

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 406 of 2022 &
Interlocutory Application No.6557 of 2024

IN THE MATTER OF:

Ram Kishor Arora
Suspended Director of Supertech Ltd.

... Appellant

Versus

Union Bank of India & Anr.

... Respondents

Present:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Siddharth Bhatli, Ms. Lashita Dhingra, Ms. Anvesha Jain, Ms. Heena Kochar and Ms. Khyati Jain, Bhupendra P., Advocates.

Mr. Gopal Jain, Sr. Advocate with Mr. Gudipati G. Kashyap, Mr. Ronvijay Gohain, Ms. Anam Ahmad, Advocates for NBCC (I) Ltd.

Mr. Sudhir Nand Raja, Sr. Advocate with Mr. Ishwar Mohapatra, Mr. Santosh Rout and Mr. Tripathi, Advocates for BoB.

Mr. Arvind Nayar, Sr. Advocate with Ms. Vanita Bhargava, Mr. Ajay Bhargava, Ms. Wamika Trehan, Mr. Siddhant Kumar, Advocates for L&T Finance and ACRE.

Mrs. Vibha Makhija, Sr. Advocate with Mr. Kushal Bansal, Ms. Esha Bhadoria, Mr. Karan Mangain, Mr. Perveen and Mr. Anish Alhawati, Ms. Nehal, Advocates for Intervenor in I.A. Nos.8181, 8183, 8194, 8195, 8221, 8185, 5746, 5748 and 6673 of 2024.

Mr. Sanjiv Sen, Sr. Advocate with Mr. Suvigya Awasthy, Mr. Sameer Jain, Mr. Deepesh Raj, Ms. Anjali Singh, Mr. Pragyan Mishra, Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Kanishk Raj, Mr. Adarsh Srivastava Advocates for Noida Authority.

Mr. Karan Valecha, Advocate for Applicant in IA No. 8194/2024.

Mr. Amar Gupta and Mr. Mohit Sharma, Advocate for YEIDA in Diary No. 54820/2024.

Mr. Ramji Srinivasan, Sr. Advocate with Mr. Nikhil Mehndiratta, Ms. Namrata Sarogi, Advocates in IA No. 3776/23.

Mr. Ravindra Kumar, Sr. Advocate with Mr. U N Singh, Mr. Shivam Saxena, Ms. Sandhya Chaturvedi, Mr. HGS Pandey, Advocates for Greater Noida Authority.

Mr. Akash Chatterjee, Mr. Pranav Gupta, Advocates for Applicant in IA No. 8184 of 2024.

Mr. Amish Tandon, Ms. Anushree Kulkarni, Advocates for IFCI Ltd. in IA 3281/2022.

Mr. Milan Singh Negi, Advocate for Applicant in I.A. No. 8231/2024.

Mr. Amit Singh, Mr. Vaibhav Jindal, Mr. Adarsh Nair, Advocates in IA No. 5544 for Respondents (Eco Village-1)

Mr. Dhananjay Sahai, Mr. Lokesh Nandan, Advocates in IA No. 8192 of 2024.

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Sagar Thakkar, Mr. Shaurya Shyam, Advocates for Indiabulls ARC/Samman Capital

Mr. Alok Kumar, Ms. Somya Yadava, Mr. Kunal Arora, Ms. Parnika Jolly, Advocates for R-1/UBI

Mr. Sahil Sethi, Mr. Samriddh Bindal, Mr. Vikash Kumar, Advocates in IA No. 4306/2023 for Capetown association.

Mr. Arpit Dwivedi, Ms. Sakshi Kapoor, Advocates for Applicant in IA No. 2717/2024, 6518/2024.

Mr. Pawan Shree Agarwal, Advocate for Applicant in IA No. 3619/2023.

Mr. Mohit Sharma, Advocate for YEIDA in Diary No. 54820/2024.

Mr. Tanveer Oberoi, Advocate in IA No. 4316/2023 for Applicant.

Mr. Anshul Sharma, Mr. Rohan Panwar, Advocates for the registered homebuyers (Supertech Golf Country Welfare Association).

Mr. Sahil Sethi, Mr. Samriddh Bindal, Mr. Vikash Kumar, Advocates in IA No. 4306/2023 for Capetown Association.

Mr. Nakul Dewan, Sr. Advocate with Mr. R. Sudhinder, Mr. Somdutta Bhattacharya, Mr. Ashish Mukhi, Ms. Kiran Sharma and Ms. Himani Chhabra, Ms. Anushka Sharma, Advocates for IRP of Supertech Ltd. a/w Mr. Hitesh Goel, RP in person.

Mr. P. Nagesh Sr. Advocate with Mr. Nikhil Kumar Jha, Applicant in IA- 6683 of 2024.

Mr. Amit Singh and Mr. Adarsh Nair, Advocates in IA- 5544/2024 for Residents of Eco-Village-1.

Mr. Aman Gupta and Mr. Mohit Sharma, Advocates in Diary No. 54820/2024.

Mr. MP Sahay (AOR), Ms. Yaman Verma, Ms. Drishti Narbar, Mr. Kartik Jindal, Ms. Srishti Malik, Advocates for Applicant in IA Nos. 2763/2023, 6563 and 7184/2024.

Mr. Ankit Sharma, Applicant in IA- 6568 of 2024/ Supertech Azalia.

Mr. Iswar Mohapatra, Mr. Santosh Rout, Mr. Punit Bhansali, Advocates for BoB.

Mr. Tanveer Oberoi, Advocate in IA No. 4316/2023 for Applicant

Mr. Bhaskar Sharma a/w Mr. Sudhakar Tripathi, AGM for Bank of Baroda.

Mr. Bhaskar Tripathi and Mr. Venamra Mahaseth, Advocates for Hill town Homebuyer's Welfare Association in IA No.4576/2024 and I.A. 4545 of 2024.

Mr. Tathagata Dutta, P. Chaitanyashil and Mr. Krishna Mohan Menon, Advocates for Applicant in IA- 2981 of 2024.

Mr. Pawan Shree Agarwal, Mr. Ayush Sharma, Advocates in IA- 3619/2023.

Mr. Karmveer, Mr. Dilip K. Niranjana, Mr. Nikhil Kumar Singh, Ms. Sulakshana Yadav and Mr. Ajay Kumar, Advocates for Eco Village 2 welfare association, Eco village 1, Hilltown- Group of homebuyers.

J U D G M E N T

ASHOK BHUSHAN, J.

IA No.6557 of 2024

In the Company Appeal (AT) (Ins.) 406 of 2022, the order passed by National Company Law Tribunal, New Delhi, Bench-VI dated 25.03.2022 admitting Section 7 Application filed by Union Bank of India against the Corporate Debtor - M/s. Supertech Limited is under challenge. M/s. Supertech Limited is a real-estate Company engaged in construction of various housing Project in Noida, Greater Noida and different other cities of

the country. The Financial Creditor – Union Bank of India has extended financial facilities to the Corporate Debtor for Project Eco Village-II located at Group Housing Plot No. GH-01, Sector 16B, Greater Noida (West), UP. There being default committed by CD in repayment of financial facilities, Section 7 Application was filed and admitted.

2. The Appeal was heard by this Tribunal and an interim order was passed on 12.04.2022, directing the IRP , not to constitute the Committee of Creditors till the next date. An order dated 10.06.2022 was passed in this Appeal, modifying the interim order to the extent that CoC was permitted to be constituted with regard to Project Eco Village-II only. With regard to other non- Eco Village-II Projects, IRP was directed, that all other Projects, apart from Eco Village-II shall be kept as ongoing Project. The construction of all other Projects was to continue with overall supervisions of IRP. Certain other directions were passed on 10.06.2022.

3. Challenging the order dated 10.06.2022, Union Bank of India – Financial Creditor filed an Appeal (Civil Appeal No.5941 of 2022). Another Appeal was filed by Indiabulls Asset Reconstruction Company Limited being Civil Appeal No.1925 of 2023. The Hon'ble Supreme Court passed an order in both the above Civil Appeals on 11.05.2023. By order dated 11.05.2023, the Hon'ble Supreme Court allowed the order dated 10.06.2022 passed by this Tribunal to operate, subject to final orders to be passed in the Appeals. In respect of Eco village-II, the Hon'ble Supreme Court directed that the process beyond voting on Resolution Plan shall await further order of the Hon'ble Supreme Court. Subsequent to the order of the Hon'ble Supreme

Court dated 11.05.2023, an Application was filed by the IRP (the Respondent herein) for fixing the date in the Appeal in view of the order of the Hon'ble Supreme Court dated 11.05.2023. On Application filed by the IRP, the Appeal was fixed for 05.07.2023. Various orders were passed by this Tribunal in the proceeding after hearing the learned Counsel for the Appellant, IRP, homebuyers, lenders and Authorities.

4. By an order dated 31.05.2024, after hearing the learned Counsel for the Appellants, IRP and other various Intervenors, noticing the earlier proceeding dated 12.02.2024, this Tribunal has directed for Project-wise resolution. Project-wise proposals were received and certain directions were issued regarding Project-wise list of creditors; Circulation of Project-wise resolution; Nomination by stakeholders of their respective authorised representatives and convening of Project-wise meeting. In pursuance of order dated 31.05.2024, steps were taken by the IRP. Several Intervention Applications were filed on behalf of the homebuyers' Association, individual homebuyers for intervention, which were permitted. In the order dated 31.05.2024, 16 Projects were noticed. In paragraph-5 of the order, Eco Village-II was not included in the list.

5. On 15.07.2024, when the Appeal was taken for consideration, a statement was made by learned Senior Counsel for the NBCC that it has sent an email to the IRP with the copy to the Union Bank of India, showing their interest in the Projects of the Corporate Debtor. The learned Counsel for the IRP was directed to share the relevant data, details and documents to the

NBCC. On 19.09.2024, IA No.6557 of 2024 was filed by the NBCC (I) Ltd.

Making the following prayers:

- i. Allow the Applicant to undertake the projects in terms of TOR.
- ii. Issue necessary directions/orders as deemed fit and proper in the facts and circumstances by this Hon'ble Court.
- iii. Pass such other and further orders that this Hon'ble Tribunal may- deem fit and proper in the facts and circumstances of the present case."

6. On 19.09.2024, following order was passed

"19.09.2024: Heard Shri Nakul Dewan, Ld. Sr. Counsel appearing for the IRP, Shri Gopal Jain, Ld. Sr. Counsel appearing for IA No. 6557 of 2024 filed by the NBCC.

2. Ld. Counsel for the Noida, Greater Noida, Landowners, Lenders and Yamuna Expressway Authority of India as well as the Homebuyers are allowed two weeks to file objection to the IA No. 6557 of 2024 which objection be also given to the IRP. All objections may be tabulated by the IRP and substance of the objection in a chart-form be placed before the court on the next date of hearing so that NBCC's application and the objections can be considered and disposed of.

3. All the Lenders, Homebuyers, Landowners, Banks are permitted to efile the objections with a copy to IRP. Copy of the objection to the NBCC's application be served to the Ld. Counsel appearing for the Applicant Shri Gopal Jain and the Appellant.

