

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-330(ND)/2021

IN THE MATTER OF:

Bibhuti Bhushan Biswas & 125 Others

Chandrima Mukhopadhyay

R/O 3308-B, Ground Floor,

Chandralok, DLF PH-4,

Near Ascent Public School,

Gurgoan-122002, Haryana

... Applicants/Financial Creditors

Versus

M/s Ansal Properties and Infrastructure Limited

Having its registered office at:

115, Ansal Bhawan 16,

Kasturba Gandhi Marg

New Delhi-110001

...Respondent

Order Delivered on: 16.11.2022

SECTION: 7 of IBC 2016

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. K.K Singh, Adv. Nidhi Rani,

For the Respondent : Adv. Neeha Nagpal

(IB)-330/(ND)/2021

Bibhuti Bhushan Biswas and Ors. Vs M/s. Ansal Properties and Infrastructure Ltd.

ORDER

PER SH. L. N. GUPTA, MEMBER (T)

Mr. Bibhuti Bhushan Biswas and 125 others (collectively called as, the **‘Applicants/Financial Creditors’**) have filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **‘IBC, 2016’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Ansal Properties and Infrastructure Limited (for brevity, the **‘Respondent’**).

2. The Respondent namely, M/s. Ansal Properties and Infrastructure Limited is a Company incorporated on 30.06.1967 under the provisions of erstwhile Companies Act, 1956 with CIN L45101DL19673LC004759 having its registered office at 115, Ansal Bhawan 16, Kasturba Gandhi Marg New Delhi-110001, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.1,50,00,00,000/- and Paid-up Share Capital of the Company is Rs.78,70,24,380/- as per the Master Data annexed with the Application.

3. It is submitted by the Applicants that they have purchased flats/villas in the project developed by the Respondent, namely, “The Fernhill” situated at “Revenue Estate of Village Mewka, Tehsil-Manesar, Sector-91, District Gurgaon, Haryana (hereinafter referred to as **“the Project”**) in the year 2011. It is submitted that the Applicants had purchased the residential flats

(IB)-330/(ND)/2021 

Bibhuti Bhushan Biswas and Ors. Vs M/s. Ansal Properties and Infrastructure Ltd.

/ villas (“Units”) as the Respondent had assured timely physical possession. Pursuant to booking of the units, the Applicants executed separate builder-buyers’ agreements with respect to the allotted units. Terms and Conditions of these agreements were identical except the sales consideration of each unit.

4. The Allottee-wise details of the units allotted, dates of allotment and amount of default as stated by the Applicants in the application are summarized in the table given below:

Sl. No	Name of Allottee	Date of Allotment/Agreement	Unit Details	Amount of Default (Rs)
1.	Mr. Vikram Jeet Garg	10-07-2013	(Flat/Villa) No. 0704 - A - 1101 in Tower No. A having an approximate super area admeasuring 1618 sq. ft.	2,64,20,948.75/-
2.	Mrs. Taran Mehta & Mr. Amit Mehta	10-07-2013	(Flat/Villa) No. 0704 - A - 0404 in Tower No. A having an approximate super area admeasuring 1348 sq. ft.	2,32,58,453.07/-
3.	Mr. Pawan Kumar Mishra & Mrs. Kamini Mishra	10-07-2013	(Flat/Villa) No. 0704 - A - 803 in Tower No. A having an approximate super area admeasuring 1348 sq. ft.	2,25,64,955.38/-
4.	Mr. Vishwas Sharma & Mrs. Deerga Sharma	10-07-2013	(Flat/Villa) No. 0704 - A - 903 in Tower No. A having an approximate super area admeasuring 1348 sq. ft.	2,15,47,051.05/-
5.	Mr. Munish Abrol & Mrs. Beatrice Abrol	10-07-2013	(Flat/Villa) No. 0704 - B - 1101 in Tower No. B having an approximate super area admeasuring 1618 sq. ft.	2,39,49,458.10/-

6.	Mr. Manish Nema & Ms. Deepti Nema	20/7/2013	(Flat/Villa) No. 0704 - B - 0401 in Tower No. B having an approximate super area admeasuring 1618 sq. ft.	2,64,38,461.11/-
7.	Khyati Thareja & Mukesh Kumar Sajjan	30/7/2013	(Flat/Villa) No. 0704 - H - 0202 in Tower No. H having an approximate super area admeasuring 1877 sq. ft.	2,56,67,851.33/-
8.	Kartik Sharma	10/7/2013	(Flat/Villa) No. 0704 - C - 0502 in Tower No. C having an approximate super area admeasuring 1618 sq. ft.	2,81,82,734.8/-
9.	Bibhuti Bhushan Biswas & Chandrima Mukhopadhyay	18/7/2013	(Flat/Villa) No. 0704 - D - 0702 in Tower No. D having an approximate super area admeasuring 1618 sq. ft.	2,43,48,887.67/-
10.	Mahendra Tripathi	10/7/2013	(Flat/Villa) No. 0704 - E - 0301 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	2,57,84,902.70 /-
11.	Rahul & Pooja Sachdeva	10/7/2013	(Flat/Villa) No. 0704 - E - 0501 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	2,59,82,633.33/-
12.	Pradeep Kumar Gupta	10/7/2013	(Flat/Villa) No. 0704 - E - 0603 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,07,36,102.21/-
13.	Arun Taneja & Sona Taneja	10/7/2013	(Flat/Villa) No. 0704 - E - 0802 in Tower No. E having an approx. super area admeasuring 1618 sq. ft.	2,43,96,606.33/-

