

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 211 of 2019

IN THE MATTER OF:

Prithvi Raj Kasana

...Appellant

Versus

Kapil Arora & Ors.

...Respondents

Present:

For Appellant : **Mr. C. S. Gupta, Mr. Anand Shukla and Mr. Rakesh Singh, Advocates**

For 1st Respondent: **Ms. Prachi Johri, Advocate**

For 2nd Respondent : **Dr. M.K. Pandey, Advocate for ‘Resolution Professional’ – Mr. S.K. Bhatt**

O R D E R

04.06.2019 ‘Mr. Kapil Arora’ filed an application under Section 7 of the ‘Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’) against ‘Morpheus Developers Private Limited’ (Corporate Debtor) which was admitted by the impugned order dated 12th February, 2019. The Appellant - Shareholder and Director of the ‘Corporate Debtor’ has preferred this appeal.

2. On 7th May, 2019, we allowed the parties to settle the matter taking into consideration that number of Allottees are dependent on the construction of the ‘real estate’. During the pendency of the appeal, ‘Resolution Professional’ was allowed to ensure that the company remains a going concern and payment of wages to the employees / workmen and construction etc. do not suffer. On 21st May, 2019, learned counsel for the Appellant submitted that the parties have settled the matter and they were allowed to enclose the ‘Terms of Settlement’.

3. An affidavit (vide Diary No. 12512) has been filed on behalf of the Appellant enclosing the 'Terms of Settlement'. By 'Settlement Agreement' dated 20th May, 2019, the Appellant settled the matter with Mr. Kapil Arora who had 18% share. The 'Terms of Settlement' reads as under:

"SETTLEMENT AGREEMENT"

This Settlement Agreement is entered into at New Delhi on 20 day of May, 2019 (hereinafter "this Agreement"/ "this Settlement Agreement")

BY AND BETWEEN

Mr. Kapil Arora, s/o LATE SHRI ATAM PRAKASH ARORA, r/o B-134, SECTOR-30, NOIDA DISTRICT GAUTAM BUDH NAGAR (hereinafter referred to as '**FIRST PARTY**', which expression shall, unless repugnant to or inconsistent with the context of meaning thereof, be deemed to include his successors, heirs and permitted assigns);

AND

Mr. Prithvi Raj Kasana, S/o Shri Mani Ram Kasana R/o 12/2 BAN ROAD, SHIPRA SUN CITY, INDIRAPURAM, GHAZIABAD, UP, (hereinafter referred to as '**SECOND PARTY**', which expression shall, unless repugnant to or inconsistent with the context of meaning thereof, be deemed to include its successors and permitted assigns);

FIRST PARTY and SECOND PARTY are hereinafter collectively referred to as Parties and individually as Party.

WHEREAS the SECOND PARTY is the Director and authorised signatory of a Company being Morpheus Developers Private Limited, a Private Limited Company incorporated under the provisions of the Companies Act, 1956 having Corporate Identity Number: U45200DL2012PTC240832 and having its Registered Office at 1 Main Road Maujpur, New Delhi 110053 (hereinafter "**Morpheus**").

WHEREAS there were defaults in repayment of financial debt by Morpheus to the FIRST PARTY.

WHEREAS in view of the defaults made by Morpheus, the FIRST PARTY initiated proceedings under the Insolvency and Bankruptcy Code, 2016 before the Hon'ble Adjudicating Authority being Hon'ble National Company Law Tribunal, Principal Bench, New Delhi. The proceedings against Morpheus came to be registered as CA. NO. (IB) 949(PB)/2018.

WHEREAS the Hon'ble Adjudicating Authority being Hon'ble National Company Law Tribunal, Principal Bench, New Delhi vide orders dated 12.02.2019 passed in CA. NO. (IB)949(PB)/2018 admitted Morpheus into insolvency.

WHEREAS the SECOND PARTY filed an appeal against order dated 12.02.2019 passed by Hon'ble National Company Law Tribunal, Principal Bench, New Delhi in CA. NO. (IB) 949(PB)/2018 before Hon'ble National Company Law Appellate Tribunal being Company Appeal (AT) (Insolvency) No. 211/2019 and the same is pending before the

Appellate Tribunal whereas parties have been directed to explore for settlement.