4. Shri Nakul Dewan, Ld. Sr. Counsel submits that the summary of all objections received to the NBCC's application shall be put on the website so that everybody can access to the website.

5. List on 21.10.2024 at 2: 00 PM high on the board for rest of the matters.

6. With regard to IA No. 6644 of 2024 relating to Doon Square Project, it is submitted by Ld. Counsel for the Appellant that the Bank of Baroda who is a sole lender has already agreed for a resolution. Ld. Sr. Counsel Ms. Vibha Makhija, appearing for the group of homebuyers also submit that homebuyers also support the said proposal and IA No. 6673 of 2024 is also filed in support of the said.

7. Let the Doon Square Project along with all concerned IA's with regard to project be taken on 25.09.2024 at 2: 00 PM.

8. Shri Nakul Dewan, Ld. Sr. Counsel for the IRP submits that with regard to CIRP cost no finances are available and as per the earlier order the details of the CIRP cost has been placed before the Committee of Creditors and the Committee of Creditors in its 26th meeting held on 10.09.2024 has noted the same and approved the CIRP cost.

9. Shri Dewan, Ld. Sr. Counsel submits that under the order dated 10.06.2022 with regard to 30% account maintained the direction was issued for disbursement to the lenders due to which direction certain hesitation is shown for payment of CIRP cost. We clarify that payment of CIRP cost as approved by the CoC may be credited from 30% account with all necessary details and the report of expenses and the payments received out of the said account shall be filed along with the report in the court before the next date of hearing i.e. before 21.10.2024.

10. Now coming to the Capetown maintenance IA No. 4306 of 2023 it is submitted that there is a registered association of Capetown maintenance but the earlier agency which was appointed by the promoters is still maintaining there are several lapses in the maintenance, it has been noted in the earlier orders that IRP has already issued a show cause notice to the earlier maintenance agency.

11. Ld. Counsel appearing for the Capetown maintenance submits that the registered association of homebuyers is ready to take responsibility of the maintenance and IRP may get inventory

prepared of inspection of all deficiencies and handover. IRP may consider handing over the maintenance to the registered association and appropriate steps be taken before the next date.

12. IA No. 6563, 6683 of 2024- Let IRP respond to these two applications.

13. Parties are at liberty to file all the hard copies before the next date fixed.”

7. With regard to one of the Projects of the CD namely Doon Square Project, it was noted that OTS has been issued by the only lender, Bank of Baroda. Letter of Intent has also been issued and homebuyers has also been given consent for resolution of Doon Square Project, Court directed the Agreement with regard to Doon Square Project duly signed by the IRP be placed before the Court. On 16.10.2024, direction was issued with regard to Doon Square Project to implement Master Agreement and to complete the Project.

8. In Civil Appeal No.5941 of 2022, filed by Union Bank of India in the Hon’ble Supreme Court, an IA No.199233/2024 was filed by NBCC Ltd., in which IA, the Hon’ble Supreme Court has passed the following order on 01.10.2024:

“I.A. 199233/2024 in C.A. No. 5941/2022

Issue notice to all non-applicants.

The pendency of the present appeals and the present application will not come in the way of the National Company Law Appellate Tribunal¹, Principal Bench, New Delhi, examining and deciding the proposal filed by the NBCC (India) Limited, formerly known as the National Buildings Construction Corporation², vis-à-vis the 17 ongoing projects of the corporate debtor.

The parties are at liberty to raise all pleas and contentions before the NCLAT. We make no comments or observations in this regard, except stating that the pendency of the present appeals and the present application, on which notice has been issued, will not bar or prohibit the NCLAT from passing appropriate orders. The parties, if aggrieved by any such order, will be entitled to challenge the same in accordance with law.

While passing this order, we have taken into consideration the pleas and submissions made on behalf of the Union Bank of India, the NBCC (India) Ltd. and the flat buyers. NBCC (India) Ltd. has clarified that the object of filing the present application is not to interfere with the proceedings pending before the NCLAT but only to ensure that, in case any orders are required to be passed under Article 142 of the Constitution of India to implement and execute the orders passed by the NCLAT, in terms of its proposal, the same can be expedited and hurdles are not created.

We also clarify that the aforesaid observations and the liberty granted will apply equally to the “ECO Village-II project”.

The parties are granted liberty to ask for listing of the present matters.”

9. The order of the Hon’ble Supreme Court was placed before this Tribunal and has been noted in the proceeding dated 16.10.2024. By order dated 19.09.2024, this Tribunal already allowed time to the Noida, Greater Noida, Lenders and Yamuna Expressway Authority of India as well as the Homebuyers to file objections to IA No.6557 of 2024 filed by the NBCC. Objections were filed as was permitted on 19.09.2024. Learned Counsel for the IRP on 21.10.2024 submitted that he has received objections to the proposal submitted by NBCC for construction of the Projects. Certain objections raised by Homebuyers as well as learned Counsel for the Appellant were noticed in the order dated 21.10.2024. Looking to the objections that

NBCC has proposed to start construction of Projects in Phase-I and Projects under Phase-II and III to be taken up after the review of Phase-I progress and availability of funds, we in our order dated 21.10.2024 directed NBCC to give fresh composite proposal Project wise and the proposal submitted in September 2024, cannot be relied. Learned Counsel for the IRP also pointed out that in view of the order of the Hon'ble Supreme Court dated 01.10.2024, proposal of the NBCC may also include Eco Village-II.

10. NBCC filed fresh proposal on 11.11.2024 (hereinafter referred to as "11.11.2024 proposal of the NBCC"). Applications/ objections filed by the Homebuyers were directed to be listed and considered with respect to IA No.6557 of 2024. On 21.11.2024 liberty was granted to those, who had not filed objections to IA No.6557 of 2024. Various Applications and objections to the NBCC proposal was heard on 26.11.2024 to 29.11.2024.

11. We first proceed to consider IA No.6557 of 2024 filed by NBCC to take over the Projects and act as Project Management Consultant. We have also considered the objections raised by Noida, Greater Noida, Yamuna Expressway Authority to the proposal of the NBCC. Objections raised by the Lenders, charge holders, private land owners, individual homebuyers as well as Associations of Homebuyers, who have filed various objections with respect to different Projects.

12. The NBCC in its proposal dated 04.11.2024 has compiled the summary of objections received from land Authorities, Yamuna Expressway Industrial Development Authority, New Okhla Industrial Development Authority,

Greater Noida Industrial Development Authority, objections filed on behalf of lenders, corporate guarantee holders namely – Asset Care & Reconstruction Enterprise Ltd., Sammaan Capital Ltd., IndiaBulls Asset Reconstruction Company Ltd., IndiaBulls Commercial Credit Ltd. and the Homebuyers. As per our orders passed in this Appeal, IRP has tabulated the objections received from different stakeholders and communicated it to the NBCC. The NBCC in Annexure-C to proposal dated 11.11.2024 compiled the objections and its comments.

13. Learned Counsel appearing for Yamuna Expressway, Noida and Greater Noida have opposed the Application given by the NBCC mainly on two grounds. It is submitted that the above Authorities have provided land to the CD and there are liabilities on the CD towards statutory Authorities and the NBCC Proposal does not address repayment of these dues in Terms of Reference. It is submitted that without including any repayment plan in the NBCC Proposal, the Proposal is neither acceptable nor feasible. Further, the NBCC's request for waiver of statutory compliances or financial concession, cannot be accepted. Yamuna Expressway Authority, Noida and Greater Noida Authorities are statutory Authorities, who have to act in accordance with UP Industrial Development Act, 1976 and rules and regulations framed thereunder. No waiver from statutory compliances can be granted to the NBCC, since the Authorities are bound to follow all statutory Regulations. It is further submitted that in the Court Committee, which was proposed by the NBCC, the statutory Authorities are not included. It is contended that inclusion of statutory Authorities in Committee, which is constituted for

Project Management is necessary to safeguard the interest of the statutory Authorities. The statutory Authorities also are obliged by the statute to act in public interest. The Authorities have raised serious objections to various clauses as contained in Terms of Reference submitted by NBCC in its IA 6557 of 2024.

14. We have also heard learned Counsel appearing for Homebuyers, who have filed different IAs/ objections to the Proposal submitted by NBCC. In the Status Report submitted by IRP dated 20.11.2024, certain objections received from various stakeholders including Homebuyers have been tabulated as Annexure-A. Majority of learned Counsel appearing for the Homebuyers in different IAs have supported the Proposal given by NBCC for construction of Projects. It is submitted that Projects are incomplete and languishing for several years. The Homebuyers, who have made the payments of substantial amount as per Builder Buyers Agreement are waiting for possession of their homes for years together. Most of the Homebuyers have raised the amount for payment to builder by taking loans from the Banks and they are paying their EMIs to the Bank and on account of not being given the flats are suffering immensely. Most of the Homebuyers belong to middle income group or lower middle income group. It is submitted by learned Counsel for Homebuyers that while handing over the Projects to NBCC, it may be categorically made clear that no Homebuyer be asked to pay any additional amount apart from one, which was agreed to be paid by them under the Builder Buyers Agreement. Homebuyers can only be asked to pay

the balance amount, which is due to them as per Builder Buyers Agreement and no more.

15. We need to briefly notice the submissions advanced by learned Counsel appearing on behalf of several Intervenors, who have filed Intervention Applications in the Appeal. As noted above, one set of Intervenors are Homebuyers, individuals as well as Homebuyers' Association. We need to first notice the Applications filed by the Homebuyers and the stand taken by those Homebuyers with regard to NBCC Application – IA No.6775 of 2024.

16. **IA No.4306 of 2023** has been filed by Cape Town Association of Apartment Owners. They have highlighted the deficiencies in the Status Report filed by the IRP, safety issues, water and electricity issues and direction for IRP to hand over the possession to the allottees after procuring occupancy certificate. Learned Counsel appearing for the Applicant submits that Applicant has no objection to the Application filed by the NBCC to construct all 16 Projects. It is submitted that NBCC should proceed and do its due diligence.

17. **IA No.2763 of 2023** has been filed by Amandeep Singh and Ors. for Eco Village-II. The Applicant claims that Application has been submitted by 548 allottees in real-estate Project namely - Eco Village II, Eco Village II Phase II [Eco Village 4], Eco Village III, Upcountry and Sports Village. Learned Counsel for the Applicants submits that NBCC should be given the Project for completion.

18. **IA No.4973 of 2023** has been filed by Eco Village-II Welfare Association (Regd.). Learned Counsel appearing for the Applicant also submitted that NBCC should be given the Project to be constructed. The Applicant also express their no objection to the NBCC. However, it is contended that there shall be a Court Committee and the designated Bank account should be Project-wise. It is submitted that liability period should be five years, which has been stated to be two years in Terms of Reference given by the NBCC.

19. **IA No.7497 of 2024** has also been filed by Ecovillage 2 Welfare Association (Regd.) making similar submissions as noted above.