14.	Gulshan Malik	26/7/2013	(Flat/Villa) No. 0704 - F 0101 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	2,59,07,462.00/-
15.	Abhishek Repswal	12/1/2012	(Flat/Villa) No. 0704 - F - 1201 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	9,41,676.00 /-
16.	Mohit Rastogi	23/7/2013	(Flat/Villa) No. 0704 - F - 1202 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	2,30,22,362.00/-
17.	Arun Saigal & Sandeep Saigal	10/7/2013	(Flat/Villa) No. 0704 - F - 0203 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,17,53,184.38/-
18.	Gaurav Dayal	30/07/2013	(Flat/Villa) No. 0704 - G - 1102 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,53,75,374.80/-
19.	Ananda Dharmapal & Soma Dharmapal	30/7/2013	(Flat/Villa) No. 0704 - G - 0601 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,29,23,275.33/-
20.	Rajesh Kumar and Usha Rani	30/7/2013	(Flat/Villa) No. 0704 - G - 0603 in Tower No. G having an approximate super area admeasuring 1618 sq. ft.	2,09,32,885.67/-
21.	Gaurav Kumar & Ruchi Khurana	30/7/2013	(Flat/Villa) No. 0704 - G - 0904 in Tower No. G having an approx. super area admeasuring 1618 sq. ft.	2,13,98,650.67/-

22.	Vineet Bhatia	10/7/2013	(Flat/Villa) No. 0704 - J - 1004 in Tower No. J having an approximate super area admeasuring 1618 sq. ft.	1,92,70,152.33/-
23.	Subhash Chander	10/7/2013	(Flat/Villa) No. 0704 - J - 0104 in Tower No. J having an approximate super area admeasuring 1618 sq. ft.	1,73,87,922.99/-
24.	Abhimanyu Repswal	10/7/2013	(Flat/Villa) No. 0704 - F - 12A01 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	1,23,16,882.33/-
25.	Amandeep Kathuria	10/7/2013	(Flat/Villa) No. 0704 - J - 0301 in Tower No. J having an approximate super area admeasuring 1877 sq. ft.	1,46,28,538.67/-
26.	Radha Abrol and Sudha Abrol	10/7/2013	(Flat/Villa) No. 0704 - J - 0602 in Tower No. J having an approximate super area admeasuring 1877 sq. ft.	2,22,13,339.67/-
27.	Roshan Lal Sandal & Nidhi Sandal	10/7/2013	(Flat/Villa) No. 0704 - J - 0802 in Tower No. J having an approximate super area admeasuring 1877 sq. ft.	2,19,98,550.67/-
28.	Rohit Verma	10/7/2013	(Flat/Villa) No. 0704 - K - 0201 in Tower No. K having an approximate super area admeasuring 1877 sq. ft.	2,03,87,871.42/-
29.	Subhash Khurana	10/7/2013	(Flat/Villa) No. 0704 - B-L/1103 in Tower No. L having an approx. super area admeasuring 1618 sq. ft.	2,48,39,916.33/-

30.	Vijay Kumar Maurya	10/7/2013	(Flat/Villa) No. 0704 - L - 0303 in Tower No. L having an approximate super area admeasuring 1618 sq. ft.	1,97,40,076.51/-
31.	Chandan Sood & Karuna Nidhi	10/7/2013	(Flat/Villa) No. 0704 - M - 0204 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,34,58,686.33/-
32.	Rahul Jain & Shefali Jain	10/7/2013	(Flat/Villa) No. 0704 - M - 0304 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,77,88,209.33/-
33.	Puneet Arora & Kapila Arora	10/7/2013	(Flat/Villa) No. 0704 - M - 0504 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,33,42,067.58/-
34.	Himanshu Mittal and Smita Garg	10/7/2013	(Flat/Villa) No. 0704 - H - 0304 in Tower No. H having an approximate super area admeasuring 1618 sq. ft.	2,18,86,069.13/-
35.	Aman Bhatnagar	20/7/2013	(Flat/Villa) No. 0704 - E - 0303 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,07,31,608.88/-
36.	Mrs. Ravinder Sharma & Ganesh Dutt Sharma	30/7/2013	(Flat/Villa) No. 0704 - H - 0504 in Tower No. H having an approximate super area admeasuring 1618 sq. ft.	2,13,15,779.67/-
37.	Mrs. Gunjan Garg and Mr. Anupam Garg	10/7/2013	(Flat/Villa) No. 0704 - H - 1102 in Tower No. H having an approximate super area admeasuring 1877 sq. ft.	2,49,43,219.67/-