WHEREAS *the Parties have met and have been able to reach an amicable settlement whereby the SECOND PARTY has agreed to pay off the financial debt of Morpheus and the FIRST PARTY has agreed to withdraw his claim under the Insolvency and Bankruptcy Code, 2016, strictly under the terms and conditions of this Agreement and applicable law.*

WHEREAS *the present Settlement Agreement is being signed in order to amicably resolve the matters and to ensure return of monies advanced by the FIRST PARTY.*

NOW THEREFORE, in consideration thereof, the Parties agree as follows:

1. *The Parties acknowledge that:*

IN RESPECT OF MORPHEUS

- a. *an amount of Rs.1,00,00,000/- (Rupees One Crore only) was advanced by the FIRST PARTY to Morpheus under Memorandum of Understanding dated 04.10.2015;*
- b. *the said principal sum paid by the FIRST PARTY was to bear time value in the form of assured returns for 12 months, after which the amount was to be returned by Morpheus to the FIRST PARTY;*
- c. *Morpheus defaulted in re-payment and admits that part Principal Sum (Rs.50,00,000/-)*

became liable to be paid along with interest to the FIRST PARTY.

2. *In acknowledgement of its debt and in order to ensure the return of the money to the FIRST PARTY, the SECOND PARTY has agreed to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakh only) to the FIRST PARTY in lieu of the principal sum outstanding. The SECOND PARTY has also agreed to pay interest and compensation on the said outstanding principal sum further amounting to Rs.87,50,000/- (Rupees Eighty Seven Lakh and Fifty Thousand only) as time value for the outstanding sum, in consideration of the extended time granted by the FIRST PARTY for repayment.*

3. *The SECOND PARTY hereby agree to pay and acknowledge their liability to pay the principal sum and interest value mentioned in clause 2 of this Agreement in the following manner:*

Proposed Date of Payment	Amount to be paid (in Rupees)
20-05-2019	Rs.30,00,000/-
20-06-2019	Rs.20,00,000/-
20-05-2020	Rs.37,50,000/-
20-11-2020	Rs. 50,00,000/-
TOTAL	Rs. 1,37,50,000/-

The Parties have further agreed to secure the payment of the financial debt and interest mentioned in clause 2 as follows:

- (a) *The SECOND PARTY shall issue post dated cheques for the agreed dates of payments in the name of the FIRST PARTY and undertakes that*

these cheques shall be honoured upon presentation on the said dates. In case of dishonour of any of the cheques, the SECOND PARTY will be liable to pay the entire cheque amount along with interest @ 24.00% per annum to the FIRST PARTY from the due date of payment up to the date of realisation of the instalment concerned. This Agreement shall act as acknowledgement of liability to pay on part of the SECOND PARTY and he shall be liable under civil, criminal or any other law for the time being in force at that time;

- (b) *The SECOND PARTY covenant and represent that they will secure this Agreement and payments to be made under this Agreement with the Residential Flats bearing unit numbers mentioned in **Schedule I** to this Agreement by earmarking these units towards repayment of debt and interest. In case of default in payment or under any of the terms of this Agreement, it shall be the sole discretion of the FIRST PARTY to take any remedy in law including insolvency proceedings against Morpheus and / or take the units mentioned in **Schedule I** to this Agreement allotted to him and/or both to the extent of the debt payable alongwith interest. The FIRST PARTY shall not sell, lease or further alienate the said units mentioned in Schedule I to this Agreement except in the case of default in payment of any instalment as laid out in clause 3 of this Agreement. In case payments have been received by the FIRST PARTY in part, the Flats mentioned in Schedule I shall be released to the*

extent. The SECOND PARTY shall ensure that no third party rights are created on the said units mentioned in Schedule I to this Agreement till entire repayment of debt along with interest is made under this Agreement.

- (c) *The SECOND PARTY covenant and agree that Morpheus will have the Builder Buyer Agreements and Allotment Letters executed in favour of the FIRST PARTY for the units mentioned in **Schedule I** to this Agreement within 7 (seven) days of insolvency proceedings being dissolved by any competent Hon'ble Court/ Authority/Tribunal/Appellate Tribunal against Morpheus. It shall be the responsibility of the SECOND PARTY to ensure builder buyer agreements are executed and allotment formalities are fulfilled in favor of the FIRST PARTY by Morpheus or any other entity, as required. In case of failure to execute the said Builder Buyer Agreements in favor of the FIRST PARTY, the same shall constitute default by the SECOND PARTY and the FIRST PARTY shall be free to undertake all legal remedies including reinstating the proceedings under the Insolvency and Bankruptcy Code, 2016 against Morpheus.*
- (d) *In case payments are made by the SECOND PARTY in terms of clause 3 above, either in full or in part, the FIRST PARTY will release units mentioned in **Schedule I** of the equivalent value and the monies to be derived from taking over such units mentioned in **Schedule I** will reduce accordingly.*

