

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. 3253 ND 2025

IN

C.P. IB 284 (PB) OF 2021

IN THE MATTER OF:

VIBHA NARULA GUPTA. & ORS.

...Applicants

Versus

**MR. NARENDRA KUMAR SHARMA
RESOLUTION PROFESSIONAL
SPAZE TOWERS PVT. LTD.**

...Respondent

AND IN THE MATTER OF:

VIVEK KHANNA & ORS

...Financial Creditors

Versus

SPAZE TOWERS PVT. LTD.

...Corporate Debtor

Order Pronounced on: 05.10.2026

CORAM:

**SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Arpit Dwivedi, Mr. Anikesh Brahma, Advs.

For the RP : Mr. Karan Gandhi, Mr. Sikhar Tiwari, Mr. Pratham
Bansal, Ms. Riya Jain, Ms. Vidhika Kapoor, Advs.

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For the AR : Mr. Vishal, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules, 2016") seeking the following reliefs:

a) Allow the present Application filed by the Applicants and pass necessary and appropriate directions to the Resolution Professional to handover possession of the Apartments/ Units allotted to the Applicants complete in all respects and with all amenities particularly the covered car parking space as agreed upon as per the Builder Buyer Agreements in a time bound manner and execute Conveyance Deeds in favour of the Applicants within a period of four (4) weeks from the date of order after adjustment of the amounts payable by the Applicants;

OR

In the alternative, pass directions to the RP to handover possession of the apartments on an as is where is basis after adjustment of the amount demanded from the applicants with the amount required for completion

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of the Units as recorded in page 3 of the minutes of the 6th COC meeting on 19th May, 2025 with covered car parking spaces as promised;

b) Set aside all illegal and unjust claims/ charges as claimed and demanded by the Respondent from the Applicants;

c) Restrain the Respondent/ Resolution Professional from claiming, charging and raising any claim on the Applicants as a condition to handover of possession;

d) Pass any other order(s), direction(s), or relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

SUBMISSIONS OF THE APPLICANT:

- 2.** The present Application has been filed by eleven (11) allottees/homebuyers seeking directions to the Resolution Professional (“RP”) to hand over possession of their respective Units/Apartments in the project “Privvy The Address” in a time-bound manner and execute the corresponding Conveyance Deeds. The Applicants also seek waiver/set-off of alleged illegal and unjust demands, including additional charges and interest. Five Applicants have already been awarded Delayed Possession Compensation (“DPC”) by the Haryana Real Estate Regulatory Authority, Gurugram (“HREERA”), and seek adjustment of such amounts against the demands raised by the Corporate

Debtor. Similar DPC is sought for the remaining six Applicants whose HRERA proceedings were pending.

3. The Corporate Debtor developed the residential project “Privvy The Address” on land situated at Hayatpur, Sector 93, Gurugram, pursuant to the requisite collaboration arrangements and approvals. The Applicants booked their respective Units on the basis of representations that the project would be completed and possession handed over with the promised facilities. Builder Buyer Agreements (“BBAs”) were subsequently executed, providing for possession within 36/42 months from the respective dates of execution. However, possession was not handed over within the stipulated period.
4. The Corporate Debtor offered possession in November 2017 despite not having obtained the Occupation Certificate, which was received only on 20.07.2018. At the time of such offer, the Corporate Debtor raised additional demands on the ground that the super area of the apartments had increased. The Applicants disputed these demands and, along with other homebuyers through Privvy 93 Owners Association, approached HRERA in April/May 2018 challenging, inter alia, the alleged increase in super area, excess EDC/IDC, external electrification charges, club and preferential location charges, repair and maintenance charges, and other deficiencies in the project.

5. HRERA appointed an Investigating Commissioner, whose report was challenged by the Applicants on the ground that the relevant areas were not physically measured. HRERA ultimately dismissed the complaints on 25.07.2023, following which the Applicants preferred an appeal before the Haryana Real Estate Appellate Tribunal ("HREAT"). The appeal was pending when this Tribunal admitted the Section 7 proceedings against the Corporate Debtor on 21.10.2024 and initiated CIRP.
6. Following commencement of CIRP, the Applicants submitted their claims to the IRP, which were acknowledged. They contend that their genuine claims have not been appropriately admitted by the RP despite submission of the requisite information. The challenge to the CIRP order before the NCLAT was dismissed on 17.12.2024, while the appeal before the Hon'ble Supreme Court remains pending.
7. After taking control of the Corporate Debtor, the RP was approached by the Applicants for possession, with their willingness to pay the legitimate balance consideration under the BBAs. Instead, the RP demanded the outstanding amounts reflected in the Corporate Debtor's records, including charges which the Applicants contend are illegal and which are already the subject matter of the pending HREAT proceedings. According to the Applicants, compelling

payment of such disputed amounts would render their pending appeal substantially infructuous.

