenda and explanatory statement of 2nd CoC meeting is annexed herewith as Annexure-RI. It is also transpires from reading of minutes of 2nd CoC meeting that CoC noted that HRERA registration of the project has already expired in November, 2020 and no money can be collected from real estate allottees without renewal of HRERA. The CoC also noted that there is ongoing dispute with Directorate of Tower and Country Planning, Haryana (DTCP) on renewal of licence fee and writ petition is already filed by the Corporate Debtor. The CoC also noted that there will be more pilferage or wastage of resources of the Corporate Debtor in piecemeal construction activity.*
>
> *b. With regard to contents of para 8(b), (c) & (d), it is submitted that Corporate Debtor offered possession of flats without obtaining CC/OC and also without having basic amenities such as permanent electricity connection, without having any permanent solution of water supply and sewerage treatment. The monthly expenses as mentioned in para 8(b), (c) & (d) are dead loss the Corporate Debtor due to illegal possession offered by the ex-management."*

21. The above clearly indicate that registration of the project is not there from November, 2020 and project is still incomplete. In this appeal an additional affidavit has been filed by the Appellant dated 23.11.2024 annexing resolution plan with respect to 'Basera' project. The resolution plan proposed to be a resolution plan along with financial proposal and term of plan. Para 6.3.1 gives the timeline chart, which provides as follows:

*"**6.3.1 <u>Timeline Chart</u>***

The Promoters proposes to implement this Resolution Plan within a period in accordance with the Implementation Schedule and other terms contained in this Resolution Plan.

To implement of the Resolution Plan in the following manner ("Implementation Schedule"):

S.No.	***Activity***	***Indicative Timeline***
1.	*Approval of the Resolution Plan by the NCL*	*E*
2.	*Obtaining approvals from various authorities*	*E+180 days*
3.	*Possession of flats to Home Buyers*	*E+730 days to E+1095*

22. The above timeline which is given by the Appellant itself indicate that from the date of approval of the resolution plan between 730 days to 1095 days' possession of flats will be given to the homebuyers. Thus, according to the Appellant still there will be 2-3 years in handing over possession to the homebuyers.

23. All the above facts which have been brought along with the Affidavit by the Appellant either before the Adjudicating Authority as well as before this Tribunal can be looked into to come to the conclusion as to whether the Corporate Debtor needs resolution under CIRP.

24. We may also notice the judgment of this Tribunal in ***"Shailendra Agarwal vs. Asit Upadhyaya & Ors., Company Appeal (AT) (Ins.) No.327 of 2025"*** decided on 23.04.2025 where it was observed that not handing possession by the Corporate Debtor to the allottees is a continuing default committed by the Corporate Debtor. The above was a case also where Section 7 application was filed by the allottees alleging default on the part of the Corporate Debtor in handing over possession and refunding the amount to the allottees. It is useful to notice following observations in Para 31 of the judgment:

> *"31. ……It also mentions that the act of non-handing of possession on the part of the corporate debtor resulted in default on the part of the corporate debtor and since the possession of the units has not been handed over till day, it resulted in continuing default/recurring cause of action in terms of section 22 of the limitation act in 1963. Further in part V of the CP, in the list of documents to be attached there is clear mention of documents which show continuing default committed by the CD. The Respondents-allotees had attached the copy of RERA publication dated 24.12.2022 for this project showing default committed by the CD. Respondents-allotees has also*

> *attached the statement of accounts as on 30.06.2022 of Nikhil Home Associates. We find that documents filed and the sequence of events clearly brings out the fact that the default is continuing and we cannot come to an inference that there is absence of pleadings. The judgement cited is therefore of no avail to the Appellants.”*

25. We have noticed above that Appellant has filed IA No.6177 of 2024 seeking direction to complete the project by Promoters in reverse insolvency mechanism. In the appeal no order was passed by this Tribunal accepting the prayers made in the application although a group of allottees who had filed IA No.7266 of 2024 and another IA, as noted above, supporting the Promoters of the Corporate Debtor prayed that the resolution plan of the Promoter be accepted and they may be permitted to carry on construction. The Respondent herein who has filed the Section 7 application opposed the said prayer tooth and nail. It is submitted that the Corporate Debtor had neglected to construct project and project is in inhabitable condition. Even after expiry of more than five years from the date when possession was to be given to the unitholders project is neither complete nor can be completed by the Promoters in near future. In the present case, we, thus, are not inclined to pass any direction for Reverse Insolvency Resolution Process, as prayed by the Promoters.

26. There can be no dispute to the proposition that that in several cases this Court has directed for completion of the project under the Reverse Insolvency Process. Judgment of this Tribunal in ***“Flat Buyers***

Association of Winter Hills – 77, Gurgaon vs. Umang Realtech P. Ltd., 2020 SCC OnLine NCLAT 1199" has been relied. The most of the cases where Reverse Insolvency was directed are cases where all stakeholders were substantially agreed with the proposal of construction. Present is a case where Applicants who has initiated proceedings under Section 7 have objected to the prayers made by the Promoter to permit them to carry on the construction.

27. It is submitted that the present is a case where the Corporate Debtor is to be resolved by CIRP process only and the resolution plan has to be obtained as per the CIRP process. It is submitted that in view of the interim order passed by this Tribunal directing the Resolution Professional not to issue Form G on 02.07.02024 further steps are not yet been taken and this Court may direct the Resolution Professional to issue Form G and obtain a compliant resolution plan for resolution of the Corporate Debtor.

28. We having noticed the facts present in Section 7 application, affidavit filed before the Adjudicating Authority and this Tribunal and application filed before this Tribunal in the present appeal, we come to the conclusion that project 'Basera' is still incomplete and no case has been made out to permit the Promoter to complete the project. The Adjudicating Authority having already initiated the CIRP process by admitting Section 7 application, the Corporate Debtor needs to be resolved in accordance with the process prescribed in the I&B Code and CIRP Regulations, 2016.

29. In facts of the present case, specially the fact that project is not yet complete as per own case of the Appellant and Appellant in its resolution plan itself has shown that it will take 2-3 years in handing over possession to the homebuyers. The submission advanced by leaned counsel for the Appellant that there is no default on the part of the Corporate Debtor cannot be accepted. The real estate projects are project which are undertaken by the Corporate Debtor to complete with the amount received from the allottees. Timelines given in the Flat Buyer's Agreement has to be given meaning and purpose. The Corporate Debtor cannot be allowed to take benefit of his own inaction and act of not completing the project. Submission of the Appellant that since Occupation Certificate was not issued, it could not give possession to the homebuyers cannot be accepted. Completion of the construction is precondition for obtaining Occupation Certificate, thus, precondition having not been completed by the Corporate Debtor, it cannot hide its default on the pretext that due to non-receipt of the Occupation Certificate possession cannot be handed over, hence, there is not default on the part of the Corporate Debtor.

30. Taking into consideration the overall facts and circumstances, no case has been made out to interfere with the initiation of insolvency resolution process of the Corporate Debtor. The project which is not complete even after about a decade from the date when allotment was made in favour of the allottees, the Corporate Debtor needs resolution as per the I&B Code and the CIRP Regulations, 2016.

31. In result, we dismiss the appeal. Discharge the interim order dated 02.07.2024. The period from 02.07.2024 till date shall be excluded from the CIRP process. The Resolution Professional to proceed with the CIRP process and after issuing Form G take steps for early resolution of the Corporate Debtor as early conclusion of the CIRP is required in the facts of the present case. Subject to above, the appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

29th August, 2025

Archana