

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1056 of 2019

&

I.A. Nos. 4033 & 4303 of 2019

IN THE MATTER OF:

Rajesh Goyal

...Appellant

Vs.

Babita Gupta & Ors.

...Respondents

For Appellant :

**Mr. Sunil Kumar, Senior advocate with
Mr. Chandra Shekhar Yadav, Ms. Gitanshi Arora, Mr.
Vivek Kohli, Mr. Sandeep Bhuraria, Mr. Aman
Anand, Mr. Parth Kaushik, Ms. Mahima Malhotra,
Mr. Monish Surendran and Ms. Malvika Jain,
Advocates**

For Respondents:

**Mr. Sumesh Dhawan Ms. Apoorva, Mr. Abhinav
Agnihotri and Mr. Vedant Singh, Advocates for
Indiabulls
Mr. Amandeep Singh, Advocate for 'Home Buyers
Association'
Mr. Rishabh Jain, Advocate for 'Interim Resolution
Professional'
Mr. Praful Jindal, Advocate for Applicants
Mr. Rajesh Gupta and Mr. Anubhav Mehrotra,
Advocates
Mr. Parvesh Bahuguna, Advocate
Mr. Sudeep Shrotirya and Mr. Govind Keshav,
Advocates**

O R D E R

05.02.2020—

Ms. Babita Gupta, Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors) moved an application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016 ('I&B Code', for short) for initiation of 'corporate insolvency resolution process' against 'Rajesh

Projects (India) Private Limited (Corporate Debtor), an infrastructure Company.

2. The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order date 19th September, 2019 admitted the application.

3. Mr. Rajesh Goyal (Promoter) has preferred this appeal on one of the ground that the Respondents (Allottees) themselves being defaulter and in view of the decision of the Hon'ble Supreme Court in '**Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.** - [(2019) SCC OnLine SC 1005]', the application was fit to be dismissed. It was also submitted that there was no 'default' by the 'Corporate Debtor' in terms of the agreement, therefore, the application under Section 7 of the 'I&B Code' was pre-mature.

4. The Appellant highlighted the present project status in the appeal to suggest that the 9 (nine) towers of the project is on the verge of completion and stated as under:

“At present, as far as the physical structure is concerned, the construction of the said Project has reached up to 75% (Seventy-Five Percent). The Corporate Debtor has developed 1,920 flats in 9 towers in Phase-1 comprising of Towers A, B, C, D, E, F, G, H & M. The bulk of sales and allottees relate to these towers.

The super structure of these nine towers is already complete and the finishing work is under progress. The internal and external plaster work, staircase railing balcony railing,

internal doorframes, internal electrical conducting work, of 7 towers is complete. In some of the towers lift installations work is also near complete representing 8 lifts.

In Common Areas, external services like rainwater harvesting, sewage line, drainage line are in advanced stage. Civil Structure work of club and community area is also nearly complete and finishing work will be started soon.

At best, it is the submission of the Appellant that it will need 6 – 9 months to complete the Project and apply for the Completion/Occupation Certificate.

As far as the financials are concerned, the Corporate Debtor as on date has sold/booked around 1,650 units and received approximately Rs.595.75 crores (excluding Taxes) against such bookings. Against this sum of money received, the Corporate Debtor has spent more than 600 crores on construction, licenses, marketing as per the following details. While these collections and expenses have been incurred over the last 6 odd years, the consolidated figures, based on the unaudited accounts for the Financial Year 2018-19 are as under :

Particulars	Amount (INR) (In Crores)	Percentage (%)
Collection of Phase-I/ II/ III	595.75	
TOTAL	595.75	16.12%

Land Cost	96.09	48.35%
Construction Cost	288.10	7.56%
Finance Cost	45.04	6.06%
Marketing Cost	36.15	11.51%
Salaries Exp.	68.60	7.74%
Administrative & Other Expenses	46.12	3.19%
Brokerage & Selling Expenses	19.05	0.58%
Advertisement Expenses	3.44	2.58%
Taxes	15.35	
Total	617.93	
Balance	(22.18)	