8. The Applicants rely upon Regulations 4E and 30C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inserted by notification dated 03.02.2025. Regulation 4E permits the RP, after approval of the CoC by not less than 66% voting share, to hand over possession and facilitate registration where the allottee has requested possession and performed his part under the agreement. Regulation 30C requires the RP to report to the CoC and the Adjudicating Authority regarding the status of development rights and permissions of a real estate project.
9. The Applicants state that they are ready and willing to take possession and pay the legitimate balance sale consideration, subject to waiver/set-off of the disputed demands. By email dated 02.05.2025, they requested the RP to place the issue before the CoC, but the RP allegedly neither responded nor placed the matter before the CoC. The Applicants contend that the RP's conduct in insisting upon the disputed amounts is contrary to the requirement of fair and transparent conduct and indicates undue influence of the suspended management.
10. The Applicants seek determination/adjustment of the following disputed demands:

- a. Increase in Super Area: The Corporate Debtor claimed an increase of approximately 5.35%–8.55% in super area and demanded additional payment. The Applicants dispute the increase, asserting that there was no corresponding increase in the actual apartment areas and that no satisfactory explanation or measurement was provided.
- b. EDC/IDC: Based on an RTI response, the Applicants contend that the EDC and IDC payable worked out to approximately Rs.247.63 per sq. ft. and Rs.15.96 per sq. ft., respectively, whereas the Corporate Debtor charged Rs.316.37 per sq. ft. towards EDC and Rs.32.31 per sq. ft. towards IDC. They therefore allege excess recovery of Rs.85.09 per sq. ft. and seek refund with interest at 18%.
- c. External Electrification Charges: Against the statutory demand of approximately Rs.1.21 crore, the Applicants contend that the charge should have been approximately Rs.12.40 per sq. ft., whereas Rs.96.51 per sq. ft. was charged on the increased super area. They seek reduction of the demand by Rs.84.11 per sq. ft. with effect from 21.08.2018.
- d. Delayed Possession Compensation: Five Applicants have obtained DPC orders from HRERA, while the proceedings of the remaining six Applicants were pending when CIRP commenced. The Applicants seek implementation of the DPC already awarded and corresponding DPC for the remaining

Applicants. They further contend that DPC should continue beyond the dates considered by HRERA since proper possession has allegedly still not been offered due to the disputed demands.

- e.** Preferential Location Charges: PLC was charged at Rs.100 per sq. ft. for certain apartments on the basis of their alleged green-facing location. The Applicants contend that some of the relevant green areas were subsequently converted into roads/open parking and therefore seek reversal and refund of such charges with interest.
- f.** Club Development Charges: The Applicants dispute club development charges of approximately Rs.32,000–Rs.48,000 per Applicant, contending that the BBA does not specify any amount and that the Corporate Debtor itself claims ownership of the club. Reversal with interest is sought.
- g.** Labour Cess: Labour cess demands ranging between Rs.16,000 and Rs.24,000 are disputed on the ground that labour cess is not an “additional tax” within the meaning of the BBA. The Applicants seek reversal of the amounts from 21.08.2018.
- h.** Interest: The Applicants dispute interest levied from 21.08.2018 on the disputed demands, contending that the underlying amounts were themselves not due or payable. They also state that the Corporate Debtor

had refused to accept even the full payment unless the Applicants withdrew their complaints.

11. The Applicants further challenge the RP's proposal to hand over the apartments in an unfinished condition. According to them, the BBAs contemplated delivery of completed apartments and substantial expenditure would be required to finish the Units. They contend that the RP had proposed adjustment of the completion cost before the CoC, but withdrew the proposal before voting on 24.05.2025. Any adjustment, if permitted, should therefore be calculated from the original date of offer of possession rather than the present date.
12. The Applicants rely upon Section 60(5) of the IBC, contending that, in view of the moratorium and pendency of CIRP, this Adjudicating Authority has jurisdiction to determine the claims and adjustments sought. Having already paid substantial amounts for the Units and remaining deprived of possession for several years, they seek immediate possession during the pendency of the Application, with payment of the balance amount after determination of the disputed charges by this Adjudicating Authority.