20. **IA No.3619 of 2023** has been filed by Sureel Singh and Ors., who claim to be allottees of Eco Village-I. It is submitted that they have paid the entire amount and the possession of plot has also been handed over to the Applicants, except three of the Applicants. However, the Conveyance Deed has not yet been executed till date. With regard to NBCC proposal, they submit that NBCC be not exempted from RERA requirements of maintaining separate account. The NBCC has not given any firm commitment regarding timeline. It is submitted that fire safety is not complete.

21. Learned Counsel appearing in **IA No.4545 of 2024** also submitted that Project be handed over to NBCC.

22. **IA No.4316 of 2023** relates to Project Supertech Czar Suites. It is submitted that 150 units are unsold. The Applicants have no objection if NBCC be given the Project.

23. **IA No.5746 of 2024** has been filed by allottee of Supertech North Eye, Super Tech Group Buyers Association. Ms. Vibha Makhija learned Counsel appearing for the Applicant contend that the NBCC has to give Project-wise Proposal. There should be definite source of finance and strict timeline. The NBCC need to take care of the delay, terms of the BBA need to be honoured by the NBCC. It may be clarified as to who shall bear the escalation cost. No exemption should be allowed from RERA provisions. Lenders and Authorities claims should also be taken care of. Project-wise Committee be constituted. How the financiers have to be satisfied also to be looked into and the IRP should also find a mechanism to represent Homebuyers in the Committee.

24. Ms. Vibha Makhija, learned Senior Counsel appearing on behalf of set of Homebuyers has also contended that there is no definite timeline given by the NBCC for completion of the Projects and the completion date as mentioned in Terms of Reference is indefinite, flexible and do not give any complete picture of time line under which construction will start and completed. It is submitted that there are several Projects, which can be completed in short period. Ms. Vibha Makhija has referred to five Projects namely - Green Village Meerut, Micasa, Rivercrest, Meerut Sports City and Araville, which can be easily completed by the Co-Developers as suggested by the Appellant. She, however, reiterated that Homebuyers are not much concerned with entities, who carries on construction. They are only concerned with regard to quality construction, construction in timeline and with no financial burdens on the Homebuyers, except those, who are under the Builder Buyers Agreement.

25. **IA No.6563 of 2024** has been filed by Gulshan Kumar and Ors. The Application is claimed to be filed on behalf of 18 Authorized Representatives of Homebuyers spanning eleven non-Eco Village II of Supertech. Details allottees of 11 Projects, who are being represented by the Applicant is tabled as Annexure A1 (Colly.). The Applicants claim to represent 26,475 allottees. Learned Counsel for the Applicant submits that Applicants support the NBCC Application. It is, however, submitted that a forensic audit be also conducted. There shall be Project-wise Committee and there shall be no cost escalation to the Homebuyers.

26. **IA No.2981 of 2024** has been filed by Romano Welfare Association. Learned Counsel submits that they welcome NBCC to take over the Projects.

27. **IA No.5544 of 2024** has been filed by G.S. Verma and Ors., who are allottees of Supertech Eco Village-I. Learned Counsel for the Applicant submits that they support the NBCC. It is submitted that lot of Homebuyers have taken possession and registration has also been done, but in some cases, registration has not yet been done. It is submitted that various dues are pending.

28. **IA No.8181 of 2024** has been filed by Satya Prakash on behalf of Supertech Group Buyers Association (on behalf of Micasa Project). The Applicants submit that NBCC Proposal falls short of the requisite standards of clarity and completeness. The proposal lacks definitive timelines. It is submitted that a developer namely – Ametek Buildtech has given a proposal, whose LoI may be accepted.

29. **IA No.8182 of 2024** has been filed by Prianka Srivastava on behalf of (North Eye) Homebuyer Representative. It is contended that revised Proposal submitted by NBCC falls short of the requisite standards of clarity and completeness. The Applicant supports the development of Project-wise through Co-Developer. It is submitted that without payments to the land Authorities and Banks, the Project will not be completed. The order may be passed as was directed in the matter of Doon Square Project.

30. **IA No.8183 of 2024** has been filed by Amit Bathla (Representative of Rivercrest). The Applicant does not support the NBCC Proposal. The Applicant support the Proposal given by M/s. Brick Boss Infra Pvt. Ltd.

31. **IA No.8184 of 2024** has been filed by Soniya Tyagi on behalf of (Eco Citi) Homebuyer Representative. The Applicant does not support the Proposal of NBCC. It is contended that Letter of Intent from various developers were invited to undertake construction of the Project and the Project be constructed accordingly.

32. **IA No.8185 of 2024** has been filed by Sarita Jha on behalf of (Eco Village-2) Homebuyer Representative, who contend that NBCC Proposal falls short of the requisite standards of clarity and completeness. The Applicant supports the LoI received from Apex Height Pvt. Ltd.

33. **IA No.8178 of 2024** has been filed Applicant/ Appellant, who contends that LoI received from Micasa Project, Bangalore and Green Village Project, Meerut of the CD by one M/s. Ametek Builtech India Pvt. Ltd. be allowed to

construct the Projects. It is submitted that there is a consent from Homebuyers, allottees, Promoter/ Ex-Management.

34. **IA No.8179 of 2024** has also been filed by Applicant/ Appellant stating that M/s. Brick Boss Infra Pvt. Ltd. has expressed its interest to revive specific Projects namely – Araville and Rivercrest Project and stakeholders of the Projects have also reached a consensus, hence, Tribunal may grant approval for the same.

35. **IA No.8194 of 2024** has been filed on behalf of Eco Village-3 has also objected to the Application of the NBCC. It is submitted that no Zero Date has yet been given by the NBCC, hence, the Project is to get delayed.

36. **IA No.8195 of 2024** has been filed by Authorised Representative of Green Village Meerut. It is contended that LoI received from Ameted Buildtech be allowed and orders be passed as was passed with regard to Project Doon Square and Co-Developer be allowed to construct.

37. **IA No.3776 of 2022** has been filed by Assets Care and Reconstruction Enterprise Ltd. It is submitted that Altico Capital India Ltd. had sanctioned loan of Rs.430 crores to Supertech ORB Projects Pvt. Ltd., wholly owned subsidiary of the CD and it has filed its claim in Form-C. Shri Ramji Srinivasan, learned Senior Counsel appearing for the Applicant states that the Applicant has no objection to the NBCC Proposal. It is submitted that it has to be Project-wise resolution and Lenders specific to the Project should be in the Committee. Project-wise accounting may be done and the loan of

Lenders be serviced Project-wise. Provisions of RERA may be complied with designated account may be opened.

38. Shri Arvind Nayyar, learned Senior Counsel appearing for L&T Finance Ltd. in **IA No. 3034 of 2022** submits that L&T Finance has no objection to the NBCC Proposal.

39. There are several other Intervention Applications filed by different Homebuyers claiming allotments. Some of them supported the NBCC Proposal and some of them objected to it.

40. **IA No.6714 of 2023** has been filed by land owners of Araville Project. It is contended that there is a revenue sharing model in collaboration. The Lenders are liable to pay dues of DTCP being Co-promoter. Provision should also be made for taking care of the dues of the land owners.

41. **IA No.6683 of 2024** has been filed by Apex Heights Pvt. Ltd. through its Authorised Representative, who also claimed to have given Proposal for Supertech Sports Village. The Applicant submits that its offering Rs.150 crores and it should be permitted to take the Project as Co-Developer.

42. **IA No.5482 of 2023** has been filed by IndiaBulls Housing Finance Ltd. seeking Intervention/ Impleadment in the Appeal. The Applicant claimed to be Financial Creditor, who has filed claimed in Form-C, which was initially accepted for Rs.1. It extended loan to another Group Company of the CD namely – Revital Reality Pvt. Ltd., to which the Supertech Ltd. is a Guarantor. The Application filed by the IndiaBulls is pending consideration before the NCLT. Learned Counsel for the Applicant states that NBCC Proposal

regarding distribution to the Lenders and Financial Creditors only if there is any surplus left, after completion of the Projects, cannot be accepted.

43. **IA No.4316 of 2023** has been filed by Nikhil Behl, whose claim of its unit has been cancelled. It is submitted that when unsold units are sold, some property be given to those unit holders, who were allottee and were allotted flats, which were subsequently cancelled.

44. Some of the learned Counsel, who are appearing on behalf of Homebuyers in different Applications, contended that Homebuyers are not much concerned as to who construct the Project, but they are concerned with timeline under which the construction has to complete and houses to be delivered to the Homebuyers. It is further submitted that Homebuyers be not asked to pay any extra amount, apart from the amount, which was agreed with the Builder Buyers Agreement. Some of the learned Counsel for the Homebuyers have also pressed for their entitlement for delay compensation on account of delay caused in handing over their houses. It is contended that delay compensation may be adjusted in the amount, which is payable by the Homebuyers as per Builder Buyers Agreement.

45. Learned Counsel appearing for different Homebuyers have also highlighted issues pertaining to the Projects in which they are concerned.

46. We are of the view that different issues raised by individual Homebuyers, pertaining to real-estate Projects, need no consideration at this stage, which can be addressed by the concerned Project Committees as in the manner hereinafter shall be directed.

47. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant also has opposed the Proposal submitted by NBCC. It is submitted that NBCC lacks *locus* to file any Application in this proceeding. The NBCC not being creditor, stakeholder or party in the Appeal, the Application of NBCC is liable to be rejected. It is submitted that although Application is titled Proposal on behalf of NBCC, but Application does not propose any substantive proposal and at best can be described as Proposal to give Proposal. Shri Sinha has also referred to the order dated 21.10.2024, where NBCC was directed to give fresh composite Proposal Project-wise. It is submitted that NBCC in its Proposal in Terms of Reference has repeatedly stated that it is not a Resolution Plan. It is contended that NBCC does not seek to take any liability under the provisions of IBC and requesting this Tribunal to take over all the Projects of the CD, without undertaking the construction of stalled Projects, accepting any liability or being responsible for any obligation associated with the Projects. The NBCC contends that it is submitting Proposal on the basis of Amrapali judgment of the Hon'ble Supreme Court. It is submitted that in the present matter multiple parties are involved and in the Amrapali matter, Court Receiver was appointed in exercise of jurisdiction by Hon'ble Supreme Court under Article 142 of the Constitution of India. It is submitted that there is no certainty regarding Day Zero in timeline for completion of the Projects. The timeline for calculating Day Zero is uncertain and flexible. Obtaining permission and approvals from the statutory Authorities in the name of Supertech, without settling claims or providing their dues, has been opposed by the learned Counsel for Authorities. NBCC cost per square feet is higher. There is no fund guarantee

or available with NBCC, except certain comfort letters. The NBCC Proposal that any surplus fund left over after construction of the Project, the dues were to be paid as unworkable. All lenders and Authorities have opposed the said stand taken by the NBCC. The learned Counsel for the Appellant submits that with regard to five Projects namely - Green Village Meerut, Micasa, Rivercrest, Meerut Sports City and Araville can successfully be completed with the assistance of Co-Developers and Investors, who are ready to infuse funds. Resolution Plan and road map with regard to aforesaid five Projects is already on the record. It is not necessary that all Projects should be handed over to the NBCC. Above five Projects be constructed as per the mechanism already envisaged by this Tribunal vide its directions to Project-wise resolution. The above five Projects, can be completed expeditiously and earlier than the timeline proposed by the NBCC, should be handed over in the manner as suggested. It is submitted Doon Square Project, which has already been directed by this Tribunal to be constructed as per the Agreement between the parties, including the Lender in the model in which Doon Square Project is to finish. At least above five Projects be also provided to be proceeded with. The Project-wise Proposal for above five Projects is pending consideration before this Tribunal. Exemption sought by NBCC from compliance of the statutory provisions, cannot be granted. The Applicants are fully compatible to deliver the remaining 13,000 homes. It is submitted that Project-wise Proposal present a more comprehensive, transparent and feasible approach for resolving the issue in hand and this Tribunal may dismiss IA No.6557 of 2024 as not maintainable and consider the Project-

wise Proposal, which have shown a greater financial commitments, better timeline and clearer roadmap for Projects completion.