5. It has also been pleaded that the ‘Corporate Debtor’ spent more amount than the amount collected from the ‘Financial Creditor’ for the said project and in fact the expenses were made in terms of the requirements as prescribed under RERA, which reads as under :

“A bare perusal of the above clearly shows that Corporate Debtor has spent on the Project more than the amount collected from the customers and no monies has been paid to any promoter, director or transferred to any other Associate Company, sister concern and the said funds have been used solely for the purpose of the completion and construction of the said Project.

Further, as would also be apparent, the expenses that have been incurred by the Corporate Debtor are well within the industry norms and quite reasonable. In

fact the expenses are fully in lieu with the requirements prescribed (70:30) under the RERA.”

6. Similar issue was fell for consideration before this Appellate Tribunal in **‘Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP & Ors.’** in ‘Company Appeal (AT) (Insolvency) No. 926 of 2019’. In the said case, this Appellate Tribunal in the judgment dated 4th February, 2020 noticed the problems as arises in the ‘corporate insolvency resolution process’ of infrastructure companies constructing Apartments/Flats for the allottees. It was noticed that the allottees were not agreed to invest more amount or to finance to keep the ‘Corporate Debtor’ (Umang Realtech Pvt. Ltd. (through IRP) as a going concern. For the said reason, on the request of one ‘Uppal Housing Pvt. Ltd. –Intervenor/Promoter it was allowed to invest the amount as an outsider – Financial Creditor and not as the Promoter to keep the ‘Corporate Debtor’ (Company) as a going concern. As the ‘Promoter’ it was also allowed to co-operate with the ‘Interim Resolution Professional, it having expertise of ‘real estate project’, so the Appellate Tribunal asked to give the time-frame of completion of the flats/apartments and the common area facilities. During the pendency of the appeal, the project remained functional on receipt of investment and cooperation of Promoter. The result was that out of 706 flats/apartments of the ‘Winter Hills – 77, Gurgaon project, for which 624 flats/apartments were booked, before time and within the period of ‘corporate insolvency resolution process’ 453 allottees, who paid their respective consideration amount in full were allowed possession on receipt of fees etc. registration of ‘Sale Deed’ in

favour of 92 allottees were completed. So some more time was allowed and matter was disposed of.

7. In the case of '*Flat Buyers Association Winter Hills – 77, Gurgaon*' (Supra) this Appellate Tribunal observed :

“PROBLEMS IN FOLLOWING CERTAIN PROCESS IN THE CASES OF INFRASTRUCTURE COMPANIES (FOR ALLOTTEES):

3. *The Parliament made amendment of Section 30(2) & (4) of the 'I&B Code' to give weightage to the 'Secured Creditors' which came into force on 16th August, 2019.*

4. In "***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.***¹", the Hon'ble Supreme Court made a distinction between the 'Secured' and 'Unsecured Creditors' and observed that protecting creditors in general is, no doubt, an important objective. Protecting creditors from each other is also important. If an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the Corporate Debtor is liquidated. This would defeat the objective of the Code which is resolution of distressed assets and only if the same is not possible, should

¹2019 SCC OnLine SC 1478

liquidation follow. The amended Regulation 38 does not lead to the conclusion that ‘Financial Creditors’ and ‘Operational Creditors’, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of Operational Creditors rights under the Regulation 38 involves the resolution plan stating as to how it has dealt with the interests of Operational Creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.

5. In **“Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.”²**, the Hon’ble Supreme Court upheld the Explanation below Section 5(8) (f) to hold that allottees (Homebuyers) of Infrastructure

²(2019) SCC OnLine SC 1005

Company are 'Financial Creditors'. It further observed that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Therefore, provisions of the Code would apply in addition to RERA.