SUBMISSIONS OF THE RESPONDENT/RESOLUTION PROFESSIONAL:

13. Pursuant to the CIRP order dated 21.10.2024, a public announcement was issued on 24.10.2024 inviting claims from creditors, with 06.11.2024 being

the last date for submission of claims. The claims filed by the present Applicants were admitted by the Resolution Professional (“RP”).

14. The Application is liable to be dismissed as the issues raised have already been adjudicated by HRERA and the appeal preferred against the HRERA order was subsequently withdrawn.
15. The disputes raised by the Applicants relate to demands and actions of the Corporate Debtor prior to commencement of CIRP and do not arise from any independent act or omission of the RP. The RP has merely discharged his duties in accordance with the IBC and acted pursuant to the decisions of the CoC and directions of this Adjudicating Authority.
16. The Applicants had earlier challenged the disputed demands before HRERA through Complaint No. 279 of 2018. Another complaint, being Complaint No. 6059 of 2019, involving the same issues was subsequently heard along with the first complaint. HRERA had appointed an Investigating Commissioner, whose report formed the basis of the eventual decision. Both complaints were disposed of by HRERA by order dated 25.07.2023, finding no merit in the grievances raised.
17. Although the Applicants have asserted that their appeal against the HRERA order was pending before the Haryana Real Estate Appellate Tribunal, they did not disclose the details of the appeal in the present Application. According

to the RP, the appeal stood withdrawn, as reflected in the order dated 13.02.2025. The RP therefore contends that the same issues, having already been adjudicated by HRERA and the appeal having been withdrawn, cannot be reagitated in the present proceedings.

18. The demands in question are stated to be in accordance with the terms of the Builder Buyer Agreements and have already been accepted and paid by several other allottees. The RP contends that a number of allottees have cleared their outstanding dues either pursuant to the directions of HRERA or in terms of their respective Builder Buyer Agreements. Consequently, no fresh cause of action survives for reopening the same disputes.
19. The RP cannot be held liable for acts, transactions or demands arising from the conduct of the Corporate Debtor and its erstwhile management prior to commencement of CIRP. The RP's role is confined to management of the affairs of the Corporate Debtor during CIRP and he has no authority to adjudicate upon the legality of past actions or sit in appeal over decisions concerning the Corporate Debtor. The RP further relies upon the statutory protection available for acts performed in good faith in the discharge of his duties.
20. The Applicants have taken an inconsistent position by simultaneously disputing the legality of the outstanding demands and seeking adjustment of

DPC against those very dues, thereby acknowledging the existence of outstanding amounts. The RP contends that he cannot be compelled to hand over possession or execute Conveyance Deeds without recovery of the legitimate dues payable to the Corporate Debtor, as such recovery is necessary for protecting the interests of all creditors and is consistent with his statutory duties.

- 21.** The RP further contends that proceedings under the IBC are summary in nature and that this Adjudicating Authority does not exercise the jurisdiction of a civil court for conducting a detailed adjudication of disputes relating to the disputed charges. RERA already provides a specialised statutory mechanism for adjudication of disputes concerning the rights and obligations of allottees and promoters.
- 22.** The allegation that the RP failed to place the issue concerning unfinished units before the CoC is denied. The matter was placed before the 6th CoC meeting held on 19.05.2025, where a proposal was considered for execution of Conveyance Deeds in respect of unfinished units on an “as is where is” basis, subject to adjustment of the estimated cost of completion from the receivables at rates determined by the Project Division of the Corporate Debtor.

- 23.** However, following the CoC meeting, the Authorised Representative of the Financial Creditors in a class communicated, after discussions with the homebuyers, that the proposed adjustment could unfairly benefit certain allottees who had not paid their dues while prejudicing those who had already made payments. The Authorised Representative accordingly requested withdrawal of the resolution from the voting process. The RP thereafter revised the minutes and circulated them accordingly. The matter was subsequently clarified and recorded before the 8th CoC meeting held on 31.07.2025.
- 24.** The RP submits that he is a court-appointed officer who has acted in accordance with law and cannot be saddled with allegations relating to the pre-CIRP conduct of the Corporate Debtor. The Application is therefore stated to be misconceived and liable to be dismissed, with the Applicants being required to clear their legitimate outstanding dues before taking further steps for execution of the Conveyance Deeds in accordance with law.