4. *The Parties shall make appropriate representation before the Hon'ble National Company Law Appellate Tribunal in the pending Appeal to ensure this Agreement is made part of the record and endeavor shall be made to get the order passed by Hon'ble Adjudicating Authority i.e., Hon'ble National Company Law Tribunal, Principal Bench, Delhi admitting insolvency set aside.*
5. *The Parties understand and agree that the SECOND PARTY shall bear the responsibility to place this Agreement before the Committee of Creditors of Morpheus and secure the necessary vote for ending the insolvency of Morpheus. The SECOND PARTY also undertakes the obligation to place on record this Agreement before the Hon'ble National Company Law Appellate Tribunal and the Hon'ble Supreme Court and/or any other Hon'ble Court/Authority/Tribunal/Appellate Tribunal to seek necessary order. The FIRST PARTY agrees to make all necessary statements before any Hon'ble Court/Authority/Tribunal/Appellate Tribunal in regard to the present settlement and terms thereof and to withdraw his claim after receipt of first instalment of repayment as scheduled in clause 3 of this Agreement.*
6. *The Parties agree and covenant that neither the SECOND PARTY nor anyone related to or acting through the SECOND PARTY shall take any action to defeat the rights of the FIRST PARTY. This Agreement shall be binding on the Parties and shall remain binding irrespective of orders to be passed in Writ Petition (C) No. 454/2019 pending before the Hon'ble*

Supreme Court whereby the SECOND PARTY has challenged validity of certain clauses of the Insolvency and Bankruptcy Code, 2016. The SECOND PARTY covenants that it has not sought and undertakes not to seek any specific remedy against the FIRST PARTY in Writ Petition (C) NO. 454/2019 pending before the Hon'ble Supreme Court of India.

- 7. It is made clear and is understood by the parties that present Settlement Agreement will be effective and implemented only after the Insolvency Proceedings against Morpheus are terminated and / or closed and / or order dated 12-02-2019 is set aside. The first instalment dated 20.05.2019 will be paid in the form of a cheque issued by the SECOND PARTY that the SECOND PARTY will keep alive (by replacing the same every 3 months) till such time as*
- 8. This Agreement becomes effective. The timeline for the other instalments shall stand extended by as many number of days as the first instalment is extended beyond 20.05.2019.*
- 9. In case of any default in repayment under clause 3 of this Agreement or any other default in following the terms of this Agreement, the FIRST PARTY shall be entitled to seek revival of its claims against Morpheus and to reinstate proceedings inter alia under the Insolvency and Bankruptcy Code, 2016 or any other law for the time being in force against Morpheus.*
- 10. This Settlement Agreement is being agreed to and executed in supersession of all previous agreements and understanding between the Parties.*

11. This Settlement Agreement shall be governed by and construed exclusively in accordance with the laws of India and the courts at New Delhi shall have exclusive jurisdiction.
12. The FIRST PARTY and SECOND PARTY both jointly in equal portion agrees to bear the costs and expenses of execution of this Settlement Agreement.
13. This Settlement Agreement is being executed in two counterparts each of which constitutes original.

In witness whereof the Parties have caused this Settlement Agreement to be duly executed by themselves on the date and year first hereinabove written.

MR. KAPIL ARORA (FIRST PARTY)

Date and Place 20/5/19 NOIDA

MR. PRITHVI RAJ KASANA (SECOND PARTY)

Date and Place 20/5/2019 NOIDA”

SCHEDULE I

Units to be allotted to the FIRST PARTY within 7 days of dissolution of insolvency proceedings against Morpheus (FLATS TOWARDS REPAYMENT OF MORPHEUS)

Sl. No.	Name of Project	Unit No.	Tower	Area	Rate	Total Rs.
1.	Morpheus Pratiksha	2406	1	1,170	28.30	33,11,100/-
2.	Morpheus Pratiksha	2407	1	1,170	28.30	33,11,100/-
3.	Morpheus Pratiksha	2408	1	960	28.30	27,16,800/-
	TOTAL					93,39,000/=

**Units to be allotted to the FIRST PARTY within
7 days of dissolution of insolvency
proceedings against Morpheus
(FLATS TOWARDS REPAYMENT OF VYOM)**

Sl. No.	Name of Project	Unit No.	Tower	Area	Rate	Total Rs.
1.	Morpheus Pratiksha	2003	1	1,170	28.30	33,11,110/-
2.	Morpheus Pratiksha	1903	2	1,170	28.30	33,11,100/-
3.	Morpheus Pratiksha	2102	1	1,170	28.30	33,11,100/-
4.	Morpheus Pratiksha	2402	1	1,170	28.30	33,11,100/-
	TOTAL					1,32,44,400/- -