38.	KanhiyaLall Goel & Madhu Bala	10/7/2013	(Flat/Villa) No. 0704 - L - 1004 in Tower No. L having an approximate super area admeasuring 1618 sq. ft.	2,29,90,207.67/-
39.	Piyush Arora & Pinky Arora	10/7/2013	(Flat/Villa) No. 0704 - M - 1002 in Tower No. M having an approximate super area admeasuring 1877 sq. ft.	2,67,53,180.46/-
40.	Vimal Bhan&Soni Tikoo	27/1/2012	(Flat/Villa) No. 0704 - G - 0402 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,50,34,631.00/-
41.	Tarun Kamra& Suman Kamra	10/7/2013	(Flat/Villa) No. 0704 - J - 0604 in Tower No. J having an approximate super area admeasuring 1618 sq. ft.	1,59,37,734.33/-
42.	Taranpreet Singh Chandhok	10/7/2013	(Flat/Villa) No. 0704 - L - 0201 in Tower No. L having an approximate super area admeasuring 1877 sq. ft.	27,001,453.53/-
43.	Rajesh Kumar & Supriya Sinha	18/7/2013	(Flat/Villa) No. 0704 - D - 0303 in Tower No. D having an approximate super area admeasuring 1348 sq. ft.	2,29,06,154.67/-
44.	Ramesh & Ankur Pahuja	10/7/2013	(Flat/Villa) No. 0704 - M - 1004 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,29,75,412.64/-
45.	Ruchika Sharma & Rahul Sharma	1/8/2013	(Flat/Villa) No. 0704 - C - 0203 in Tower No. C having an approx. super area admeasuring 1348 sq. ft.	2,37,17,425.00/-

46.	Siyaram Kashyap	10/7/2013	(Flat/Villa) No. 0704 - F - 1603 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,04,20,861.33/-
47.	Shyam Hingorani & Jyoti Hingorani	10/7/2013	(Flat/Villa) No. 0704 - G - 0104 in Tower No. G having an approximate super area admeasuring 1618 sq. ft.	1,68,07,770.38/-
48.	Shweta Shalini & Mukesh Kumar Jha	10/7/2013	(Flat/Villa) No. 0704 - A - 0203 in Tower No. A having an approximate super area admeasuring 1348 sq. ft.	2,05,98,928.31/-
49.	Anand Kumar	10/7/2013	(Flat/Villa) No. 0704 - A-B/1004 in Tower No. B having an approximate super area admeasuring 1348 sq. ft.	2,02,48,773.33/-
50.	Satish Kumar Agarwal	30/7/2013	(Flat/Villa) No. 0704 - H - 0604 in Tower No. H having an approximate super area admeasuring 1618 sq. ft.	2,22,36,817.67/-
51.	Vandana Sharma and Naresh Sharma	10/7/2013	(Flat/Villa) No. 0704 - C-C/403 in Tower No. C having an approximate super area admeasuring 1348 sq. ft.	2,16,13,356.69/-
52.	Rajeev Arora & Shalini Arora	30/7/2013	(Flat/Villa) No. 0704 - H -0201 in Tower No. H having an approximate super area admeasuring 1877 sq. ft.	2,54,50,887.33/-
53.	Gaurav Arora & Payal Verma	10/7/2013	(Flat/Villa) No. 0704 - B - 0504 in Tower No. B having an approx. super area admeasuring 1348 sq. ft.	1,93,03,248.41/-

54.	Puneet Madan & Namrata Madaan	10/7/2013	(Flat/Villa) No. 0704 - M - 0203 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,36,45,829.65/-
55.	Deepak Kumar and Mrs. Ramesh	10/7/2013	(Flat/Villa) No. 0704 - E - 1404 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,17,66,976.33/-
56.	Ravindra Agarwal	10/7/2013	(Flat/Villa) No. 0704 - J - 0901 in Tower No. J having an approximate super area admeasuring 1877 sq. ft.	2,13,94,246.67/-
57.	Dinesh Satija	10/7/2013	(Flat/Villa) No. 0704 - B-G/1203 in Tower No. G having an approximate super area admeasuring 1618 sq. ft.	2,05,53,570.53/-
58.	Utsav Sarkar	19/7/2013	(Flat/Villa) No. 0704 - E - 1103 in Tower No. E having an approx. super area admeasuring 1348 sq. ft.	2,19,11,158.33/-
59.	Narinder Kumar Girdhar & Aseem Girdhar	10/7/2013	(Flat/Villa) No. 0704 - E - 1101 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	1,73,42,499.59/-
60.	Amit Girdhar	10/7/2013	(Flat/Villa) No. 0704 - C - 1003 in Tower No. C having an approximate super area admeasuring 1348 sq. ft.	2,27,51,915.02/-
61.	Raj Mishra & Nidhi Mishra	10/7/2013	(Flat/Villa) No. 0704 - E - 0901 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	2,52,86,384.33/-