SUBMISSIONS OF THE AUTHORIZED REPRESENTATIVE:

- 25.** The Authorised Representative (“AR”), Mr. Shaikh Nafis Anjum, was appointed as the Authorised Representative for the class of creditors comprising real estate/homebuyers under Section 21(6A)(b) of the IBC read with Regulation 16A of the CIRP Regulations, vide order dated 09.12.2024 passed in IA/5677/ND/2024.

- 26.** The issues raised in the present Application were placed before and deliberated upon by the Committee of Creditors (“CoC”), particularly in the 6th CoC meeting held on 19.05.2025. The CoC was informed that, in certain cases, allottees were holding Memoranda of Understanding/Provisional Allotment Letters and had the option of surrendering the same for execution of the Builder Buyer Agreement (“BBA”), subject to clearance of all outstanding dues. Since execution of a registered BBA was necessary for execution of the Conveyance Deed, the RP sought authorisation from the CoC to execute BBAs/Space Agreements/Buyer Agreements/Allotment Letters and permit transfer or assignment of units, subject to surrender of the MoU and payment of complete dues as reflected in the books of the Corporate Debtor.
- 27.** The aforesaid proposal was approved by the CoC with 99.11% voting share, pursuant to e-voting concluded on 27.05.2025. The RP was accordingly authorised to execute the necessary documents and authorise other officers of the Corporate Debtor for the said purpose.
- 28.** The RP had also apprised the CoC regarding the execution and registration of Conveyance Deeds. It was reported in the 7th CoC meeting that 378 Conveyance Deeds had been executed after commencement of CIRP, from 22.10.2024 to 16.06.2025, in addition to 3,730 Conveyance Deeds executed

prior to CIRP. Subsequently, in the 8th CoC meeting, it was informed that a total of 4,223 Conveyance Deeds had been executed, including 493 Conveyance Deeds executed after commencement of CIRP up to 25.07.2025.

- 29.** One of the Applicants wrote to the AR on 27.07.2025 requesting him to take up the Applicants' grievance with the RP and seek an explanation as to why their request had not been placed before the CoC. The AR, by email dated 29.07.2025, forwarded the concerns of the Applicants to the RP and requested that the matter be appropriately considered during the 8th CoC meeting.
- 30.** The communication forwarded by the AR recorded that the concerned allottees were willing to take possession of their respective Units, subject to adjustment or waiver of the demands alleged to be unjust, including excess EDC, delayed possession compensation and other disputed charges. They expressed willingness to pay any amount legitimately due after such adjustments and upon being offered possession with the promised amenities.
- 31.** The AR further points out that, despite the existence of an Authorised Representative for the class of financial creditors comprising homebuyers, the present Application has been filed by certain individual allottees. Reliance is placed on Regulation 16A(10)(j) of the CIRP Regulations regarding the duties and functions of the Authorised Representative in relation to the financial creditors forming a class.

ANALYSIS AND FINDINGS:

- 32.** We have heard the Learned Counsel for the parties and have perused the pleadings and documents placed on record.
- 33.** The present Application has been filed by 11 allottees/homebuyers in respect of their respective Units in the project “Privvy The Address”. The Applicants principally seek directions to the Resolution Professional for handing over possession of the Units and execution of the Conveyance Deeds. They have also sought adjustment/waiver of various amounts forming part of the demands raised in respect of their Units, including amounts towards increase in super area, EDC/IDC, external electrification charges, preferential location charges, club development charges, labour cess and interest. The Applicants have further sought adjustment of DPC awarded in their favour by HRERA and, in cases where DPC has not been awarded, seek corresponding relief in respect thereof. In the alternative, possession of the Units on an “as is where is” basis has been sought after adjustment of the estimated cost of completion.
- 34.** The case of the Applicants is that they are ready and willing to pay the amounts legitimately due under the Builder Buyer Agreements, but the possession is being withheld by the Resolution Professional on account of certain disputed demands which, according to the Applicants, are illegal or

excessive. It is their contention that such amounts ought to be adjudicated and adjusted before they are required to make payment for obtaining possession.