6. *The following are the problems which have now cropped up.*

There is a difference in Form B and Form C for submission of proof claims by the Operational Creditors and the Financial Creditors. Prior to the Notification dated 27th November, 2019, Form B which is for submission of proof of claims by Operational Creditors before the Interim Resolution Professional, did not have any column for details of any security held by them, unlike Form C which had such a separate column. The inclusion of this column vide the aforesaid notification acknowledges the fact that Operational Creditors can also be secured and that earlier, due to absence of any such specific column, the Operational Creditors were deprived from submitting their claims and to state whether any security is held by them either by annexing it by way of supplementary documents. Hence, there was a need for this inclusion.

7. On the other hand, since inception of the Insolvency and Bankruptcy Code, 2016, at the time of liquidation, Forms B & C provided column for details of any security held by 'Operational Creditors' and the 'Financial Creditors'.

8. The 'allottees' (Homebuyers) come within the meaning of 'Financial Creditors'. They do not have any expertise to assess 'viability' or 'feasibility' of a 'Corporate Debtor'. They don't have commercial wisdom like Financial Institutions/ Banks/ NBFCs. However, these allottees have been provided with voting rights for approval of the plan. Many of such cases came to our notice where the allottees are the sole Financial Creditors. However, it is not made clear as to how they can assess the viability and feasibility of the 'Resolution Plan' or commercial aspect/ functioning of the 'Corporate Debtor' in terms of the decision of the Hon'ble Supreme Court in **"Innoventive Industries Limited v. ICICI Bank and Anr.³"** followed by **"Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.⁴"** and **"Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.⁵"**.

³(2018) 1 SCC 407

⁴2019 SCC OnLine SC 73

⁵2019 SCC OnLine SC 1478

9. *In terms of the 'I&B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/ Operational Creditors).*

10. *The Infrastructure which is constructed for the allottees by Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for 'Secured Creditors'. On the contrary, allottees (Homebuyers) who are 'Unsecured Creditors', the assets of the Corporate Debtor which is the Infrastructure, is to be transferred in their favour ('Unsecured Creditors') and not to the 'Secured Creditors' such as Financial Institutions/ Banks/ NBFCs.*

Normally, the Banks/ Financial Institutions/ NBFCs also would not like to take the flats/ apartments in lieu of the money disbursed by them. On the other hand, the 'unsecured creditors' have a right over the assets of the Corporate Debtor i.e. flats/ apartment, assets of the Company.

11. *In most cases, the Committee of Creditors take 'haircut'. The Resolution Applicants satisfy them most of the time with lesser amount than the amount as*

determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/ apartment.

The law is to be explained now again in a reverse way.

REVERSE CORPORATE INSOLVENCY RESOLUTION

PROCESS:

12. In “**Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (2019 SCC OnLine SC 1478)**”, Hon’ble Supreme Court observed as follows:

“90. In *Swiss Ribbons* (supra) this Court was at pains to point out, referring, inter alia, to various American decisions in paras 17 to 24, that the legislature must be given free play in the joints when it comes to economic legislation. Apart from the presumption of constitutionality which arises in such cases, the legislative judgment in economic choices must be given a certain degree of deference by the courts. In para 120 of the said judgment, this Court held:

“120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. **Earlier experiments, as we have seen, in terms of legislations having failed, “trial” having led to repeated “errors”, ultimately led**

to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.”

In view of the observation of the Hon’ble Supreme Court, we experimented as to whether during the Corporate Insolvency Resolution Process the resolution can reach finality without approval of the third party resolution plan.”