62.	Sachin Punjani & Neeru Punjani	20/7/2013	(Flat/Villa) No. 0704 - E - 1203 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,12,47,180.25/-
63.	Parshant Sharma & Mrs. Raj Rani	10/7/2013	(Flat/Villa) No. 0704 - D - 0202 in Tower No. D having an approximate super area admeasuring 1618 sq. ft.	2,79,49,535.79/-
64.	Seema Dhillon	10/5/2014	(Flat/Villa) No. 0705 - GH- 023 in Tower No. Villa having an approximate super area admeasuring 5030 sq. ft.	4,31,53,760.03/-
65.	Rishi Khanna & Payal Khanna	30/7/2013	(Flat/Villa) No. 0704 - G - 0801 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,52,14,131.74/-
66.	Anoop Chauhan & Smita Chauhan	10/7/2013	(Flat/Villa) No. 0704 - G-G/203 in Tower No. G having an approx. super area admeasuring 1618 sq. ft.	1,73,87,922.99/-
67.	Pankaj Saini & Kavita Saini	10/7/2013	(Flat/Villa) No. 0704 - F - 0401 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	2,53,55,683.33/-
68.	Preeti Saini Naveen Saini	10/7/2013	(Flat/Villa) No. 0704 - C - 0402 in Tower No. C having an approximate super area admeasuring 1618 sq. ft.	2,68,83,522.00/-
69.	Jatin and Shilpa Sabharwal	10-07-2013	(Flat/Villa) No. 0704 - M - 0301 in Tower No. M having an approximate super area admeasuring 1877 sq. ft.	2,68,61,416.67/-

70.	Veena Bhomia & Hemanta Kumar Batra	10-07-2013	(Flat/Villa) No. 0704 - N - 0203 in Tower No. N having an approximate super area admeasuring 2315 sq. ft.	3,37,59,209.64/-
71.	Mahendar Singh and Anit Kaur	10-05-2014	(Flat/Villa) No. 0705 - GH- 04 in Tower No. Villa having an approximate super area admeasuring 5030 sq. ft.	5,77,45,976.00/-
72.	Mrs Raj Rana & Mr. Manish Rana	10-05-2014	(Flat/Villa) No. 0705 - GH- 026 in Tower No. Villa having an approximate super area admeasuring 5030 sq. ft.	5,58,71,358.00/-
73.	Shashi Bala & Ajit Chawla	10-07-2013	(Flat/Villa) No. 0704 - D - 0104 in Tower No. D having an approximate super area admeasuring 1348 sq. ft.	2,43,55,077.33/-
74.	Pooja Malik and Raman Kumar	30-07-2013	(Flat/Villa) No. 0704 - G - 1001 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,47,64,998.33/-
75.	Gaurav Madan & Smita Madan	10-07-2013	(Flat/Villa) No. 0704 - M - 0703 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,77,88,209.33/-
76.	Vibhor Jain & Rama Jain	30-07-2013	(Flat/Villa) No. 0704 - F - 0604 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,22,49,522.67/-
77.	Saurabh Sarwate	25-02-2012	(Flat/Villa) No. 0704 - J - 0304 in Tower No. J having an approx. super area admeasuring 1618 sq. ft.	1,92,99,160.8/-

78.	Santosh Rani & Ramesh ChanderKochar,	10-07-2013	(Flat/Villa) No. 0704 - K - 0404 in Tower No. K having an approximate super area admeasuring 1618 sq. ft.	1,92,15,273.33/-
79.	Dr V Rajshekhar & Dr Sushmita Pathy	10-07-2013	(Flat/Villa) No. 0704 - P - 0701 in Tower No. P having an approximate super area admeasuring 1675 sq. ft.	2,59,68,077.85/-
80.	Prashant Kumar	10-07-2013	(Flat/Villa) No. 0704 - H - 0901 in Tower No. H having an approximate super area 185 admeasuring 1877 sq. ft.	2,47,31,349.67/-
81.	Ranajit Mohanty	10-07-2013	(Flat/Villa) No. 0704 - C - 0501 in Tower No. C having an approximate super area admeasuring 1618 sq. ft.	2,88,38,033.71/-
82.	Utkarsh Oarikh	25-02-2012	(Flat/Villa) No. 0704 - D - 12A01 in Tower No. D having an approximate super area admeasuring 1618 sq. ft.	2,88,35,669.04/-
83.	Arpit Singh Bhadauriya	10-07-2013	(Flat/Villa) No. 0704 - H - 0203 in Tower No. H having an approximate super area admeasuring 1618 sq. ft.	2,15,12,768.24/-
84.	Nidhi Bhardwaj	10-07-2013	(Flat/Villa) No. 0704 - A - 1202 in Tower No. A having an approximate super area admeasuring 1618 sq. ft.	2,50,83,570.85/-
85.	Usaka Negi & Jagat Singh Negi	10-05-2014	(Flat/Villa) No. 0705 - GH - 006 in Tower No. Villa having an approx. super area admeasuring 5030 sq. ft.	5,42,62,955.51/-