35. Per contra, the Resolution Professional has submitted that the claims of the Applicants have been duly received and admitted in the CIRP and that the demands in question relate to the period prior to commencement of CIRP. It is contended that the RP has neither raised the said demands nor created any liability against the Applicants and is merely seeking recovery of the outstanding dues reflected in the records of the Corporate Debtor. The RP has further submitted that the issues now sought to be raised by the Applicants had already been agitated before HRERA and were adjudicated upon by order dated 25.07.2023. It is also submitted that the appeal stated to have been preferred against the said order was subsequently withdrawn.

36. Having considered the submissions, we find that the principal relief sought by the Applicants requires this Adjudicating Authority to determine the legality and quantum of various charges raised by the Corporate Debtor under the respective Builder Buyer Agreements. The disputes regarding increase in super area, EDC/IDC, external electrification charges, PLC, club development charges, labour cess and interest are essentially disputes arising out of the contractual relationship between the parties. Determination of such issues

would necessarily require examination of the terms of the respective agreements, the basis on which the charges were levied and the factual circumstances relating thereto.

- 37.** The jurisdiction conferred upon the Adjudicating Authority under Section 60(5) of the Code cannot be understood to mean that every contractual dispute between the Corporate Debtor and an allottee can be adjudicated by this Authority merely because CIRP is pending against the Corporate Debtor. Section 60(5) is intended to enable this Adjudicating Authority to deal with questions of law or fact arising out of or in relation to the insolvency resolution process. It does not confer an unrestricted jurisdiction upon this Authority to adjudicate upon contractual disputes which properly fall within the jurisdiction of the competent civil or specialised statutory forum.
- 38.** It is also pertinent to note that the grievances forming the subject matter of the present Application substantially relate to acts and demands of the Corporate Debtor prior to commencement of CIRP. The present Resolution Professional cannot be called upon to adjudicate upon the legality of such pre-CIRP demands or to waive amounts merely because the Applicants dispute their liability. The RP is required to administer the affairs of the Corporate Debtor in accordance with the provisions of the Code and to preserve and realise its assets and receivables in accordance with law.

39. The Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Limited v. Mr. Amit Gupta & Ors. Civil Appeal No. 9241 of 2021** has made the following observation:

“67.Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

40. The Hon'ble NCLAT in **SICOM Ltd. v. Kitply Industries Ltd., (2023) ibclaw.in 236 NCLAT**, which was also upheld by the has held the following:

*“On the point of jurisdiction of NCLT or NCLAT in respect of interpretation of agreement/contract which had already occurred prior to initiation of CIRP it has been held that neither NCLT nor NCLAT is having jurisdiction to adjudicate. In this context it would be profitable to reproduce paras 16, 24, 28 to 31 of judgement of Hon'ble Supreme Court reported in (2022) 2 SCC 583 **Tata Consultancy Services Ltd Vs. Vishal Ghisulal Jain** which are quoted herebelow:”*

“16. Based on the appeal, two issues have arisen for consideration before this Court:

16.1 Whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties; and

16.2 Whether in the exercise of such a residuary jurisdiction, it can impose an ad-interim stay on the termination of the Facilities Agreement.

24. It was also urged on behalf of the appellant that the NCLT and NCLAT have re-written the agreement changing its nature from a determinable contract to a non-terminable contract overlooking the mandate of Section 1412 of the Specific Relief Act 1963. It is a settled position of law that IBC is a complete code and Section 238 overrides all other laws. The NCLT in its residuary jurisdiction is empowered to stay the termination of the agreement if it satisfies the criteria laid down by this Court in Gujarat Urja (supra). In any event, the intervention by the NCLT and NCLAT cannot be characterized as the re-writing of the contract between the parties. The NCLT and NCLAT are vested with the responsibility of preserving corporate debtor's survival and can intervene if an action by a third party can cut the legs out from under CIRP.

28. In Gujarat Urja (supra), the contract in question was terminated by a third party based on an ipso facto clause, i.e., the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of the corporate debtor and it was amenable to the jurisdiction

of the NCLT under Section 60(5)(c). This Court observed that (SCC pp. 262-63, para 69)

"69....NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor... The nexus with the insolvency of the corporate debtor must 22 exist"

(emphasis supplied)

Thus, the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor.

29. It is evident that the appellant had time and again informed the Corporate Debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor. Thus, we are of the view that the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld the interim order of the NCLT.