48. Learned Counsel for the Union Bank of India (Financial Creditor) has supported the NBCC. It is submitted by learned Counsel for the Union Bank of India that NBCC focuses on execution of entire Project in time bound manner. It is submitted that there can be a Sub-Committee Project-wise, which can be dealt with by IRP and IRP may address the grievances and issues pertaining to individual Projects. The NBCC has already conducted its due diligence with the documents and materials, which were supplied by the IRP. Finally, it is submitted that carrying on entire Project by one entity shall ensure confidence building among Homebuyers, Lenders and Authorities. The NBCC proposes to bring money from cash surplus Project to cash negative Project, to complete all Projects. The NBCC being a PSU and audited by CAG and having a proven track record, have both capability and capacity to raise funds from HUDCO and other Financial Institutions to complete the Project in time bound manner. Court appointed Committee will ensure that NBCC shall focus on completion of the Projects in time bound manner.

49. Learned Counsel for the IRP has given outline of objections raised by Authorities, Lenders, Homebuyers, Charge Holders as is reflected in its Status Report dated 20.11.2024. Shri Nakul Dewan, learned Senior Counsel appearing for the IRP submits that in event the Projects are to be given to the NBCC for construction as Project Management Consultant, in addition to the Court-appointed Committee to take all financial issues and supervise all the Project, there shall be Project-wise Committee, which may consist of IRP,

Land Authorities, Financial Lenders and representative of Homebuyers. It is submitted that in the Committee an Expert needs to be appointed, who has expertise in real-estate Projects. The learned Counsel for the IRP submitted that he shall be proposing a slew of directions, which need to be issued by this Tribunal for start and completion of the Project. Directions need to be issued to statutory Authorities for taking decision on sanction/ renewal of pending sanctions and other statutory compliances on an application made by the IRP. The learned Counsel for the IRP submits that in the Process Note to be submitted, details of directions prayed for and sought for, for construction of the Projects shall be included, which are necessary to be issued. The learned Counsel for the IRP has further submitted that NBCC cannot be allowed waiver from statutory compliances, including the compliances of the provisions of the RERA Act.

50. Learned Counsel for the Lenders, different Financial Institutions have also submitted that they are not opposed to Projects being handed over to the NBCC for construction. However, NBCC Proposal that payment to the Lenders, shall be considered from surplus after completion of the Projects is unacceptable. It is submitted that there has to be appropriate measures, appropriate provisions for payment of Lenders towards their dues. The Lenders' dues cannot be left unattended.

51. Shri Gopal Jain, learned Senior Counsel appearing for the NBCC referring to Application – IA No.6557 of 2024 and Proposal dated 04.11.2024, while summing-up his submission, contends that Proposal submitted by NBCC is based on prior proven track record in the Amrapali case, where the

NBCC had to construct around 37,000 flats as Project Management Consultant (“PMC”) Model. The NBCC has submitted Proposal for proper planning and implementation of the construction (not as a Resolution Applicant), but on the basis of Amrapali Model as directed by the Hon’ble Supreme Court in the **Writ Petition (Civil) No.940 of 2017 – Bikram Chatterji & Ors. vs. Union of India & Ors.** relating to Amrapali Group. The Hon’ble Supreme Court by various orders passed in the above Writ Petition has directed the NBCC to undertake the construction of Project and NBCC under the orders issued by the Hon’ble Supreme Court has constructed thousands of flats and handed over units to the Homebuyers. Learned Counsel for the NBCC submits that NBCC shall take all the 16 Projects, except Doon Square Project, which has already been directed to be resolved and with regard to which directions have already been issued by the Tribunal in the present Appeal. The 16 Projects shall also include Eco Village-II. It is submitted that NBCC assures safe and reliable quality of construction as per CPWD norms with third party inspection (including structural audit) shall be conducted by reputed Institute viz NIT/ IIT etc. The NBCC will follow the specifications and finishing schedule as per earlier approved building plans and as per Project Brochure. With regard to funding, learned Counsel submits that construction will start with the funds received from Financial Institutions, which may also include HUDCO, Kotak, HDFC. It is submitted that Rs.1800 crores shall be received from sold units and Rs.14,000 crores shall be received from unsold inventories. Agencies for execution of the Projects will be finalized by transparent e-tender. Start of construction will encourage sale of unsold inventory around 10,000 units and help curb

existing trust deficit in the Project. The receivables generated will be used for the construction purposes and shall be the primary source of the revenue for completion of the Projects. Surplus from receivables, after completion of the Projects will be given to the Committee (NCLAT appointed Committee) for distribution to stakeholders like Authorities, Banks etc. The learned Counsel for the NBCC has also opposed the submission of the Appellant that five Projects (as noted above) shall be handed over to Co-Developers as has been indicated by the Promoters. It is submitted that the Appellants, who are Promoters, who are responsible for non-completion of the Project, cannot be permitted to construct the aforesaid five Projects through Co-Developers, which are all cash rich Projects. It is submitted that NBCC has applied its due diligence on the basis of documents, records and materials provided by the IRP. Learned Counsel for the NBCC also submitted that NBCC shall not be asking for any waiver from statutory compliances and if need be, as noted by Hon'ble Supreme Court in its order dated 01.10.2024, the NBCC shall be approaching/ filing an appropriate Application in the pending Appeal before the Hon'ble Supreme Court for seeking such directions as may be necessary for expeditious implementation of the Projects.

52. We have considered the submissions of learned Counsel for the parties and perused the records.

53. The issue which needs to be first considered and decided is as to whether Application filed by NBCC i.e. IA No.6557 of 2024 deserve to be allowed or not? One of the related issues raised is as to whether all 16 projects excluding Doon Square and including Eco-Village-2 need to be

handed over to NBCC or at least five projects namely – Green Village Meerut, Micasa, Rivercrest, Meerut Sports City and Araville be permitted to be resolved and be handed over to the co-developers as identified by the Appellant.

54. From submissions of parties, following issues need to be considered and answered:

- (I) Whether IA 6557 of 2024 filed by NBCC praying for handing over all the projects of the Supertech Ltd. for construction, be allowed or not?
- (II) Whether in event NBCC is allowed to carry out construction, all 16 projects be handed over to the NBCC or construction of five projects namely - Green Village Meerut, Micasa, Rivercrest, Meerut Sports City and Araville be handed over to the co-developers as identified by the Appellant?
- (III) Whether the time lines for construction of all 16 project as proposed by the NBCC need to be approved?
- (IV) Whether NBCC's proposal to grant waiver from compliance of statutory provisions like building regulations and the Uttar Pradesh Real Estate Regulatory Authority 2016 as proposed in 'Terms of Reference' be waived?
- (V) Whether homebuyers, who have already been allotted units, which allotments are subsisting, can be subjected to

any escalation of cost in addition to dues, if any, as per the Builder Buyers Agreement?

(VI) What directions need to be issued in this Appeal towards completion of construction of all 16 projects?

Question No. I & II

55. Both the above issues being interconnected are taken together.

56. NBCC in I.A. No. 6557/2024 has prayed for taking all 17 Projects of the Corporate Debtor. 17 Projects have been listed in Annexure-A to I.A. No. 6557/2024 which are to the following effect:

Sl No.	Phase	Project	Location
1	Phase-1	<i>Eco-village -2</i>	<i>Sec-16B, Greater Noida</i>
2		<i>Romano</i>	<i>Sec-118, Noida</i>
3		<i>Capetown</i>	<i>Sec-74, Noida</i>
4		<i>Czar Suites</i>	<i>Greater Noida</i>
5		<i>Eco- Village 3</i>	<i>Sec-16B, Greater Noida</i>
6		<i>Sports village</i>	<i>Sec-10, Greater Noida</i>
7		<i>Eco-citi</i>	<i>Sec-137, Noida</i>
8	Phase-2	<i>Northeye</i>	<i>Sec-74, Noida</i>
9		<i>Upcountry</i>	<i>Sec-17 A, Yamuna Expressway</i>
10		<i>Eco- Village 1</i>	<i>Sec-1, Greater Noida</i>
11		<i>Meerut sports city</i>	<i>Meerut</i>
12		<i>Green village Meerut</i>	<i>Meerut</i>
13	Phase-3	<i>Hilltown</i>	<i>Gurugram</i>
14		<i>Araville</i>	<i>Gurugram</i>
15		<i>Rivercrest</i>	<i>Rudrapur</i>
16		<i>Doon square</i>	<i>Dehradun</i>
17		<i>Micasa</i>	<i>Bangalore</i>

57. Out of above 17 Projects, with regard to Project Doon Square listed as Item No. 16, Order has already been passed in this Appeal for resolution of the said Project under the Agreements of all Stakeholders, hence said Project

is deleted from the above list. Thus, there remains 16 Projects in the Annexure A in the Application which has been filed by the NBCC, the NBCC as on the basis of document and information received from IRP in IA 6557/2024. NBCC has proposed 17 Projects to be undertaken in 3 Phases; Phase 1, Phase 2 & Phase 3. Para 1.1 of the IA 6557/2024 is as follows:

“1.1 STATUS OF THE ONGOING PROJECTS

*Basis the information provided by IRP, NBCC had constituted various internal teams to examine the projects and submit its reports basis which the status of construction of the 17 (Seventeen) Projects along with tentative cost of construction have been categorised in different Phases as provided below and enclosed as **ANNEXURE-B (Colly.)**:*

(a) Phase I: NBCC proposes to construct and deliver Projects identified in Phase I upon acceptance of TOR and upon directions of the Court Committee and infusion of funds

(b) Phase II: Construction works of the Projects identified in Phase II, may be taken up by NBCC in future subject to review of progress of work and realization of funds in Phase I/ infusion of funds and subject to directions of the Court Committee.

(c) Phase III: Construction works of the Projects identified in Phase III, may be taken up by NBCC in future subject to review of progress of work and realization of funds in Phase I & II/ infusion of funds and subject to directions of the Court Committee.”