86.	Himanshu Oberoi & Divya Oberoi	30-07-2013	(Flat/Villa) No. 0704 - H - 0603 in Tower No. H having an approximate super area admeasuring 1618 sq. ft.	2,13,68,333.67/-
87.	Ashima Ahuja	30-07-2013	(Flat/Villa) No. 0704 - K - 1101 in Tower No. K having an approximate super area admeasuring 1877 sq. ft.	2,20,31,167.89/-
88.	Ashish & Ranjana singh	30-07-2011	(Flat/Villa) No. 0704 - A - 0103 in Tower No. A having an approximate super area admeasuring 1348 sq. ft.	2,42,32,673.40/-
89.	Deep Kalucha, Rakesh Sikka, Harish Dua	20-07-2013	(Flat/Villa) No. 0704 - B - 0202 in Tower No. B having an approximate super area admeasuring 1618 sq. ft.	2,64,51,593.69/-
90.	Vinay Mittal	10-07-2013	(Flat/Villa) No. 0704 - L - 0302 in Tower No. L having an approximate super area admeasuring 1877 sq. ft.	2,71,56,896.67/-
91.	Sheetal Pahuja	10-07-2013	(Flat/Villa) No. 0704 - K - 802 in Tower No. K having an approximate super area admeasuring 1877 sq. ft.	2,166,7,431.67/-
92.	Sumit Gupta	10-07-2013	(Flat/Villa) No. 0704 - C - 0401 in Tower No. C having an approximate super area admeasuring 1618 sq. ft.	2,69,73,955.47/-
93.	Meera Devi & Vaishali Gandhi	30-07-2013	(Flat/Villa) No. 0704 - G - 304 in Tower No. G having an approx. super area admeasuring 1618 sq. ft.	2,50,93,158.97/-

94.	Nitin Girdhar & Om Parkash Girdhar	18-07-2013	(Flat/Villa) No. 0704 - A - 0804 in Tower No. A having an approximate super area admeasuring 1648 sq. ft.	2,27,58,732.65/-
95.	Sandeep Datta & Debjani	23-07-2013	(Flat/Villa) No. 0704 - F - 0704 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	1,93,83,963/-
96.	Sumit Mahajan	20-07-2013	(Flat/Villa) No. 0704 - C - 1103 in Tower No. C having an approximate super area admeasuring 1348 sq. ft.	2,33,45,192/-
97.	Sumesh Pahuja	30-07-2013	(Flat/Villa) No. 0704 - G - 0802 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,52,48,779.33/-
98.	Mrs Shashi Madan & Puneet Madan	10-07-2013	(Flat/Villa) No. 0704 - A - 0702 in Tower No. A having an approximate super area admeasuring 1618 sq. ft.	2,67,39,877.05/-
99.	Vikas Gupta	10-07-2013	(Flat/Villa) No. 0704 - G - 0202 in Tower No. G having an approximate super area admeasuring 1877 sq. ft.	2,48,31,110.59/-
100.	Abhinav Narula	30-07-2013	(Flat/Villa) No. 0704 - F - 0903 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,20,19,032.57/-
101.	Sachin Kumar Jain and Parul Jain,	20-07-2013	(Flat/Villa) No. 0704 - E - 0704 in Tower No. E having an approx. super area admeasuring 1348 sq. ft.	2,03,18,136/-

102.	Shubhra & Vijay	26-07-2011	(Flat/Villa) No. 0704 - E - 0902 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	1,73,60,996.67/-
103.	Laxmi Dahiya & Upender Singh Dahiya	10-07-2013	(Flat/Villa) No. 0704 - J - 0103 in Tower No. J having an approximate super area admeasuring 1618 sq. ft.	1,83,34,436.14/-
104.	Shiv Kumar Singh & Surabhi Katyal	10-07-2013	(Flat/Villa) No. 0704 - F - 0002 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	2,50,83,570.85/-
105.	Vipin Gupta	10-07-2013	(Flat/Villa) No. 0704 - B - 0803 in Tower No. B having an approximate super area admeasuring 1348 sq. ft.	2,10,36,859.33/-
106.	Rahul Khera and Deepti Jain	10-07-2013	(Flat/Villa) No. 0704 - F - 0103 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,02,02,133.33/-
107.	Banke Bihari Mittal	10-07-2013	(Flat/Villa) No. 0704 - E - 0204 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,16,77,857.33/-
108.	Jitender Kumar	10-12-2011	(Flat/Villa) No. 0705 - GH - 028 in Tower No. Villa having an approximate super area admeasuring 5030 sq. ft.	4,87,32,219.95/-
109.	Seema Khera & Sanjeev Khera	10-07-2013	(Flat/Villa) No. 0704 - B - 0201 in Tower No. B having an approx. super area admeasuring 1618 sq. ft.	6,47,739.33/-