30. While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor. In *Gujarat Urja (supra)*, this Court held thus: (SCC pp.309-10, paras 176-177)

“30. While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor. In *Gujarat Urja (supra)*, this Court held thus: (SCC pp.309-10, paras 176-177)

"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the

present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix). 177. The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the termination of PPA which is the sole contract of the corporate debtor, governing the supply of

electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of the corporate debtor a foregone conclusion."

(Emphasis supplied)

31. The narrow exception crafted by this Court in Gujarat Urja (supra) must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief. The order of the NCLT dated 18 December 2019 does not indicate that the NCLT has applied its mind to the centrality of the Facilities Agreement to the success of the CIRP and Corporate Debtor's survival as a going concern. The NCLT has merely relied upon the procedural infirmity on part of the appellant in the issuance of the termination notice, ie., it did not give thirty days' notice period to the Corporate Debtor to cure the deficiency in service. The NCLAT, in its impugned judgment, has averred that the decision of the NCLT preserves the 'going concern' status of the Corporate Debtor but there is no factual analysis on how the termination of the Facilities Agreement would put the survival of the Corporate Debtor in jeopardy."

Similarly this issue was considered by Hon'ble Supreme court in case reported in (2020) 13 SCC 308 Embassy Property Developments Pvt Ltd Vs Stte of Karnataka and Ors.

In view of law settled by Hon'ble Supreme Court as incorporated hereinabove we are of the opinion that by order impugned the Learned NCLT has exceeded its jurisdiction in directing the appellant to transfer the property in question in

favour of Corporate Debtor. The dispute whether agreement to sale which was entered in between the parties in the year 1998 was breached by the appellant or the respondent breached the agreement, may not be examined in a proceeding under the IBC. Such disputes are required to be examined by the court of competent jurisdiction. In view of admitted position that title of the property in respect of Igatpuri Unit still lies with the appellant, the Learned NCLT has committed error in allowing the application filed on behalf of the Respondent in directing for transferring the land in question and as such there is no option but to set aside the impugned order.”

- 41.** In the present case, the Applicants had already approached HRERA in respect of the very grievances which are sought to be reagitated before this Adjudicating Authority. The record indicates that the disputes relating, inter alia, to increase in super area, EDC/IDC, external electrification charges, PLC, club charges and other demands were considered in the proceedings before HRERA. HRERA, after consideration of the matter and the report of the Investigating Commissioner, disposed of the complaints by order dated 25.07.2023.
- 42.** Thus, the Applicants cannot seek, in proceedings under Section 60(5) of the Code, a fresh adjudication of issues which had already been raised before and considered by the specialised forum constituted for determination of disputes between promoters and allottees. The pendency or subsequent withdrawal of

an appeal against such order does not enlarge the jurisdiction of this Adjudicating Authority so as to enable it to sit in appeal over the findings rendered by HRERA.

- 43.** We therefore find that the prayer seeking a declaration that the various demands raised against the Applicants are illegal or excessive cannot be considered by the Adjudicating Authority in the present proceedings. The Applicants, if aggrieved by any contractual or regulatory determination, are required to avail the remedy before the forum competent to adjudicate such dispute. The insolvency proceedings cannot be utilised as a mechanism to reopen or circumvent such adjudication.
- 44.** As regards possession, it is not disputed that the Applicants have contractual obligations towards payment of the amounts due in respect of their respective Units. The mere fact that the Corporate Debtor has subsequently gone into CIRP does not, by itself, extinguish such payment obligations. The RP, while dealing with the affairs of the Corporate Debtor during CIRP, cannot be directed to hand over possession without insisting on payment by the Applicants.
- 45.** Accordingly, the Applicants would be required to clear the outstanding dues payable in respect of their respective Units, in accordance with the contractual terms and applicable law, if they seek possession and

consequential execution of the Conveyance Deeds. The disputed contractual charges cannot be directed to be waived or adjusted by this Adjudicating Authority in the absence of a determination by the competent forum.