58. Annexure B which is filed along with the Application has tabulated receivables as per IRP Report and tentative balance construction cost assessed by NBCC with column of surplus/deficit and details of units in each Project. Annexure B which is part of the Application is as follows:

Phase	Project	Location	Receivable as per IRP Report (Rs in Cr)			Tentative Bal. Const. Cost as assessed by NBCC (Rs in Cr)			Surplus/Deficit (Rs in Cr)	UNITS as per IRP report (modified with *)			
			Sold	Unsold	Total Receivables	Const. Cost	Statutory fees, Charges or any other Contingencies @3%	TOTAL		% of Units Delivery	Total (in Nos.)	Sold (in Nos.)	Unsold (in Nos.)
Phase-1	Eco-village -2	Sec-168, Greater Noida	184.32	1,077.40	1,261.72	1,114.43	33.43	1,147.86	113.86		7135	6050	1085
	Romano	Sec-118, Noida	116.00	1,402.41	1,518.41	806.53	24.20	830.73	687.68		2130	1464	666
	Capetown	Sec-74, Noida	106.92	317.54	424.46	293.02	8.79	301.81	122.65		4932	4850	82
	Czar Suites	Greater Noida	38.44	81.90	120.34	60.56	1.82	62.38	57.96		2102	1948	154
	Eco-Village 3	Sec-16B, Greater Noida	150.44	843.92	994.36	594.04	17.82	611.86	382.50		3917	2866	1051
	Sports village*	Sec-10, Greater Noida	113.21	5,842.15	5,955.36	1,915.58	57.47	1,973.05	3,982.31		3657	335	3322
	Eco-citi	Sec-137, Noida	0.26	54.94	55.20	13.72	0.41	14.13	41.07		2151	2142	9
	Total A		709.59	9,620.26	10,329.85	4,797.88	143.94	4,941.82	5,388.03	52%	26024	19655	6369
Phase-2	Northeye	Sec-74, Noida	317.68	89.27	406.95	435.02	13.05	448.07	-41.12		2815	2428	387
	Upcountry	Sec-17 A, Yamuna Expressway	125.35	955.37	1,080.72	1,048.41	31.45	1,079.86	0.86		4661	4628	33
	Eco-Village 1	Sec-1, Greater Noida	200.59	90.45	291.04	385.63	11.57	397.20	-106.16		8173	8052	121
	Meerut sports city	Meerut	56.81	343.28	400.09	213.53	6.47	222.00	178.09		1795	1137	658
	Green village Meerut	Meerut	33.59	339.10	372.69	199.67	5.99	205.66	167.03		2115	1440	675
	Total B		743.02	1,817.47	2,551.49	2,284.26	68.53	2,352.79	198.70	39%	19559	17685	1874

Phase-3	Hilltown**	Gurugram	295.04	2,235.82	2,530.86	1,981.45	59.44	2,040.89	489.97		1950	1484	466
	Araveille**	Gurugram	73.38	7.29	80.67	70.84	2.13	72.97	7.70		618	525	93
	Rivercrest	Rudrapur	44.53	416.39	460.92	25.52	0.77	26.29	434.63		1397	340	1057
	Doon square	Dehradun	25.88	99.29	125.17	32.44	0.97	33.41	91.76		608	428	180
	Micasa	Bangalore	7.89	0.70	8.59	9.58	0.29	9.87	-1.28		200	199	1
	Total C		446.72	2,759.49	3,206.21	2,119.83	63.59	2,183.42	1,022.79	9%	4773	2976	1797
	GRAND TOTAL (A + B + C)		1890.33	14,197.22	16,087.55	9,201.97	276.06	9,478.03	6,609.52	100%	50356	40316	10040

59. In these Appeals, I.A. No. 8178/2024 & I.A. No. 8179/2024 have been filed containing proposal made by the Promoters for 5 specific Projects, namely; Araville, Micasa, Green Village Meerut, Meerut Sports City & Rivercrest. These 5 Projects have been proposed with Co-Developers who have to infuse total INR 85 Crores in all the 5 Projects and as per the proposal of Promoters, timeline for completion of Araville is 18 months, Micasa is 12 months, Green Village Meerut is 12 to 24 months, Meerut Sports City is 12 to 24 months and Rivercrest is 12 months.

60. Learned Counsel for the Promoters have pleaded that above Projects be permitted to be completed by the Co-Developers as identified by the Promoters, who are giving a lesser timeline for completion of the Project and proposal contemplate settling the claims of financial institutions and charge holders which are Indiabulls and Acre. Claim admitted to the tune of Indiabull is Rs.19.66 Crores and Acre is 151 Crores.

61. Learned Counsel for the NBCC submits that NBCC has examined all Projects by internal teams on the basis of materials and data provided by the IRP, and as per Annexure B to the IA there are several Projects who may have surplus funds and several Projects which are in deficit. Out of 5 Projects which are proposed by Promoter, 4 Projects are Surplus Project. It is submitted by Learned Counsel for the NBCC that in view of the revised proposal submitted by the NBCC dated 11.11.2024, now NBCC proposes to take all 16 Projects simultaneously and the earlier proposal given in IA 6557/2024 to take the construction in project wise in Phase 1, Phase 2

and Phase 3 has been given up. In the revised proposal dated 11.11.2024, there is a categorical statement that timelines on 12 to 36 Months applies to the simultaneous completion of all 17 Projects. Para 7 of the revised proposal of the NBCC is as follows:

“7. That in response to the objections raised, regarding the construction timelines proposed by NBCC, it is clarified that the 12 to 36 months timeline applies to the simultaneous completion of all 17 projects and should not be misconstrued as being applicable only to Phase-I of the development. The phases have been defined merely to prioritize and initiate construction activities in specific locations, primarily in Noida and Greater Noida, where surplus funds are anticipated. These funds will facilitate the mobilization of resources and the acceleration of construction at additional sites after a few months (approximately 3 to 6 months), contingent on the cash flow position and the revenue generated from the sale of unsold inventory.”

62. As noted above, the majority of Homebuyers who have filed various Applications and objections have supported the proposal of NBCC provided the Projects are completed in timeline and no additional cost is imposed on the Homebuyers, and NBCC maintains the quality of construction. Other set of Homebuyers who have not supported the proposal of NBCC have contended that although they do not support the proposal, but they have no specific objection for Project to be given for construction to any entity provided timelines, quality of construction is maintained and Homebuyers are not put to any financial burden. NBCC is PSU, which has nation wise presence and most of the Projects as noted above are spread in Noida, Greater Noida, and Gurgaon. One Project, Rivercrest in Rudrapur, State of Uttarakhand and one Project Micasa in Bangalore. The Project Doon

Square has already been directed to be resolved and cannot be part of the Projects to be given.

63. Learned Counsel appearing for the IRP has also not shown his disagreement with the proposal of NBCC provided certain directions are issued for taking over the Projects simultaneously.

64. Learned Counsel for the NBCC submitted that out of the 16 Projects, some Projects may have surplus funds, whereas some Projects are in deficit, all Projects being Project of the Corporate Debtor required completion and surplus fund from one Project can be appropriated by decision of Court Committee, can be transferred and utilised in other Projects which may be requiring funds for completion. In event, Cash Surplus Projects are taken out from 16 Projects, completion of all Project shall become unviable. We are of the view that NBCC being a PSU, who is required to maintain quality of construction and maintain uniformity in quality of construction in all Projects, giving all Projects to be constructed under the NBCC shall ensure uniformity and the quality of construction in execution and implementation of the Projects. As noted above hiving out 5 Projects, out of 16 Projects, out of which 4 Projects are Cash Surplus shall not be beneficial for completion of all 16 Projects. We thus are of the considered opinion that NBCC be allowed to carry out construction in all 16 Projects as listed in Annexure A to the Application (except Doon Square Project).

Question No. I & II are answered accordingly.

Question No. III

65. As noted above, in the IA 6557 of 2024, NBCC has initially proposed construction of 17 Projects in 3 Phases; Phase 1, Phase 2 and Phase 3, but in the revised proposal dated 11.11.2024, NBCC has now clarified that all 17 (now 16) Projects shall be simultaneously completed, hence the apprehension that Projects of Phase 2 & Phase 3 shall not begin together has been taken care of. In revised proposal, tentative timelines for construction and completion have been given in Annexure D, which Annexure D of revised proposal is as follows:

Sl No.	Project	Location	Tentative Time Lines for Construction Completion
1	<i>Eco-village -2</i>	<i>Sec-16B, Greater Noida</i>	<i>18 to 36 Months</i>
2	<i>Romano</i>	<i>Sec-118, Noida</i>	<i>12 to 36 Months</i>
3	<i>Capetown</i>	<i>Sec-74, Noida</i>	<i>12 to 36 Months</i>
4	<i>Czar Suites</i>	<i>Greater Noida</i>	<i>18 to 36 Months</i>
5	<i>Eco- Village 3</i>	<i>Sec-16B, Greater Noida</i>	<i>12 to 36 Months</i>
6	<i>Sports village</i>	<i>Sec-10, Greater Noida</i>	<i>30 to 36 Months</i>
7	<i>Eco-citi</i>	<i>Sec-137, Noida</i>	<i>12 to 24 Months</i>
8	<i>Northeye</i>	<i>Sec-74, Noida</i>	<i>18 to 36 Months</i>
9	<i>Upcountry</i>	<i>Sec-17 A, Yamuna Expressway</i>	<i>24 to 36 Months</i>
10	<i>Eco- Village 1</i>	<i>Sec-1, Greater Noida</i>	<i>12 to 36 Months</i>
11	<i>Meerut sports city</i>	<i>Meerut</i>	<i>18 to 36 Months</i>
12	<i>Green village Meerut</i>	<i>Meerut</i>	<i>18 to 36 Months</i>
13	<i>Hilltown</i>	<i>Gurugram</i>	<i>24 to 36 Months</i>
14	<i>Araveille</i>	<i>Gurugram</i>	<i>12 to 30 Months</i>
15	<i>Rivercrest</i>	<i>Rudrapur</i>	<i>12 to 36 Months</i>
16	<i>Doon square</i>	<i>Dehradun</i>	<i>12 to 36 Months</i>
17	<i>Micasa</i>	<i>Bangalore</i>	<i>12 to 18 Months</i>

66. From Annexure D, the Project Doon Square is treated to be deleted, it having already directed to be resolved with the consent of all stakeholders. The timelines as indicated in an Annexure D to the revised proposal, thus has to be approved.

67. Learned Counsel for the Homebuyers and Promoters have expressed uncertainty and doubt about achievement of day zero. In IA 6557/2024, in Para 1.4(c)(ii) time period for completion has been mentioned, which is as follows:

*“(c) **Cost and Time Estimation:** Upon completion of the survey and due diligence exercise mentioned here-in-above estimated costs and time for completion of the Projects shall be ascertained.*

(ii) Time period for completion: Tentative time period for completion of various projects shall vary from 12 to 36 months from "Day Zero".