110.	Amulya Kali Ray & Jayati Ray	10-07-2013	(Flat/Villa) No. 0704 - L - 0301 in Tower No. L having an approximate super area admeasuring 1877 sq. ft.	2,78,79,133.17/-
111.	Hraday Kaushik & Pratima Kaushik	10-07-2013	(Flat/Villa) No. 0704 - E - 0302 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	2,61,49,129.20/-
112.	Sanjeev Kumar Arya	10-07-2013	(Flat/Villa) No. 0704 - F - 0801 in Tower No. F having an approximate super area admeasuring 1618 sq. ft.	2,59,72,218.33/-
113.	Naresh Kumar	10-05-2014	(Flat/Villa) No. 0705 - GH - 014 in Tower No. Villa having an approximate super area admeasuring 5030 sq. ft.	5,47,10,890/-
114.	Asha Bhandari & Supriya Bhandari	10-07-2013	(Flat/Villa) No. 0704 - C - 0103 in Tower No. C having an approximate super area admeasuring 1348 sq. ft.	2,48,14,951.33/-
115.	Manish Goel & Gaurav Gupta & Rajiv Sethi	20-07-2013	(Flat/Villa) No. 0704 - E - 0403 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,20,16,860.64/-
116.	Ankit & Mukta Jain	10-07-2013	(Flat/Villa) No. 0704 - J - 1102 in Tower No. J having an approximate super area admeasuring 1877 sq. ft.	2,21,19,204.56/-
117.	Shahzad Tauqir	10-07-2013	(Flat/Villa) No. 0704 - E - 1701 in Tower No. E having an approximate super area admeasuring 1618 sq. ft.	4,25,56,948.70/-

118.	Bajrang Lal Jain	10-07-2013	(Flat/Villa) No. 0704 - E - 0304 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	1,22,08,792.33/-
119.	Mandeep Singh and IswaryaVas antharaaj	10-07-2013	(Flat/Villa) No. 0704 - B - 12A01 in Tower No. B having an approximate super area admeasuring 1618 sq. ft.	2,87,22,096.73/-
120.	Bhupesh Bareja	23-08- 2011	(Flat/Villa) No. 0704 - E - 0104 in Tower No. E having an approximate super area admeasuring 1348 sq. ft.	2,17,45,054.33/-
121.	Vipul Jain	10-07- 2013	(Flat/Villa) No. 0704 - M - 0303 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,57,84,902.33/-
122.	Meena & Sangh Mitter	10-07-2013	(Flat/Villa) No. 0704 - F - 1604 in Tower No. F having an approximate super area admeasuring 1348 sq. ft.	2,04,86,354.99/-
123.	Dhulli Chand Saini & Nisha Kumari Saini,	10-07-2013	(Flat/Villa) No. 0704 - M - 0602 in Tower No. M having an approximate super area admeasuring 1877 sq. ft.	2,71,53,322.81/-
124.	Lal Chand Saini & Vinita Saini	10-07-2013	(Flat/Villa) No. 0704 - M - 0804 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	22,701,969.20/-
125.	Sukhminder Singh &Avleen Kaur	10-07-2013	(Flat/Villa) No. 0704 - M 803 in Tower No. M having an approximate super area admeasuring 1877 sq. ft.	2,78,79,133.17/-

126.	Ankush Mangala	10-07-2013	(Flat/Villa) No. 0704 - M - 0802 in Tower No. M having an approximate super area admeasuring 1618 sq. ft.	2,34,57,775.33/-
------	----------------	------------	---	------------------

5. It is stated by the Applicants in terms of the Clause 5.1 of Builder-Buyer Agreement, the Respondent had promised to hand over the physical possession of the said units booked within 48 months i.e., by 30th July 2017 for majority of the Applicants. Even after including the grace period, the Respondent was required to hand over the allotted units by 30th January, 2018. Whereas, till 31st March, 2021, the said units were not completed and the entire Project is lying incomplete/unfinished even after a gap of 04 years from the promised date of handing over physical possession.

6. It is further stated by the Applicants in their Written Submissions that as per the Bank Statements of the Applicants/ Respondent's Ledger Account/Receipts, the total amount of paid/disbursed to the Respondent by the Applicants against the units purchased is approximately Rs.53,46,32,282/-.

7. It is further stated by the Applicants that instead of using this amount in development of the Project, the Respondent has transferred the excess amount to Samyak Projects & Infrastructure Limited (hereinafter referred to as "SPIL"). As per the MoU dated 6th January 2011 and Addendum thereto dated 3rd February 2020, SPIL should have received Rs. 114.04 Crore (after taking into account the revenue

sharing ratio of 70:30, which was subsequently revised to 80:20 as per the MoU & Addendum), whereas they actually received the total amount of Rs. 169.26 Crore, thereby an excess of Rs. 55.22 Crore was paid to them. That neither the Respondent nor the SPIL have been able to justify this transaction. With an aim to cover up this excess payment, an Addendum dated 3rd February 2020 was signed between the Respondent and the SPIL, whereby the revenue sharing percentage of the SPIL was increased from 34.5% to 45%. It is submitted by the Applicant that the project under reference was always a cash rich project, however, the non-completion of the project raises suspicions of siphoning off of funds.