- 46.** As regards the claim of Delayed Possession Compensation (“DPC”), the same stands on a different footing. In respect of those Applicants in whose favour HRERA has already passed an order awarding DPC, the entitlement to such amount has crystallised by virtue of the adjudication by the competent forum. Therefore, where such DPC has not already been accounted for or adjusted by the Resolution Professional, the amount so awarded is liable to be taken into account while determining the net amount payable by the concerned Applicant towards the outstanding dues of the Unit.
- 47.** Such adjustment would, in substance, amount to a set-off of the amount admittedly/legally due to the Applicant against the amount payable by the Applicant to the Corporate Debtor. The principle of set-off, as recognised by the Hon’ble Supreme Court in ***Bharti Airtel Ltd. & Anr. v. Vijay Kumar Iyer & Ors.***, cannot be applied indiscriminately during CIRP; however, the Court has recognised that contractual and equitable set-off may operate in appropriate circumstances, particularly where the mutual dealings arise from the same or connected transaction.

- 48.** In the present case, the DPC awarded to the concerned Applicants arises directly from the very same allotment and Builder Buyer Agreement under which the Applicants are liable to make payment of the outstanding dues for their respective Units. The two amounts therefore arise from the same underlying contractual relationship and constitute mutual dealings between the parties. Consequently, to the extent DPC has been finally awarded by HRERA and the same has not already been adjusted by the Resolution Professional, the said amount is to be adjusted/set off against the outstanding dues payable by the concerned Applicant.
- 49.** It is clarified that the adjustment shall be restricted strictly to the amount of DPC actually awarded by HRERA or any other competent forum. This Adjudicating Authority is not determining any fresh entitlement to DPC nor extending the period for which DPC is payable. The benefit of adjustment shall be available only in respect of an amount which has already crystallised pursuant to an order/decreed of a competent forum and which has not otherwise already been accounted for by the Resolution Professional.
- 50.** Insofar as the Applicants whose claim for DPC has not been finally adjudicated by a competent forum are concerned, no such adjustment can presently be granted. Their claim for DPC, if otherwise maintainable, may be pursued before the competent forum in accordance with law and, upon such

claim attaining finality, the consequential adjustment, if permissible in law, may be considered.

- 51.** We, however, find no merit in the prayer seeking adjustment or waiver of the other disputed charges merely on the basis of the Applicants' assertions. The disputes concerning increase in super area, EDC/IDC, external electrification charges, PLC, club development charges, labour cess and interest are essentially contractual/regulatory disputes which have already been considered by HRERA and cannot be re-adjudicated by this Adjudicating Authority in exercise of its jurisdiction under Section 60(5) of the Code. Unless any such demand has been set aside, reduced or otherwise modified by a competent forum, the same cannot be directed to be waived or adjusted by this Authority.
- 52.** Accordingly, the Applicants shall be required to clear the outstanding dues payable in respect of their respective Units if they intend to obtain possession and complete the necessary formalities for execution of the Conveyance Deeds. While computing such outstanding dues, however, the Resolution Professional shall adjust the DPC finally awarded in favour of an Applicant, to the extent the same has not already been adjusted or accounted for.
- 53.** In view of the foregoing discussion, we are of the considered view that the present Application seeks, in substance, adjudication of contractual disputes

and re-examination of demands which arose prior to commencement of CIRP and which have already been the subject matter of proceedings before HREERA. Such disputes cannot be adjudicated afresh by this Adjudicating Authority in exercise of jurisdiction under Section 60(5) of the Code.

54. Accordingly, the prayers seeking waiver, setting aside or adjustment of the various contractual charges, as well as the prayer restraining the Resolution Professional from raising or recovering such charges, cannot be acceded to. The Applicants shall be required to clear the outstanding dues payable in respect of their respective Units for obtaining possession and for completion of the necessary formalities for execution of the Conveyance Deeds. However, in respect of DPC, where a competent forum has already passed an order/decreed in favour of the concerned Applicant and the amount has not been adjusted by the RP, the same shall be dealt with in accordance with such order/decreed and applicable law.

55. In view of the above, the prayer for adjustment of DPC is allowed to the limited extent stated hereinabove. The remaining prayers seeking adjudication, waiver or adjustment of the disputed contractual charges and directions to the Resolution Professional to disregard such charges are rejected. The Applicants shall accordingly pay the balance outstanding dues after giving

effect to the permissible adjustment of the finally adjudicated DPC, if they intend to seek possession and execution of conveyance deeds.

56. Accordingly, the present Application is **disposed of** in the above terms.

57. It is, however, clarified that disposal of the present Application shall not preclude the Applicants from pursuing any remedy available to them before the competent forum in respect of any claim which has not attained final adjudication. No opinion is expressed on the merits of any such claim.

- SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)