8. This Appellate Tribunal also noticed the following facts :

13. *One of the Promoter – ‘Uppal Housing Pvt. Ltd.’/ Intervenor agreed to remain outside the Corporate Insolvency Resolution Process but intended to play role of a Lender (Financial Creditor) to ensure that the Corporate Insolvency Resolution Process reaches success and the allottees take possession of their flats/apartments during the Corporate Insolvency Resolution Process without any third party intervention. The Flat Buyers Association of Winter Hill – 77 Gurgaon also accepted the aforesaid proposal. It is informed that ‘JM Financial Credit Solutions Ltd’ one of the financial institution has also agreed to cooperate in terms of agreement with the condition that they will get 30% of the amount paid by the allottees at the time of the registration of the flat/apartment.*

14. *The other development is that ‘Rachna Singh’ and ‘Ajay Singh’ (Allottees), who moved application under Section 7 of the I&B Code, joined hands with the Appellant - ‘Flat Buyers Association Winter Hill - 77, Gurgaon’ and became its members. During the last few months the Corporate Insolvency Resolution Process has progressed and a number of allottees including ‘Rachna Singh’ and ‘Ajay Singh’ have*

already taken possession of their respective flats and sale deed(s) have been registered in their favour.

15. 'Uppal Housing Pvt. Ltd.' invested certain amount as an outsider Financial Creditor and as Promoter cooperating with the Interim Resolution Professional, having expertise of real estate project, so we asked it to give time frame for completion of the flats/apartments of the project and time frame for providing common area facilities like Swimming Pool, Club House etc. as per the agreement. They were directed to provide a chart showing the amount as due from different allottees and default, if any, committed by allottee(s). The progress report has also been taken on record."

9. In this Appeal, the 'Interim Resolution Professional' was directed to collate the claims and on the basis of voting share of the allottees to find out whether the allottees agree with the proposal for investment by Promoter – as an outsider 'Financial Creditor' and to allow this to co-operate with 'Insolvency Resolution Professional' to complete the project and allottee, if any, who wants the refund.

10. The 'Interim Resolution Professional' after conducted the voting of the allottees (Financial Creditors) and the voting share and the decision has been recorded as under:

“12. That the detail of total number of allottees entitled for proposal and exercised their option is as under:

Particulars	Possession	Refund
Total no. of allottees	1450	148
No. of allottees responded	915	125

13. That after the end of offer period, the detail of decision of the allottees on the aforesaid proposal is as under:

With respect to possession offer:-

Particulars	Assent	Dissent	Total
Through Right2Vote	873	39	912
Through e-mail	5	--	5
Less: Consent given by Ex-director & IRP	2	--	2
Total	876	39	915
Percentage (%)	95.74%	04.26%	100.00%

With respect to refund offer:-

Particulars	Assent	Dissent	Total
Through Right2Vote	49		912
Through e-mail	5	--	5
Less: Consent given by Ex-director & IRP	2	--	2
Total	876	39	915

Percentage (%)	95.74%	04.26%	100.00%
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11. The time for completion of the project after receiving the occupancy certificate has been shown by Mr. Rajesh Goyal – Promoter as under, as agreed with the allottees :

S.No	Name of the Tower	Period for applying occupancy certificate after completion of work
01	Tower A	Within 180 days from the start of work.
02	Tower B	Within 180 days from the start of work
03	Tower C	Within 180 days from the start of work
04	Tower F	Within 180 days from the start of work
05	Tower D	Within 180 days from the start of work
06	Tower E	Within 180 days from the start of work
07	Tower M	Within 180 days from the start of work
08	Tower G	Within 180 days from the start of work
09	Tower H	Within 180 days from the start of work

(ii) The second party also undertakes to start work within 30 days (+-) 10 days from the date of order passed by Hon'ble NCLAT in all respect allowing the construction at the project site.

12. Mr. Rajesh Goyal (Promoter) who appear in person accepted that the Promoter will make investment as 'Financial Creditor' to keep the 'Corporate Debtor' (company) as a going concern. 'Summary of sources of funds and time period' to infuse such investment shown as under:

“Summary of Sources of Funds and time period {Total 70 Crores (approx.)