4. By another 'Settlement Agreement' reached on 30th May, 2019, reads as follows:

“SETTLEMENT AGREEMENT

(FOR Withdrawal of case as per sec-12A of IBC-2016 and its regulation)

This Settlement Agreement is made and entered into this 30th day of MAY, 2019 BY & BETWEEN:

Morpheus Developers Private Limited, (CIN : U45200DL2012PYC240832) having its registered office at GH-16A, Sector-01, Greater Noida (West), U.P represented **through its currently suspended Managing Director Mr. Prithvi Raj Kasana, MD, and Rakesh Singh, CEO, Morpheus Developers Private Limited**, and Terms Tower B1, B2, ..B10 refers the Tower B1 & so on, of the project (hereinafter referred as Builder (MDPL) which expression unless repugnant to the context and meaning thereof shall deem to mean and

include their legal heirs, legal representatives, successors, assigns, representatives, nominees, administrators, successors, permitted assigns etc. as the case may be **being the Party of the FIRST PART);**

AND

Buyer(s) means a Flat Buyer(s) in Morpheus Pratiksha Project (Part of COC (1-54) List enclosed as admitted by IRP as per sec-18 & 21 of IBC-2016 through Authorised Representative as per appointed by Home buyer as per Public announcement made by IRP and further appointed by NCLT as per IBC-2016 Mr. IP NAVJIT SINGH (Hereinafter referred as MDPL (HB) (1-54) list enclosed and MDPL (HB) (1-54) which expression unless repugnant to the context and meaning thereof shall deem to mean and include their legal heirs, legal representatives, successors, assigns, representatives, nominees, administrators, successors, permitted assigns etc. as the case may be being the Party of the SECOND PART;).

That MDPL & MDPL (HB) (1-54) holding 82% share of COC Constitute by IRP as per sec-21 of IBC-2016 shall be individually referred to herein as “Party” and collectively as the “Parties”.

WHEREAS, MDPL & MDPL (HB) (1-54) have entered into the Settlement Agreement on 30th May 2019 (hereinafter called Settlement Agreement) and an application under Section 12 A was filed by the Mr. Kapil Arora, Applicant with Hon’ble National Company Law Appellant Tribunal, New Delhi (hereinafter called as Hon’ble NCLAT) for withdrawal of application admitted under Section 7 of the IBC and the next date of hearing fixed on 3rd June 2019 order by the Hon’ble NCLAT.

WHEREAS, MDPL (HB) (1-54) has requested the Authorized representative as appointed by NCLT as home buyer class (AR) as per IBC-2016 to submit this settlement Agreement from MDPL before Hon'ble NCLAT on 3rd June 2019 with voting outcome from electronic means from voting agency of his class of creditors i.e. MDPL (HB) (1-54) as per regulation 26 of insolvency resolution regulations 2016 for individual approval of this settlement agreement or/and against voting pattern consolidated 82% voting share in this case COC as constituted by IRP as per sec-21 of IBC-2016 its consolidated outcome voting patter of favour and against this settlement agreement,

NOW THEREFORE, after observing the above circumstances, it is hereby agreed by and between the parties hereto as follows:

Definitions:

- *The term "Morpheus" would mean the Company Morpheus Developers Private Limited.*
- *Terms Tower B1, B2,..B10 refers the Tower B1 & so on, of the project "Morpheus Pratiksha", GH-16A, Sector-01, Greater Noida (West), U.P., which is under construction by Morpheus Developers Private Limited.*
- *The term Phase-1 includes Towers B1-B6 and Phase-2 indicates Towers B7-B10.*
- *The term Buyer(s) means a Flat Buyer(s) in Morpheus Pratiksha Project.*
- *The term MCLR stands for Marginal Cost of funds-based Lending Rate and is the benchmark lending rate of the Banks, it may vary from Bank to Bank. Therefore, to make the process simple, Current MCLR of SBI, which is*

8.65% for tenure more than 2 years, shall be considered for calculation of interest.

Terms and condition of this settlement agreement

This settlement agreement shall be binding on both the parties subject to the order of Hon'ble NCLAT.

1. *Morpheus will offer possession as per below schedule...*

Tower B1&B2 March'2020

Tower B3&B4 November'2020

Tower B5&B6 July'2020

However, the above schedule is only for the purpose of getting a firm construction plan and has checks on the progress of the projects. For any other purposes, including calculation of Delay Possession compensation to buyers, the promised date of possession in BBA shall only be considered.

However for those buyers who booked flat in pre-launch stage and could not sign BBA till date due to dispute with Morpheus, (3-years from the date of approval of the project OR 3-years from the date of 10% payments to Morpheus, whichever is later), shall be considered for calculation of delayed compensation amount.