Note:

“Day Zero in relation to each project means the date on which all the following conditions are fulfilled/completed:

- I. Hon’ble NCLAT accepts the instant TOR submitted by NBCC and issues appropriate directions for implementation;*
- II. Completion of due-diligence or audit of such project, to the satisfaction of NBCC;*
- III. Obtaining requisite permits/approvals from statutory bodies in the name of Supertech, if any which are key for commencement of works as mentioned above;*
- IV. Award of work(s) by NBCC to contractors for projects;*
- V. Handover of peaceful and vacant possession of the project sites to NBCC, capable of commencement of work; and*

VI. *Making available the requisite funds for commencing the work in relation to each phase project in the designated account in accordance with reports submitted by NBCC.”*

68. To obviate uncertainty and delay in achieving of day zero, we shall be issuing necessary directions to the statutory bodies for considering grant of requisite permit/ approvals. A timeline will also be fixed for obtaining requisite funds for commencing a work in relation to each Project. All necessary requirements for achieving day zero is to be completed before 31.03.2025, except award of works by NBCC to contractors for Project, which shall also be completed by 30.04.2025. We thus approve the timelines as indicated in Annexure D to revise proposal.

Question No. III is answered accordingly.

Question No. IV

69. In the term of reference which has been submitted by NBCC in Para 12 of revised proposal, NBCC has prayed for following:

“12. Further, NBCC requires a RERA exemption in light of this situation in terms of Amrapali model, as funds shall necessarily be required to be transferred from one project to the other, to ensure completion of the projects.”

70. Learned Counsel for the IRP submits that IRP does not support the proposal of NBCC for exemption from compliance of RERA Act 2016 and other statutory compliances.

71. Learned Sr. Counsel, Mr. Gopal Jain appearing for NBCC submitted that, if necessary, the NBCC shall file appropriate Application before the

Hon'ble Supreme Court for seeking any direction as maybe necessary. We are of the view that no exemption can be granted to the NBCC by this Tribunal with regard to compliances of statutory requirement as required by buildings Regulations or requirement as provided under the RERA Act, 2016 or other statutes governing the Projects in question. The construction and carrying on construction for Project has to be in accordance with the statutory requirement governing the Project in question and for obtaining appropriate approvals from statutory authorities, appropriate Application shall be made through IRP. Statutory authorities to whom such Applications are made, may consider such Application with urgency looking to the nature of Project. We may also refer to the Judgment of the Hon'ble Supreme Court in the matter of '**Bikram Chatterji & Ors.**' Vs. '**Union of India & Ors.**' reported in **(2019) 19 SCC 161**, where Hon'ble Supreme Court has laid down that public trust doctrine imposes on the State and its functionaries mandate to take affirmative action for effective management. In Paragraphs 73 to 76, following has been laid down:

"In re : Public Trust Doctrine

73. *The public trust doctrine imposes on the State and its functionaries a mandate to take affirmative action for effective management, and the citizens are empowered to question its ineffectiveness. The land of the farmers had been acquired for the purpose of housing and infrastructure needs by the State Government and handed over to the authorities concerned for construction. They are bound to ensure that builders act in accordance with the objective behind the acquisition of land and the conditions on which allotment had been made. It was a duty of officials concerned; they are not only enjoined to ensure that the rights of the homebuyers*

are protected but also the interests of the authorities and bankers. The public authorities are duty-bound to observe that the leased property is not frittered away along with the money of the homebuyers. Affirmative action was clearly enjoined upon them not only under the statutory provisions of various enactments but also under the public trust doctrine that has evolved over the years by this Court.

74. *In Noida Entrepreneurs Assn. v. NOIDA [Noida Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717], this Court has observed : (SCC pp. 524-25, paras 38 & 40-41)*

“38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

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40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70], Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489], T.M. Hassan Rawther v. Kerala Financial Corpn. [T.M. Hassan Rawther v. Kerala Financial Corpn.,

(1988) 1 SCC 166] , *Shrilekha Vidyarthi v. State of U.P.* [*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742] ; and *MI Builders (P) Ltd. v. Radhey Shyam Sahu* [*MI Builders (P) Ltd. v. Radhey Shyam Sahu*, (1999) 6 SCC 464] .]

41. *Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. [Vide Commr. of Police v. Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] , Sirsi Municipality v. Cecelia Kom Francis Tellis [Sirsi Municipality v. Cecelia Kom Francis Tellis, (1973) 1 SCC 409 : 1973 SCC (L&S) 207] , State of Punjab v. Gurdial Singh [State of Punjab v. Gurdial Singh, (1980) 2 SCC 471] , Collector (DM) v. Raja Ram Jaiswal [Collector (DM) v. Raja Ram Jaiswal, (1985) 3 SCC 1] , Delhi Admn. v. Manohar Lal [Delhi Admn. v. Manohar Lal, (2002) 7 SCC 222 : 2002 SCC (Cri) 1670] and N.D. Jayal v. Union of India [N.D. Jayal v. Union of India, (2004) 9 SCC 362] .]*

75. *In Natural Resources Allocation, In re (Special Reference No. 1 of 2012) [Natural Resources Allocation, In re (Special Reference No. 1 of 2012), (2012) 10 SCC 1] , the Court observed : (SCC pp. 124-25, para 172)*

"172. The judgment in LDA case [LDA v. M.K. Gupta, (1994) 1 SCC 243] ,

brings out the foundational principle of executive governance. The said foundational principle is based on the realisation that sovereignty vests in the people. The judgment, therefore, records that every limb of the constitutional machinery is obliged to be people oriented. The fundamental principle brought out by the judgment is, that a public authority exercising public power discharges a public duty, and therefore, has to subserve general welfare and common good. All power should be exercised for the sake of society. The issue which was the subject-matter of consideration, and has been noticed along with the citation, was decided by concluding that compensation shall be payable by the State (or its instrumentality) where inappropriate deprivation on account of improper exercise of discretion has resulted in a loss, compensation is payable by the State (or its instrumentality). But where the public functionary exercises his discretion capriciously, or for considerations which are mala fide, the public functionary himself must shoulder the burden of compensation held as payable. The reason for shifting the onus to the public functionary deserves notice. This Court felt, that when a court directs payment of damages or compensation against the State, the ultimate sufferer is the common man because it is taxpayers' money out of which damages and costs are paid."

76. *In Assn. of Unified Tele Services Providers v. Union of India [Assn. of Unified Tele Services Providers v. Union of India, (2014) 6 SCC 110] , the Court observed : (SCC p. 120, para 4)*

"4. We have indicated, the worth of spectrum to impress upon the fact that the State actions and actions of its agencies/instrumentalities/licensees must be for the public good to achieve the object for which it exists, the object being to serve public good by resorting to fair and reasonable methods. State is also bound to protect the resources for the enjoyment of general public rather than permit their use for purely

commercial purposes. Public trust doctrine, it is well established, puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest. Further, it mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management.”

72. Hon’ble Supreme Court has further held that public authorities ought to have been vigilant to implement the statutory provisions. In the above case, Hon’ble Supreme Court has issued several directions so as to complete the Project. We are of the considered opinion that Noida, Greater Noida Yamuna Expressway Authority, and other statutory authorities concerned with the Project shall take all necessary actions and in compliance of statutory requirements including approvals which are necessary for Projects in question with sense of urgency or immediacy giving priority looking to the huge delay in completion of Project and miseries of Homebuyers.

We thus answer Question No. IV to the effect that NBCC proposal to grant waiver from provisions of UP RERA, and other statutory provisions cannot be granted.

Question No. V

73. The Homebuyers who have been allotted units in different Projects of the Supertech have made substantial payments to the builder as per the Builder Buyers Agreement. It has been submitted by the Learned Counsel for the NBCC that it is not proposed to put any additional burden on the

Homebuyers, except the recovery of the amount which is due from the concerned Homebuyers as per the Builder Buyers Agreement. The Projects in which the Homebuyers have been allotted units have been unduly delayed, which resulted due to default on the part of the Corporate Debtor, leading to initiation of Insolvency Resolution Process of the Corporate Debtor.

74. Learned Counsel for the Homebuyers have also flagged the issue of delay compensation which they were entitled as per the Builder Buyers Agreement on account of delay in completion. As a matter of fact, the builders could not complete the Project in the timeline and it was due to default, committed by builder that CIRP process commenced against the Corporate Debtor. The Orders passed in this Appeal from time to time have been towards commencing of the construction of all stalled Projects. The priority of the court is to complete the Projects, the court cannot be oblivious to the fact that construction cost has also increased by a passage of time of several years from the date when Homebuyers were required to be handed over the possession of their units. The completion of construction has to be from receivables from unsold, inventory, and the receivables from the Homebuyers and the funding which is to be arranged by the NBCC as indicated. As of date, the prayer of the Homebuyers to pay any delay compensation cannot be accepted. Completion of the Projects with enhanced construction cost, which is to be undertaken under the Orders of this Court shall be with no additional cost to be imposed on the Homebuyers, as has been submitted on behalf of the NBCC. We thus are

of the view that Homebuyers who have already been allotted units which allotment are subsisting cannot be subjected to any escalation of cost, except the dues which are required to be paid by them as per the Builder Buyers Agreement. Thus, the only recovery which can be affected from the Homebuyers is the recovery of unpaid dues, which were required to be paid by them as per the Builder Buyers Agreement.

Question No. V is answered accordingly.

Question No. VI

75. The NBCC as well as Learned Counsel for the IRP has prayed for issuing various directions so as to commence and complete the construction of all 16 Projects. At this stage, we notice one of the main objections raised by land authorities, lenders, Banks and financial institutions, that NBCC in its proposal has submitted that payment of dues to the land authorities, Banks and financial institutions shall be made only after completion of the Project from surplus amount. In revised proposal in Para 9 x distribution of surplus, if any, NBCC has stated following:

“9. Additionally, for the sake of clarity, the Applicant would like to submit the following in respect to the objections by various stakeholders:

x. Distribution of Surplus, if any:

As per Projected Cash Flows to be submitted by NBCC to the court committee, any surplus amount remaining after the completion of construction for all the projects, may be made available for the repayment of dues to various authorities, financial institutions and other relevant agencies. This surplus fund, once the construction phase is

concluded and all project-related expenses have been met, may be utilized to settle outstanding financial obligations. The specific allocation and distribution of these surplus funds will be determined in due course, as per the decisions of the Court-appointed Committee. The Court Committee will oversee the manner in which these funds are distributed to ensure that all stakeholders, including creditors and regulatory bodies, are paid in a fair and transparent manner, based on the agreed-upon priorities and guidelines.”