S.No	Particulars	Amount in crores			
		30 Days	60 Days	90 Days	Total
1	Sanctioned Loan from IIFL Home Finance Limited	5.00	5.00	5.00	15.00
2	Confirmed Investor	3.00	3.00	3.00	9.00
3	From the properties of Sister concerns	0.50	2.00	2.15	4.65
4	From the personal properties of the promoter and his family members	5.38	15.94	20	41.32
5	Total (A)	13.88	25.94	30.15	69.27

13. A time-frame for refund to the allottees has been shown based on the agreement reached with the allottees who are seeking refund, as shown hereunder:

“TIME FRAME FOR REFUND OF PRINCIPAL AMOUNT TO ALLOTTEES WHO SEEK REFUND (AFTER SURRENDERING THEIR FLATS)”

The second party under the direct supervision of the first party will be refund the money to third party/ allottee/ buyer within an outer time period of 180 days per following schedule:-

S.NO	Percentage (%) of total debt	Time period for refund of money
1	30% of principal amount	Within 90 days from the permission granted by the Hon’ble NCLAT subject to any unforeseen circumstances.
2	70% of principal amount	From 91 to 180 days from the start of work.

14. Insofar as interest payable on the principal amount to be refunded to the allottees is concerned, the matter was discussed. Mr. Rajesh Goyal – ‘Promoter’, Mr. Gaurav Katiyar - ‘Interim Resolution Professional’ and the counsel representing such allottees, the following agreement was reached:

- (a) The allottees, on production of certificate from the Bank, will be entitled to simple interest @ 6% per annum on their principal amount. If any of such allottee induce the certificate from the ‘Financial Institution/Bank that it has taken loan and has paid or required to pay higher rate of interest such allottee will be entitled to simple interest at the rate the Bank has granted loan only with respect to the amount released by the Bank/Financial Institution on production of certificate.
- (b) The interest will be paid only on completion of the flats and its allotment to the allottees, by sale of unsold apartment/apartments. It may be paid within 180 days, the time period has provided or by 30th August, 2020, the last date for completion of the project.

15. Mr. Rajesh Goyal, who is present in the Court, undertakes that he will immediately infuse a sum of Rs. 5.38 Cr. plus 0.50 Cr. i.e. Rs. 5.88 Cr. within a week.

16. Mr. Rajesh Goyal (Promoter) also agrees to pay to all the ‘Financial Institutions’ such as ‘Allahabad Bank’, ‘Punjab National Bank’ and ‘Indiabulls’ etc. The dues of all the ‘Financial Institutions’ and time of payment has been shown as under:

“The dues of financial institutions (Principal only), as existing on the day of declaration of the account as NPA or 19th September, 2019 the date on which the insolvency petition against the corporate debtor was admitted as the case may be, shall be paid in the following time frame:

No.	Sl.	Name of the Financial Institutions	Amount (Rs.) due as on date	Time period for payment
1.		Allahabad Bank	17.35 Crores (as on 01/04/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
2.		Punjab National Bank	1.33 Crores (as on 19/09/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
3.		Indiabulls Commercial Credit Ltd.	35.80 Crores (the balance as on 01/07/2019 after payment of Rs. 3.70 Crores on 29.06.2019 for regularizing the account)	Within 180 days of the start of the work, subject to any unforeseen circumstances
4.		India Infoline Housing Finance Limited	27.00 crores (as on 19/09/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
		Total	81.48 Crores	

17. Learned counsel for the “Indiabulls’ submitted that an amount of Rs. 35.80 Crores has wrongly shown and due amount is Rs. 42 Crores.

18. Mr. Rajesh Goyal (Promoter) submitted that any amount as may be determined by the ‘Interim Resolution Professional’ will be paid to the

‘Financial Institutions’ including Banks, ‘Indiabulls’ and the ‘Operational Creditors’, if any.