2. *Morpheus will offer the buyers of B7-B10 (phase-2) to transfer their booking to Phase-1 (Tower B1-B6), at the same rate of booking. Total delay possession penalty up to the date of re-allotment against the allotment of Phase-2 flat shall be adjusted at the time of making new agreement upfront.*

Morpheus will offer an exit option for the buyers of Phase-2, who...EITHER would not be accommodated in phase-1 due to inventory issues OR do not want to transfer their flat bookings to Phase-1.

In such cases, Morpheus will refund the deposited amount with simple interest, at the rates of MCLR +1% as per RERA for the period from the date of actual booking till the date of refund. In case the REFUND is made in instalments the compensation shall be calculated till the date of actual REFUND amount against each instalment of Refund. Refund would be paid after 30th June-2020 and before 31st December'2020.

In case any buyer wants to retain its allotment in phase-2, Morpheus will start construction of Phase-2, immediately after completion of phase-1 and the plan for the same shall be shared with buyers in due course of time. The delay possession compensation for the delay period shall be calculated as per the details mentioned in S.No. 12 of this Agreement.

Morpheus will ensure with utmost care to the buyers of the Phase-2 (Towers B7 to B10) that the flats offered to them in Phase-1(Towers B1 to B6) will be free from any obligations and dispute.

3. *Morpheus will start construction from 1st July-2019.*
4. *Buyers will form a Buyer committee and Sub-Committee for Review financial data and construction planning and progress.*
5. *To resume the construction activities in a sustainable manner, Morpheus shall arrange for mobilisation funds for at least 5-months of constructions activities as per detailed construction schedule and fund flows attached herewith as Annexure-I.*

The fund flow/projection includes pending fund inflows, detailed liabilities including the Credit Notes issued to buyers,

penalty recoverable from buyers and penalty payable to buyers, etc. same has been reviewed & verified suitably by the buyer committee.

6. *Morpheus will provide monthly cash flow and intake plan for each Tower and it will be open for review in monthly Builder - Buyer Committee meetings.*
7. *Morpheus will provide monthly construction plan for each Tower and it will be open for review in monthly Builder - Buyer Committee meetings.*
8. *All future payments shall be made in ESCROW account and same account number shall be informed to RERA.*
9. *Buyers will make all future Payments after confirmation from Buyer committee.*
10. *For the first 3 months after start of construction, buyers will not have to pay any demand to Morpheus. Buyer committee will review construction during these 3 months before giving any recommendation for making any payment. The recommendation of Buyer Committee shall be binding to Morpheus.*
11. *Morpheus will not charge any Delay Payment Penalty for current outstanding payment/demands, if buyer clears all dues within 2-months from the date of clearance/recommendation from buyer committee. Same shall also be subject to disbursement of payment from bank, in case of home loan availed by the buyers.*
12. *Delay Possession Compensation Rate (Payable to buyers by builder for delay in possession) and Delay Payment Penalty Rate (payable to builder by buyer for delay in due payments) shall be MCLR +1% as per RERA.*

13. *Morpheus will offer Possession of Towers after obtaining OC from Greater Noida Authority. The offer of possession letter should be sent along with OC Certificate.*
14. *Morpheus will not increase Super area at the time of possession, unless BBA mentions about increase of Carpet Area/Build-up area.*
15. *The agreement/commitments made above will be applicable even after dissolving of COC and subsequent NCLT Proceedings, with respect to the said Project.*
16. *This Agreement is made, taking COC/Buyers into confidence for carrying out construction work to deliver flats to buyers by Morpheus, Therefore options for Any Change in the Primary ownership for Morpheus Pratiksha project shall not be exercised.*
17. *In case of any conflict of terms with the BBA, the terms in this Agreement will prevail.*

This Agreement is signed at NOIDA (Place) and on 30TH May, 2019 by...

IN WITNESS whereof this Settlement Agreement has been entered into on the date first above written.

**SUBMITTED: - Through AR (IP NAVJIT SINGH) OF MDPL (HB)
(1-54) List enclosed Before Honorable NCLAT.**

**(Rakesh Singh)
Chief Executive Officer
Morpheus Developer Private Limited
Ltd.-
(First Party)**

**(Prithvi Raj Kasana)
Suspended Managing Director
Morpheus Developer Private**

And MDPL(HB) (1-54) Home buyer representative by AR having 82% voting

power as per COC constituted in this case by IRP as per Sec-21 of IBC-2016 (voting consolidate outcome list)-enclosed as per regulation 26 of Insolvency resolution regulation regulations 2016.