8. It is contended by the Applicants that since the Respondent has neither handed over the possession nor refunded the payment made by the Applicants, it has committed default and hence, CIRP be initiated against the Respondent.

9. On perusal of records, it was noticed that Form-2 dated 16.04.2021 with the consent of one Navjit Singh, IP (who is reported to have expired) is filed with the present Application. This being the curable defect, vide order dated 03.11.2022, the Applicants were directed to rectify and file the fresh Form-2 within a week. The Applicants vide their Affidavit dated 05.11.2022 have filed the fresh Form-2, which is taken on record.

10. On issuance of notice, the Respondent has filed its Reply and written submissions and opposed the prayer made by the Applicants. It has stated that most of the Applicants are not *bona fide* Home Buyers. It has further submitted that -

10.1. The Corporate Debtor has duly completed 55% of the Fernhill Project, wherein 2 towers in Phase I are 100% complete, 6 towers are 90% complete, 2 towers are 50% complete, another 2 towers are 20% complete and the remaining 2 towers are 5% complete.

10.2. The project got delayed due to reasons, which were totally out of control of the Corporate Debtor. The onslaught of Covid-19 further brought the construction to a complete halt. However, it is pertinent to note that the pace of the construction has picked up and the project will be ready in due course of time.

10.3. The present Application is completely dehors the law laid down by the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd v. Axis Bank Ltd., 2022 SCC OnLine SC 841**, wherein it has been held that existence of a debt and default merely gives a financial creditor the right to apply for initiating CIRP but the Adjudicating Authority on receipt of such application must apply its mind to a spectrum of relevant factors, including the financial health and viability of the corporate debtor, and the feasibility of CIRP - considering that the object of the IBC is also to try and revive a company/debtor and not spell its death knell.

10.4 The Respondent has prepared a comprehensive resolution plan which lays out the details towards an effective completion of the project. In fact, the resolution plan details out the financial planning and expenditure to deliver the project, which duly shows the viability of the project.

10.5. The details of the resolution plan have been discussed with many homebuyers, who have duly given their assent towards such a completion. It is further submitted that the Corporate Debtor has duly tied up with another contractor financier, who has agreed to invest in the project. Further, the company has infused additional funds from its internal accruals to complete the project. The details of the resolution Plan will show that the Corporate Debtor is dedicated to complete the project.

10.6. The resolution plan can be summarized as follows:

- *“The total value of sold area in the Project is Rs. 381 Crores. The called amount is Rs. 290 Crores and collection against called amount till date is Rs. 265 Crores. Therefore, Rs. 25 Crores is the outstanding amount and Rs. 91 Crores is the uncalled amount.*
- *Accordingly, the total balance collection from the sold area is around Rs 114 Crores. it is important to mention that out of Rs. 265 Crores of collection till date, Rs. 169 Crores has been paid to the collaborator, Rs. 99 Crores has been spent on construction and Rs. 30 Crores has been spent on Government Dues / sanctioning and am amount of*

Rs. 10.5 Crores has been spent on marketing cost/overheads which means the company has spent more than the collection till date. It is pertinent to note that each and every rupee which have been collected till date has gone into the project.

- It is also important to mention that the company has not taken any loan from any financial institution/bank till date for this project.*
- The collection from unsold inventory on the current market rate shall contribute approx. Rs. 92 Crores, which means the total future inflows shall be Rs. 114 Crores plus Rs. 92 Crores, i.e., Rs. 206 Crores.*
- The future expenditure in this project is approx. Rs 178 Crores which includes the balance construction cost of Rs 130 Crores needed to complete the project.”*

10.7. It is pertinent to note that while the Project was launched in 2011, but due to the acquisition and realignment of 24-meter sector road, which passes through the project, the construction was halted for almost around three years. Such realignment and acquisition caused further delay as the Floor Area Ratio (FAR), which got utilized in the construction of road affected the building plans, which was initially approved for 17 floors. The Corporate Debtor was forced to reduce from 17 to 13 floors due to change in the setback area.

10.8. It is further submitted that the construction of the Project was restarted in August 2014 after the change in the building plan. As the construction started in full swing for which the Corporate Debtor spent

around Rs. 99 Crore in a period of just 36 months and completed 6 out of total 14 towers in record time.

10.9. While the entire collection from the Project till date is Rs. 265 Crore against the called amount of Rs. 290 Crore, but in 2018, a lot of customers started defaulting and the total default in the project reached up a level of Rs. 25 Crore. The default in payments and consequent increase in overlays affected the pace of construction. Several meetings were held with the homebuyers to explain the consequences of delay in payment.

10.10 In view of increasing pollution in NCR, there have been yearly orders by the Hon'ble Supreme Court which require stoppage of all construction work during certain months. As a matter of fact, the Hon'ble Supreme Court vide Order dated 04.11.2019 in M.C Mehta v. Union of India, W.P (C) No. 13029/1985 had duly barred all construction activities for some time due to increasing pollution in Delhi NCR. Further, the National Green Tribunal in the matter of Vikrant Tongad v Union of India & Ors. had banned the use of groundwater for construction activities and penalized the real estate companies. It is pertinent to note that all such actions have been going on since 2016 in Delhi NCR, which has duly hampered the construction activities.