76. Learned Counsel appearing for the land authorities/lenders and financial institutions are justified in their objection that repayment of dues of the land authorities/lenders cannot await till completion of the Projects that too in event of there being any surplus amount remaining after completion of construction. The land authorities whose huge dues are consequent to allotment of land to the Corporate Debtor where Projects were to be constructed and has commenced, dues of land authorities cannot be ignored or bypassed. Similarly, the banks and financial institutions who have given financial facilities to the Corporate Debtor which were used by Corporate Debtor in commencing of the Project have also to be taken care of. With regard to Projects which are covered by the Real Estate Regulation and Development Act, 2016, under Section 4(2)(l)D the 70% of the amount realised from the Real Estate Projects from the allottees from time to time shall be deposited in a separate account to be maintained in a scheduled Bank to cover cost of construction. Section 4(2)(l)D is as follows:

“4. Application for registration of real estate projects.—(1) * * *

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely—

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating—

*(A)-(C) ****

(D) that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.—For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);”

77. All Projects which were registered and have to be now completed has to have a designated account in the scheduled Bank. Learned Counsel for the IRP has also submitted that a separate account for all Projects be maintained in which amount received from the allottees is to be deposited. The 70% of the receivables in a Project has necessarily to be spent for construction cost and land cost as per the statutory requirement. We, thus are of the view that repayment of land authorities, financial institutions, Banks has to be commenced from 30% balance amount from receivables and on approval of the Court Committee. For payment to land authorities, the 70% amount deposited in designated account can also be utilised. We, thus are of the view that repayment of land authorities, financial institutions, Banks cannot await till the completion of the Projects nor it can wait to be distributed from surplus after completion of the Project rather said repayment shall simultaneously begin along with the date and manner to be decided by the Apex Court Committee, which we shall be directing for constituting for carrying out the Project. We do not approve the proposal of the NBCC to make payment to various authorities, financial institutions from the surplus fund after completion of the Project rather repayment shall begin in the manner as decided by the Apex Court Committee.

78. Learned Counsel for the IRP has submitted that while the Apex Court Committee constituted to supervise the finances, approvals and other issues of all Projects and separate project wise Court Committee constituted to monitor the construction of the specific Projects. Learned

Counsel for the IRP has submitted a process note proposing formation of Apex Court Committee and formation of project wise Court Committee. In Clause (a) of the Process Note following has been recommended:

“A. GOVERNANCE STRUCTURE AND DECISION-MAKING MECHANISM: FORMATION OF APEX COURT COMMITTEE AS WELL AS PROJECT-WISE COURT COMMITTEE

The table below sets out, in summary, the constituents of both the Apex Committee and ProjectWise Committee:

Apex Court Committee (in line with the structure proposed by NBCC)	Project-Wise Court Committee (in line with the recommendations of lenders, land authorities as well as allottees)
1) Two nominees on behalf of the Financial Institutions (may be the two largest comprising Financial Institutions); 2) One nominee on behalf of NBCC; 3) One expert from the real estate industry / Construction industry being an independent committee member to be appointed jointly by other Apex Court Committee members, and 4) the Chairman (being the Interim Resolution Professional).	1) One (1) nominee of the Institutional Financial Creditor being the project lender/charge holder, if any 2) One nominee of the Allottees of the project whose units are under construction 3) One nominee of the land authority, if any 4) One expert from the real estate industry being an independent committee member (as appointed by Apex Court committee), and; 5) The Chairman (being the Interim Resolution Professional).

Note: Since the stakeholders such as land authorities as well as allottees interests are specifically aligned with their respective project, hence their participation is recommended only in project wise court committees.

1) FORMATION OF APEX COURT COMMITTEE:

i. *On and from the date of the approval order passed by the Hon'ble Appellate Tribunal ("Approval Order"), an Apex Court Committee be formed for all the projects given to NBCC, in relation to completion of projects and utilization of funds by NBCC, and to protect and safeguard the interests of the stakeholders of the projects, comprising of persons as per aforesaid table.*

ii. *The names of the nominees of the Financial Institutions and NBCC shall be notified by the Financial Institutions to the Interim Resolution Professional within seven (7) days from the date of the Approval Order.*

iii. *One expert from the real estate industry/construction industry may be appointed within 1 (one) month from the date of Approval Order.*

iv. *The Apex Court Committee may take all decisions in relation to completion of all the projects including, but not limited to, the following:*

a. *Approval and allocation of overall interim funding which may be required for all the projects. Such funding shall be treated as interim finance as defined and specified under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC") and shall be paid in priority over others.*

b. *Approve the formation of a Special Purpose Vehicle ("SPV"), if required, for raising interim finance.*

c. *Approval of proposals and reports submitted by NBCC at various stages of work, approve estimated cost, projected costs, actual costs as applicable and make available required funds to NBCC for completion of the balance work and any other direction necessary for comprehensive completion of all the projects*

d. Approval of costs for appointing any marketing or other agencies or other consultants common for all projects.

e. Approval of common expenses towards appointment of professionals, auditors, corporate employees and staff, legal, administrative and other head office expenses.

f. Allocation of funds from project to common pool for meeting common expenses.

g. Allocation of funds from surplus project to deficit project.

h. Distribution/allocation of surplus towards any dues of lenders, statutory authorities and other creditors as on Insolvency commencement date ("ICD") which remains unpaid from the respective project's cash flows

i. Allocation of funds for repayment of any common dues of the corporate debtor as on the insolvency commencement date, e.g. statutory dues, which cannot be allocated towards any specific project.

j. Any other action in relation to the Corporate Debtor which may be required to ensure the smooth operations of the projects

v. *The Apex Court Committee shall supervise the implementation of the construction plan and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement the same.*

vi. *The quorum for any meeting of the Apex Court Committee shall require the attendance of the following:*

a. The Chairman (being, the Interim Resolution Professional); and

b. At least one (1) nominee on behalf of the Financial Institutions.

c. The meeting may be called by giving 5 days' notice or any shorter notice as may be decided by the Apex court committee.

vii. *The Apex Court Committee shall endeavour to take all decisions by unanimous consent. However, if unanimous consent is not achieved then decision shall be taken by a simple majority of members present and voting. In case e-voting is preferred, then the minutes may be circulated within 48 hours from the conclusion of the meeting and voting shall be concluded within 7 (seven) days of circulation of such minutes.*

viii. *The IRP shall conduct the day-to-day operations of the Company under the instructions of the Apex Court Committee and perform duties inter alia similar to that of a Resolution Professional under the CIRP and shall have powers similar to that of a Resolution Professional under the CIRP as specified under IBC. The IRP shall continue to have the same protections and exemptions available to a Resolution Professional under IBC.*

ix. *No accounts of the Corporate Debtor shall be operated without the signature of the IRP or his assigns. The construction of all projects shall continue with overall supervision of the IRP and shall have the right to engage accountants, legal advisors, and other professionals essential for the effective management of the Corporate Debtor's affairs.*

x. *The members of the Apex Court Committee shall not be liable for any action done in good faith in relation to supervision and management of the Company and shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability in relation to any actions and/or omissions, during the implementation of the plan. Further, the nature of protection prescribed in Section 233 of the IBC will extend to the members of the Apex Court Committee for any action taken by them in good faith in terms of this order.*

xi. *The going concern costs of the Corporate Debtor and fees and costs of the IRP, along with his respective advisors in keeping the Corporate Debtor as a going concern, as approved by the Apex Court Committee, shall form part of CIRP costs and shall be paid in priority from the cash flows of the common funds of the corporate Debtor as treated during the CIRP.*

xii. Upon the completion and handover of all the projects given to NBCC, any surplus funds remaining shall be allocated towards the repayment of unpaid dues of various stakeholders in proportion to their outstanding balances and the balance surplus, if any, may be submitted to the Hon'ble Appellate Tribunal with the final report. Upon the resolution of these matters, the Apex Court Committee may be dissolved.”

79. We accept the proposal of the IRP to constitute Apex Court Committee and for all the Projects given to the NBCC in relation to the completion of the Project and utilisation of funds by NBCC and to protect the safeguards and interest of the stakeholders of the Project and a project wise Court Committee for each Project for monitoring the NBCC and taking decision on various matters related to the Project. The constitution of both the Committees have also been suggested by the IRP. We approve the constitution of Apex Court Committee and project wise Committees as suggested by the IRP in the process note except one modification in project wise Court Committee that one representative of the NBCC has also to be part of the project wise Court Committee, thus, in addition to process as suggested in project wise Court Committee, one nominee of the NBCC shall be there with regard to each Project. The formation of the Apex Court Committee and project wise Court Committee with others suggestions given by the IRP as extracted above under the heading A are approved subject to any direction or modification which may be issued from time to time. The IRP under heading B direction to NBCC for implementation of construction proposal and mechanism for preparation of dues to stakeholders have made suggestions, which are as follows:

“B. DIRECTIONS TO NBCC FOR IMPLEMENTATION OF CONSTRUCTION PROPOSAL AND MECHANISM FOR REPAYMENT OF DUES TO STAKEHOLDERS:

1) NBCC may be allowed to take over the role as PMC for the projects as per the TOR modified as per the Approval Order.

2) NBCC may obtain binding proposals for interim funding within 2 months from the date of Approval Order for the approval of Apex Court Committee.

3) NBCC may complete the survey and due diligence exercise mentioned in Para 1.4 (b) of NBCC TOR and prepare project wise monthly/ quarterly cash flows within 3 months from the date of Approval Order for the approval of Project-wise Court Committee.

4) For the purpose of preparation of cash flows, NBCC may propose utilization of 70% of project cash flows for the purpose of all expenses that need to be incurred for the purpose of completion of the project including NBCC fee, selling and marketing costs as well as the monitoring costs. In cases where 70% of projected cash flows are insufficient to complete the construction of the project, such additional percentage of cash flows may be allocated in priority which is necessary to ensure meeting of all projected expenses of the project subject to the approval of the project-wise court committee.

5) With respect to 30 percent of projected cash flows, or such other amount available for allocation after covering all project costs, the same may be allocated in the following order of priority: -

i. Meeting any corporate, legal and all other expenses which may not be allocated specific to the project in order to keep the Corporate Debtor as a going concern.

ii. Meeting any outstanding CIRP expenses pertaining to the project which is already incurred and not yet paid.

iii. Meeting the proportionate payment of principal dues of financial creditors, land authorities as well as other creditors of the project admitted as on the insolvency commencement date. (Such repayments

may start only after first 6 months of start of construction of the project by NBCC and subject to feasibility and viability of the same, keeping in mind the priority for completion of construction of project).

iv. Meeting any construction deficit of other projects as decided by Apex Court Committee

v. Any other purpose as decided by the project-wise court committee.