Home Buyer(s) List

S.No.	Name	Signature
1	Neelam Jawla	
2	Shrey Prakash & Manju Kumari Sinha	
3	Ram Prakash & Manju Kumari Sinha	
4	Anant Kumar Singh	
5	Saurabh Sitesh & Parinita Bhushan	
6	Ayush Raivari And Sonal Gupta	
7	Rakesh Kumar and Peratibha Singh	
8	Fahmi Azhar	
9	Sanjeev Kuamr Singh and Shivji Singh	
10	Ashutosh Bhushan Mishra	
11	Faraaz Azhar	
12	Devinder Rawat and Alka Rawat	
13	Saras Kamal	
14	Ved Prakash Mittal, Marv Mittal, Pinky Mittal	
15	Paratibha sinha & shanti Sihna	
16	Vivek Kukrety	
17	Studipto Mukherjee	
18	Mr. Jatin Bachani	
19	Nisha Chelani	
20	Amit Kumar Tiwari & Mrs.Ragini Tiwari	

21	INDER PREET SINGH SACHDEVA & AMANPREET KAUR	
22	Shashi Bala Kaura & Deepak Kaura	
23	Parvez khan	
24	Manish Singh Bhandari & Guddi Bhandari	
25	Pankaj Verma & Bhawana Pankaj	
26	Sanjay Kumar Tiwari	
27	Neeraj Jain & Ashima Gupta	
28	Himanhu Agrahari	
29	Sachindra Mohan Garg & Anchal Garg	
30	Amit Puri & Shalini Puri	
31	Shikha Gulati	
32	Manish Srivastava & Abha Srivastava	
33	Jyotsna Srivastava W/O Niraj Kumar	
34	Kali Dutt	
35	Vinod Kumar & Shashi Bala	
36	Anup Kumar Dutta & Keka Dutta	
37	Syed rashid kamal husain, syed haroon rashid	
38	Varun Kumar & Sadhna Rani	
39	Ashutosh Mishra	
40	MRS. Shashi Sharma & Sachin Sharma	
41	Varun Kochhar	
42	Smt. Poonam Rani Rajoria, & lakhmi Singh	

43	Archana Kumari, Sunil Kumar	
44	Kishor Kumar	
45	Harish Naiwal	
46	Nitin Madhok & Priyanka Madhok	
47	Manish Kumar Srivastva	
48	Kusum Rawat and Kundan Singh Rawat	
49	Deepak Mallick	
50	Rajeev Kansal	
51	Anamika kansal	
52	Aayam Gupta & Sandhya Gupta	
53	Shailesh Sharma & Seema Sharma	
54	Rakesh Kumar Gupta & Monika gupta	

Date: - 30/05/2019

Place: - NOIDA

Annexure - 1

**PROJECT: MORPHEUS PRATIKSHA
- GH 16A, SECTOR - 01,
GREATER NOIDA - UTTAR PRADESH**

**BROAD OUTLINE OF THE PROJECT AND TENTATIVE COMPLETION
SCHEDULE AND CASH FLOWS :**

	Date of Start of Project	
	Size of Project (Phase I and Phase II)	
	No of Towers in Phase - I	B-1 to B-6
	No of Towers in Phase - II	
	No of Flats in Phase - I	856
	No of Total Flats in Phase - I to be constructed	856
	No of Flats already Booked	795

	Un-booked Flats	61

STAGE OF CONSTRUCTION & COMPLETION OF B-1 TO B-6 TOWERS

		Tower	Tower	Tower	Tower	Tower	Tower
		B-1	B-2	B-3	B-4	B-5	B-6
1	Structure upto 11 th Floor	Done	Done	Done	Done	Done	Done
2	Structure upto 12 th Floor	Done	Done	Done	--	Done	Done
3	Structure upto 13 th Floor	Done	Done	Done	--	Done	Done
4	Structure Completed	Done	Done	--	--	95%	95%

TENTATIVE COST TO BE INCURRED : (AMT IN Rs)

		Tower	Tower	Tower	Tower	Tower	Tower
		B-1	B-2	B-3	B-4	B-5	B-6
	RCC	1852000	800000	29500000	29500000	1500000	2967000
	Brick work	2795000	1800000	4900000	6130000	1050000	1123500
	Railing	1163000	900000	2100000	2100000	640000	1200000
	Internal Plaster	3900000	2550000	10500000	11500000	3122000	3150000
	Door Frame (Chowkh at)	988000	410000	1118000	1088000	430000	600000
	Plumbing	6300000	4300000	9300000	9300000	2154000	2134000
	Outer Plaster	5250000	4100000	7800000	7500000	5100000	5300000
	Parapet	400000	300000	400000	400000	400000	400000
	Fire	5000000	4000000	5000000	5000000	5000000	5000000
	Lift	8800000	6600000	8800000	8800000	6600000	6600000
	Finishing	70200000	47500000	75200000	78900000	57300000	52600000