10.11. Without Prejudice to the above, it is relevant to state that the Hon'ble NCLAT in the matter of **Flat Buyers Association Winter Hills**

v. Umang Relatech Pvt. Ltd., Company Appeal (AT) (Insolvency)

No. 926 of 2019, held that “Corporate Insolvency Resolution Process against a real estate company (Respondent) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved.” Therefore, the CIRP proceedings ought to be limited just to this project i.e. The Fernhill of the Respondent situated in the Sector-91, Gurgaon Manesar, Haryana and not the Respondent in its entirety.

11. The Applicants have filed their Written Submissions and has stated that the Resolution Plan submitted by the Respondent, seems like an insincere effort on their part to justify their position. To begin with, the Resolution is undated, unsigned, extremely vague and is not detailed enough. The Financial Creditors have not been presented with any such Resolution Plan and have not given their assent to any such Resolution. The Resolution Plan seems more like a last-minute effort to present their position before this Adjudicating Authority.

12. After hearing submissions of both the parties and perusing the documents placed on record, we notice that the present Application has been filed by more than 100 Allotees of the Project ‘The Fernhill’ hence, the present Application meets the eligibility in terms of proviso to Section 7 of IBC, 2016. Hence, we would now like to proceed to examine the application on its merits.

13. It is stated by the Respondent that the Project got delayed due to the following reasons:

(i) COVID 19;

(ii) Acquisition and realignment of 24-meter sector road, which passes through the project;

(iii) The Hon'ble Supreme Court vide Order dated 04.11.2019 in M.C Mehta v. Union of India, W.P (C) No. 13029/1985 had duly barred all construction activities for some time in view of the increasing pollution in Delhi NCR.

(iv) Further, the National Green Tribunal in **Vikrant Tongad vs Union of India & Ors.** had banned the use of groundwater for construction activities and penalized the real estate companies.

14. At this stage, we would like to refer to the MoU/ Builder Buyer Agreement entered by and between the parties herein. Since, it is not possible to refer to all the builder-buyer agreements, we refer to the Agreement entered into by one of the Applicants Mr. Vikram Jeet Garg (serial number 1 of the table of the Applicants given in Para 5 above), and find that the said agreement was executed on 10.07.2013. From the clause 5.1 (relating to Possession of Flat) we find that the Respondent was required to handover the possession of the unit to the Applicant within 48 months i.e., by 09th July 2017 and with grace period of 6 months by 09th January, 2018 i.e., by a date, which was much before the commencement of COVID-19 period. We are aware

that the First Lockdown on account of Covid-19 was enforced by the Government on 25.03.2020. Hence, in our view, the Corporate Debtor had sufficient time to complete the Project in terms of the Builder-Buyer Agreement, which it failed to deliver.

15. As regards, the alleged disruptions due to the orders of Hon'ble Courts or NGT, we observe that these were the orders *in rem* and not *in personam* or Project-specific, which could provide solace to the Respondent. Further, all these are contingencies, which every developer anticipates in advance and provides alternate/fallback arrangements to ensure completion of construction activity and delivery as per the schedule under the agreement/contract. In our considered view, the Applicant/Homebuyers, who have invested their hard-earned money cannot be subjected to loss or asked to bear the brunt of such contingencies.

16. As regards the so termed resolution plan proposed, though the Respondent has submitted that many homebuyers have given their assent but we do not find any document in support of this contention filed on record or produced before us. Even the applicants herein have not shown any confidence in the said resolution plan. Hence, this Adjudicating Authority cannot compel the Applicants to settle with the Respondent.

17. At this juncture we refer to the Judgment of Hon'ble Supreme Court passed in the matter of **Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**", whereby it is held that:

*“The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. **For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).** The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”*

(Emphasis supplied)

18. In view of the above discussion, the applicants have succeeded in proving their debt and default on the part of the Respondent in the instant case. **Hence, in the given facts and circumstances, the present Application being complete and the default being committed above the threshold limit, the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

19. As proposed by the Financial Creditor, this Bench appoints Mr. Ashwani Kumar Singla, IP (Email: ashwaniksingla@gmail.com) having Registration No. IBBI/IPA001/IP-P02035/2020-21/13122, as IRP subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that:

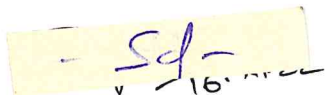
“Mr. Ashwani Kumar Singla IRP having Registration No. IBBI/IPA001/IP-P02035/2020-21/13122 (E-mail ID: ashwaniksingla@gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

20. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

21. A copy of this Order shall immediately be communicated to the Financial Creditors, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Tribunal.

22. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.



(L. N. GUPTA)
MEMBER (T)



(BACHU VENKAT BALARAM DAS)
MEMBER (J)