19. In view of the facts as referred to above and before passing any direction, it is desirable to quote certain observations and finding as given by this Appellate Tribunal in **“Flat Buyers Association Winter Hills - 77, Gurgaon’** :

“21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor – real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should

be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example – in this case the Winter Hill – 77 Gurgaon Project of the ‘Corporate Debtor’ has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximised.

22. *Further, a ‘Secured Creditor’ such as ‘financial institutions/ banks’, cannot be provided with the asset (flat/apartment) by preference over the allottees (Unsecured Financial Creditors) for whom the project has been approved. Their claims are to be satisfied by providing the flat/apartment. While satisfying the*

allottees, one or other allottee may agree to opt for another flat/apartment or one tower or other tower if not allotted to any other. In such case their agreements can be modified by the Interim Resolution Professional/ Resolution Professional with the counter signature of the Promoter and the allottees, so that the allottees (financial creditors), who are on rent or paying interest to banks may like to get earlier possession and are relieved from paying rent or interest to banks.

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24. However, after offering allotment it is open to an allottee to request the Interim Resolution Professional/Promoter, whoever is in-charge, to find out a third party to purchase said flat/apartment and get the money back. After completion of the flats/project or during the completion of the project. It is also open to an allottee to reach agreement with the Promoter (not Corporate Debtor) for refund of amount.

25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a 'Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to

ensure completion of projects which provides employment to large number of unorganized workmen.”

20. The procedure as followed in “*Flat Buyers Association Winter Hills - 77, Gurgaon*’ (Supra) shows curtailment of period of resolution without asking for ‘resolution plan’ from the third party before finalisation of the ‘resolution plan’. The resolution can be taken even during the ‘corporate insolvency resolution process’, if any ‘Promoter’ as investor agrees to invest the money for keeping the company as a going concern and complete the project within the time frame. In view of the fact that part of the infrastructure (Apartments/Flats) has already been completed, the allottees (Financial Creditors) were the main beneficiaries of the infrastructure have already reached settlement with the ‘Promoter’ and the fact that the ‘Promoter’ as an ‘outsider financial creditor’ has agreed to invest the amount, not from the account of the ‘Corporate Debtor’ but from other sources to keep the infrastructure as a going concern, we in exercise of inherent powers conferred under Rule 11 of the NCLAT Rules, 2016, pass the following order:

- i. ‘Rajesh Goyal’ (Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed within the time frame as given by him. The disbursement of amount which has been made by ‘Rajesh Goyal.’ and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount

can be utilized only by issuance of cheque signed by the authorised person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

ii. The flats/apartments should be completed in all aspect by 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments registered after paying all the balance amount in terms of the agreement.

iii. Common area such as Swimming Pool, Club House etc. as per the agreement, be also completed by 30th August, 2020. The allottees are allowed to form 'Residents Welfare Association' and get it registered to empower them to claim the common areas.

iv. 'Rajesh Goyal' will return the amount to the allottees, who already sought for, within the time frame i.e. 30% of the principal amount within 90 days and rest 70% of the principal amount within 180 days. The interest be paid to them in the manner as detailed above by 30th

August, 2020. The 'Financial Institutions/'Banks' and 'Operational Creditors', if any should be paid simultaneously within the period of 180 days.

v. All these processes should be completed by 30th August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/Resolution Professional and approval of the Adjudicating Authority (National Company Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter.

vi. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the Purchaser, Interim Resolution Professional/Resolution Professional and Promoter (Rajesh Goyal). The proceeds as may be generated from such sale should be utilized for completion of the project, payment to Financial Institutions/Banks, Operational Creditors and interest as is payable to the allottees whose principal amount is to be refunded. Once the project is completed, the 'Interim Resolution Professional' will move application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7 of the 'I&B Code' filed by Ms. Babita Gupta,

Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors).

vii. However, if the ‘Promoter’ fails to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/Resolution Professional, the Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process.

The appeal stands disposed of with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

(Justice Venugopal M.)
Member(Judicial)

ns/RR