TOTAL	106648000	73260000	154618000	16021800 0	83296000	81074500
TOTAL 659114500						

Total area cost with finishing	659114500
Non tower area	102500000
STP & WTP	26000000
Electrical Hub	81000000
Landscaping	20000000
G.TOTAL	888614500

PROSPECTIVE CASH FLOWS TO COMPLETE THE PROJECT

		Amt (In Rs)
	CASH INFLOWS :	
1	Balance Demand Receivables from customers of tower B-1 to B-6	1059109 091
2	From Commercial Space (Unsold)	3500000 00
3	From Unsold Covered car parking	1050000 00
4	Additional charges from customers for power back, load Extention, Lease Rent etc	1375000 00
5	Receivables from membership charges	5000000 0
6	Investor Financial Assistance for Construction	3000000 00
	Total Inflows	2001609 091
	CASH OUTFLOWS (PHASE - 1)	
1	Construction Costs to be incurred after 12th feb 2019	8886145 00
2	Land Cost to authority to get completion certificate and occupancy certificate	4000000 00
3	Return to Investor against investment of 30cr @22% p.a. For 1.5 Years	9900000 0
4	Principle payment of investor	3000000 00

5	Administration Cost	1320000 00
6	Selling & Marketing Exp	2240000 0
	Total Outflows	1842014 500
	NET SURPLUS TO BE USED FOR PHASE – 2 CONSTRUCTION	1595945 91

TENTATIVE DATE OF HANDING OVER POSSESSION

	Tower	Tower	Tower	Tower	Tower	Tower	Tower
	B-1	B-2	B-3	B-4	B-5	B-6	B-6
Handing Over Possession	March 2020	March 2020	Nov 2020	Nov 2020	July 2020	July 2020	July 2020

5. Mr. Navjit Singh, who represented 54 allottees, submits that apart from 18% voting share of Mr. Kapil Arora, 82% voting shares of rest of the allottees have been obtained by e-voting who supported the 'Settlement Agreement'. The copy of the e-voting for settlement has been enclosed, which reads as follows:

ANNEX-A/3

(31/05/19)
B.P.A. M.S.P.A.
AT 01/02/19
In the Settlement
Agreement (1-17)
Clause 23

In favour of settlement agreement (1-17) consolidated clause - following options would be available

EVENT-ID	RESOLUTION	VOTING-SI	NAME	MEMBER	NO	ABSTAIN		
					FOR	YES		
1	87421	16387	1.34 ram prakas	A103	Yes	1.34	0	0
2	87421	16387	1 shrey	A102	Yes	1	0	0
3	87421	16387	0.79 nisha chefa	A119	Yes	0.79	0	0
4	87421	16387	1.31 saurabh	A105	Yes	1.31	0	0
5	87421	16387	1.07 sanjay kum	A126	Yes	1.07	0	0
6	87421	16387	1 mr. jatin b	A118	Yes	1	0	0
7	87421	16387	1.02 manish sr	A132	Yes	1.02	0	0
8	87421	16387	1.72 vivek kukr	A116	Yes	1.72	0	0
9	87421	16387	1.58 manish sinj	A124	Yes	1.58	0	0
10	87421	16387	0.62 smt. poorn	A142	Yes	0.62	0	0
11	87421	16387	6.2 varun koch	A141	Yes	6.2	0	0
12	87421	16387	2.94 nder	A121	Yes	2.94	0	0
13	87421	16387	1.84 rakesh kur	A154	Yes	1.84	0	0
14	87421	16387	1.39 kali dutt	A134	Yes	1.39	0	0
15	87421	16387	0.69 manish kur	A147	Yes	0.69	0	0
16	87421	16387	1.15 jyotsna	A133	Yes	1.15	0	0
17	87421	16387	0.6 amit puri	A130	Yes	0.6	0	0
18	87421	16387	1.34 anamika ke	A151	Yes	1.34	0	0
19	87421	16387	1.43 rajeev kar	A150	Yes	1.43	0	0
20	87421	16387	2.38 ashutosh n	A139	Yes	2.38	0	0
21	87421	16387	1.8 faraz azha	A111	Yes	1.8	0	0
22	87421	16387	1.48 deepak ma	A149	Yes	1.48	0	0
23	87421	16387	0.95 shikha gula	A131	Yes	0.95	0	0
24	87421	16387	2.82 nitin madh	A146	Yes	2.82	0	0
25	87421	16387	1.32 parvez kha	A123	Yes	1.32	0	0
26	87421	16387	1.25 syed rashid	A137	Yes	1.25	0	0
27	87421	16387	2.73 nceraj jain	A127	Yes	2.73	0	0
28	87421	16387	0.68 kusum raw	A148	Yes	0.68	0	0
29	87421	16387	2.42 shailesh sh	A153	Yes	2.42	0	0
30	87421	16387	0.76 aayam gup	A152	Yes	0.76	0	0
31	87421	16387	1.15 studipto m	A127	Yes	1.15	0	0
32	87421	16387	1.65 sachinira r	A129	Yes	1.65	0	0
33	87421	16387	0.98 saras kama	A113	Yes	0.98	0	0
34	87421	16387	2.07 amit kumar	A120	Yes	2.07	0	0
35	87421	16387	1.78 archana ku	A143	Yes	1.78	0	0
36	87421	16387	1.16 ved	A114	Yes	1.16	0	0
37	87421	16387	1.71 vinod kum	A135	Yes	1.71	0	0
38	87421	16387	1.12 shashi bala	A122	Yes	1.12	0	0
39	87421	16387	1.18 kishor kum	A144	Yes	1.18	0	0
40	87421	16387	1.25 ashutosh b	A110	Yes	1.25	0	0
41	87421	16387	2 neelam jaw	A101	Yes	2	0	0
42	87421	16387	1.56 fahmi azha	A108	Yes	1.56	0	0
43	87421	16387	0.85 himanbura j	A128	Yes	0.85	0	0
44	87421	16387	1.94 mrs. shashi	A140	Yes	1.94	0	0
45	87421	16387	0.86 anup	A136	Yes	0.86	0	0
46	87421	16387	1.22 harish nam	A145	Yes	1.22	0	0