6) *In the event, after completion of due diligence and detailed cash flow submission to the Project Wise Court Committee, NBCC expresses its inability to complete a particular project within the stipulated timelines or observe significant deviations from the projected surplus, then the Apex Court Committee shall have the right to take the decision to appoint any alternate PMC/Co-developer subject to approval of the Apex Court Committee and this Hon'ble Appellate Tribunal.*

7) *Once NBCC project wise cash flow is approved by the Project Wise Court Committee, NBCC shall be responsible for completion of projects within the stipulated timelines and as per the projected cash flows submitted to the project wise court committee. In case due to market factors or any other reasons, there are any deviation in the projected receivables or expenses, NBCC shall immediately update the Project Wise Court Committee by submitting a revised cash flow projections for the approval of the Apex Court Committee.*

8) *NBCC shall be required to submit monthly updates on construction and sales activities of the project as well as detailed cash flow for the perusal of the court committee as well as other stakeholders of the project as per para 9(vii) of NBCC TOR dated November 11, 2024."*

80. As noted above in some Projects, surplus receivables are reflected and some Project. Their receivables are in minus, we are of the view that Apex Court Committee may be empowered to take decision for transferring surplus amount from one Project to other Project after obtaining necessary

detail from concerned project wise Court Committee. We have already indicated that a project wise account be maintained in which all receivables from the concerned Project shall be deposited and the account can be debited only with the approval of the project wise Court Committee. All project wise accounts which are separately maintained shall be operated by with a joint signatory of the IRP and one of the representatives of the NBCC. As nominated by the NBCC a separate account shall also be maintained in the name of NBCC (I) Limited – Supertech unfinished Project as suggested by the NBCC, which account shall be operated and managed by NBCC through its authorised signatories with joint signatories of the IRP. All funding and finance received from the finance obtained by the NBCC for completion of the Project shall be credited in the above designated account, which account shall be operated under the decision of the Apex Court Committee by authorised signatory of the NBCC and the IRP. NBCC as suggested shall obtain necessary finance of Rs. 100 Crores and deposited in the said designated account to be spent as per decision of the Apex Court Committee for carrying out the Project. Suggestion as given under heading B by the IRP are approved subject to modification as indicated above. The suggestions with regard to under heading C which are as follows:

“C. DIRECTIONS TO VARIOUS STAKEHOLDERS VIZ. ALLOTTEES, LENDERS, LAND AUTHORITIES, PROMOTERS

1) Directions for Allottees with respect to the applications mentioned in Schedule A:

i. The allottees may not be required to make incremental payments over and above the terms of the Builder Buyer Agreement. However, the allottees may be required to make the payments as per the revised payment schedule or projected cash flow submitted by NBCC and approved by the Apex Court Committee or Project-Wise Court Committee as the case may be.

ii. All and any claims of "assured return," "Subvention Scheme," or "Delay Penalty" or any other contracted return to any allottee of any Projects, whether accrued or payable only as on the insolvency commencement date, should be considered only after completion of all the liabilities and subject to the availability of Surplus and in proportion to such outstanding interest/penalty etc. of other stakeholders as determined by Project-Wise Court Committee or Apex Court Committee.

iii. Repayment of dues in relation to cancelled units may be decided by the project-wise court committee or Apex Court Committee as per para A(1)(h) read with para B(5)(iii) after submission of project-wise cash flows by NBCC.

iv. Homebuyers should not be allowed to voluntarily cancel their allotments and seek refunds of the monies paid by them.

2) Directions for financial institutions in respect of the applications mentioned in schedule A:

i. Once the Apex Court Committee has approved any decision with respect to terms of Interim funding or any other matter, the financial institution, who may have specific charge or security interest on any specific asset or cash flow of the corporate debtor, shall, immediately upon request, provide the No Objection Certificate or any other approvals or release of charge etc., which may be required in order to implement such decision of the Apex Court Committee.

ii. Once the Project-wise Court committee has approved any decision with respect to sale of inventory or utilization of cash flows or any other agenda as enumerated above, any specific lender or land owner or land authority or any other stakeholder who may have any charge or security interest in the asset or cash flows of the project shall, immediately upon request, provide the No Objection Certificate or any other approvals or release of charge etc., which may be required to implement the decision of the Project-wise Court Committee."

81. IRP has also made suggestion under C 3 as direction for land authorities and other statutory bodies in respect to the Affidavit, which are as follows:

“3) Directions for Land Authorities and other Statutory bodies in respect of the applications/affidavits mentioned in Schedule A:

i. The Hon'ble Appellate Tribunal may kindly direct the Land Authorities to extend full cooperation to NBCC for obtaining requisite approvals necessary for the timely completion of the project.

ii. NBCC may obtain requisite permits / approvals from statutory bodies in the name of Supertech Limited, if any which are key for commencement of works. In the event, due to delays or any other reason, the approvals have expired, then the respective authorities must be directed to provide the requisite approvals upon submission of necessary documents, as per the original terms of approvals expeditiously. In the event, the respective land authorities do not provide the necessary approvals within a period of one month or are unable to provide such approvals due to any changes in the laws under which these bodies are governed, then such layout plans, drawings etc in respect of already launched phases of the project may be deemed to be approved in the interest of completion of projects. The Hon'ble Supreme Court in the matter of Bikram Chatterji & Ors Vs Union of India, it was held that interest of thousands of allottees is paramount and will take precedence over dues to be recovered by NOIDA and GNIDA along with financial institutions.

iii. Grant necessary approvals, including Occupancy Certificate and/or Completion Certificate, upon completion of construction in each tower. Considering the varied range of progress in several towers in the project, tower-wise issuance of an Occupancy Certificate and Completion Certificate upon tower completion is prayed for without linking it to repayment of dues towards the land authorities as directed by the Hon'ble Supreme in the matter of Lotus 300 Association, wherein land authority being, NOIDA was directed to be pro active in documentation and complete the registration process expeditiously without any requirement of unwarranted documents from the allottees.”

82. Directions for Promoters are captured in C 4, which are as follows:

“4) Directions for Promoters in respect of the applications mentioned in Schedule A: The Hon'ble Appellate Tribunal may direct the Promoters to:

i. Extend full support for the execution and completion of pending project obligations.

ii. Act as observers and offer technical expertise wherever required to facilitate project completion in order to effectively implement the NBCC's ToR.”

83. Directions 3 as suggested are approved, which shall with respect to all 16 Projects. Directions contained in C 3 are approved. We have noticed various objections made by the Homebuyers other Stakeholders, including Landowners regarding different Projects which have been noticed in Schedule A of the process note submitted by the IRP objection which have been tabulated in the Status Report submitted by the IRP dated 20.11.2024. The project wise Court Committee having been constituted, it shall be open for the concerned Stakeholders to submit its grievance before the project wise Court Committee, which Court Committee shall consider and take appropriate decision and communicate the same to the Stakeholders. Stakeholders are at liberty to bring decision of the project wise Court Committee for review before the Apex Court Committee. We, thus are of the view that consideration of various objections raised by the Stakeholders, including Homebuyers with respect to respective Projects need no consideration at this stage. We also noticed that NBCC in IA 6557/2024 in its terms of reference has proposed a fee of 8% as PMC fee. 8% on the actual cost of work and 1% for the sale value of the Project is marketing fee. We are of the view that 8% on the actual cost of work PMC

fee shall also include the marketing fee and no separate fee as marketing fee shall be chargeable by the NBCC.

84. **We also emphasise and remind the NBCC** that NBCC, although is taking the Project as Project Management Consultant, however, looking to the special features of the Project and the plight of Homebuyers who are waiting for their units for last several years, NBCC shall not treat its obligations only as a Project Management Consultant and shall go an extra mile to ensure that Project is completed and all unnecessary and extra cost be avoided due to limited resources of fund for completion of the Project. NBCC has to play role not only Project Management Consultant, but an entity who is entrusted to monitor completion of the entire Project. The term of reference as contained in IA 6557/2024 as modified by revised proposal dated 11.11.2024 shall stand approved subject to directions and modifications as contained in this Order.

85. We allow the IA 6557/2024 to undertake the 16 Projects as listed in Annexure A (except Doon Square). All necessary steps be undertaken by the NBCC. We dispose of IA 6557/2024, accordingly with following directions:

- (1) Under TOR, paragraph 1.4 (c) Note; the Condition-I is satisfied on passing of this order. Conditions II, II V, VI be completed by all concern on or before 31.03.2025. The NBCC shall start process of award of work as per Condition-IV, prior to

31.03.2025 and complete the award of contract within one month thereafter and construction shall commence w.e.f. 01.05.2025.

- (2) The statutory Authorities whose sanction is required for renewal/ grant of building plan and other necessary sanctions, registration/ renewal of Projects state, consider and communicate their decisions within 30 days of IRP making requisite applications.
- (3) The NBCC (I) Ltd. cannot be allowed exemption from complying statutory requirements under different statutes regulating building regulations and RERA Act 2016.
- (4) The Homebuyers/ commercial unit holders, who have already been allotted units by the Corporate Debtor, which allotments are subsisting, shall not be subjected to any escalation of cost, except the dues which are required to be paid by them as per Builder Buyers Agreements.
- (5) The purpose of NBCC for distribution of surplus as contained in Paragraph a(x) of TOR is not approved. Repayment of land Authorities, Banks and Financial Institutions shall simultaneously begin as per the date and manner decided by Apex Court Committee. The balance amount in a Project apart from 70% amount which is to be used for construction, may be used for repayment. The payment for land cost can also be

debited from 70% amount as per Section 4(2)(D) of RERA Act and as per the decision of the Apex Court Committee. Any proposal for repayment of land Authorities, Banks and Financial Institutions emanating from the Project Court Committee shall require approval of Apex Court Committee for implementation.

- (6) We direct for constitution of an Apex Court Committee and Project-wise Court Committee for each Project as detailed in Paragraph 78 of this order. The above Court Committees be constituted in the manner as noted in paragraph 78 and shall perform their functions as noted in paragraph 78. In the Project-wise Court Committee, NBCC (I) Ltd. shall also nominate one Member in each Project-wise Court Committee, who will be added in that Committee. After completion of constitution of Apex Court Committee and Project-wise Court Committee, IRP shall upload the constitution of Committees on the website as early as possible. The suggestions of IRP regarding constitution and functioning of above Committee is approved, subject to modification as noted above.
- (7) The suggestions of IRP under Heading “B. Directions to NBCC for Implementation of construction Proposal and Mechanism for repayment of dues of stakeholders” as noted above in paragraph 79 of the order are approved.

- (8) The Apex Court Committee is empowered to take decision for transferring surplus amount from one Project to other Project after obtaining necessary details from concerned Project-wise Court Committee.
- (9) Project-wise account be maintained in which all receivables from the concerned Project be deposited and account can be debited only with the approval of Project-wise Committee/ Apex Court Committee. The accounts shall be operated by joint signatories, i.e. IRP and one nominee of NBCC (I) Ltd.
- (10) A separate account, in the name of “NBCC (I) Ltd. – Supertech Unfinished Project” as suggested by NBCC shall be opened and operated by NBCC through its authorised signatories with joint signature of IRP. All funding and finance received by the NBCC/ Apex Court Committee for completion of the Project shall be credited in the above designated account. The above account shall be under direction and control of Apex Court Committee.
- (11) NBCC shall obtain necessary finance of Rs.100 crores as suggested and deposit in the above designated account to be spent as per decision of Apex Court Committee for carrying out the Project.
- (12) In reference to TOR as suggested by NBCC regarding its fee of 8% as PMC Fee, we are of the view that marketing fee of 1% as

suggested shall be included in 8% fee and no separate marketing fee shall be chargeable.

- (13) Directions sought for by IRP as suggested under Heading “C. Directions to various stakeholders, Lenders, Land Authorities, Promoters” are approved insofar as “C.1, C.2, C.3, C.4” are concerned (As noted in paragraphs 80, 81 and 82 of this order).
- (14) The TOR as contained in IA No.6557 of 2024 (NBCC (I) Ltd. Application) as modified by revised proposal dated 11.11.2024 stand approved, subject to directions and modifications as contained in this order.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th December, 2024

Ashwani/ Himanshu