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47	87421	16387	1.45 sanjeev kur	A109	Yes	1.45	0	0
48	87421	16387	0.78 varun kum	A138	Yes	0.78	0	0
49	87421	16387	2.17 rakesh kur	A107	Yes	2.17	0	0
50	87421	16387	1.48 paratibha s	A115	Yes	1.48	0	0
51	87421	16387	1.42 ayush ralva	A106	Yes	1.42	0	0
52	87421	16387	1.89 pankaj verri	A125	Yes	1.89	0	0

224

Total 79.29 (All Yes)
out of 82

By (52)
1. Mr. Anil
2. A. Bhatnagar
Chairman

(IP ADHARIT (1/15/19)) AR
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6. It is informed that 100% allottees have agreed with the 'Terms of Settlement'.

7. Dr. M.K. Pandey, Advocate appears on behalf of the 'Resolution Professional' – 'Mr. S.K. Bhatt'. He submits that no payment has been made to the 'Interim Resolution Professional' and the present 'Resolution Professional' including the resolution cost.

8. Ms. Prachi Johri, learned counsel appears on behalf of Mr. Kapil Arora – 'Financial Creditor'. She submits that though the Respondent is reached for settlement but in case the 'Corporate Debtor' fails to comply with the 'Terms of Settlement', liberty should be given to revive the prayer for revival and continuation of 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor'. Same prayer has also been made by Mr. Navjit Singh, 'AR', appearing on behalf of the 82% shares of 'Financial Creditors' (Allottees).

9. Taking into consideration the development, facts and circumstances of the case, we set aside the impugned order dated 12th February, 2019 and allow Mr. Kapil Arora and rest of the Allottees to withdraw the application under Section 7 of the 'I&B Code' with liberty to pray for revival and continuation of 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor' – 'Morpheus Developers Private Limited' if the 'Terms of Settlement' is violated; in case the 'Terms of Settlement' is not complied with in its letter and spirit and it will also be open to file a petition for contempt proceedings and for action in accordance with law against the Directors of the 'Corporate Debtor'. So far as the fee of the 'Interim Resolution Process / Resolution Process and cost of resolution process is concerned, the matter is remitted to the Adjudicating Authority, Principal Bench, New Delhi to determine the claim and fix the fee payable to the 'Interim

Resolution Professional' and present 'Resolution Professional' and resolution cost payable to one or other IRP / RP. On such determination, the amount is to be paid by the 'Corporate Debtor' – 'Morpheus Developers Private Limited' within the period as may be prescribed by the Adjudicating Authority.

10. In the result, the appeal is allowed with aforesaid liberty.

In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the 1st Respondent under Section 7 of the I&B Code is disposed of as withdrawn with liberty as mentioned above. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc