



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

IA-3356/2020, IA-3629/2020 & IA-5001/2021

In

IB-2130(ND)/2019

IN THE MATTER OF IB-2130(ND)/2019:

M/s. Dynacon Projects Private Limited **Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Private Limited
..... **Corporate Debtor**

AND IN THE MATTER OF IA-3356/2020:

Mr. Nilesh Sharma
Resolution Professional of the Corporate Debtor **Applicant**

Versus

Mr. Mordhwaj Singh & Ors. **Respondents**

AND IN THE MATTER OF IA-3629/2020:

Mr. Mordhwaj Singh & Ors. **Applicants**

AND IN THE MATTER OF IA-5001/2021:

Mr. Mordhwaj Singh & Ors. **Applicants**

Pronounced On: 05.12.2023

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the RP : Mr. Saurabh Kripal, Sr. Adv., Mr. Humray Bir
Singh, Ms. Vatsala C. Chaturvedi,
Mr. Puneet Rathi, Ms. Sehr Chopra, Adv.
For the Respondent : Mr. Rajesh Kr. Gautam, Mr. Anant Gautam,
Mr. Sumit Sharma, Mr. Dinesh Sharma, Adv.

COMMON ORDER



PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. These applications i.e. **IA-3356/2020, IA-3629/2020** and **IA-5001/2021** were heard together because of the similarity in the facts and issues involved therein and being disposed of by this common order.

IA-3356/2020:

2. This application has been filed by Mr. Nilesh Sharma, Resolution Professional of M/s. Today Homes & Infrastructure Private Limited, the Corporate Debtor under Section 14 and 25 of the IBC, 2016 read with Regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking directions to the Respondents Nos. 1 to 4, (the erstwhile land owners) to restore the peaceful, vacant and physical possession of the land admeasuring 10.81 acres at Sector 73, Sohna Road, Gurgram, wherein the Corporate Debtor is constructing a group housing project in the name and style of “Canary Greens” to the Applicant/Resolution Professional. The Applicant is also seeking a direction to the local district administration of Gurugram (Respondent Nos. 5 & 6) to assist the Applicant in securing the vacant, physical and peaceful possession of the said land and action against Respondent Nos. 1 to 4 in terms of Section 74 for violating Section 14 of the Code.

3. IA-3629/2020:

The Applicants herein are the erstwhile land owners and Respondent No. 1 to 4 in IA-3356/2020, have filed this application seeking directions from this Adjudicating Authority to modify the ad interim Ex-parte order dated 24.08.2020 passed in IA-3356/2020 in IB-2130/ND/2019.



4. IA-5001/2021:

The Applicants herein, who are claiming to be the land owners of the land ad-measuring 10.81 acres situated in Village Behrampur, Tehsil & District Gurugram in the State of Haryana seeking a direction to the Resolution Professional to exclude the project land ad-measuring 10.81 acres situated in Village Behrampur, from the proposed Resolution Plan.

Factual Matrix of the Case:

5. The facts which are relevant and common for the purposes of determination of the issues involved in these applications are stated as under:
6. M/s. Dynacon Projects Private Limited, the Operational Creditor filed an application under Section 9 of the IBC, 2016 seeking initiation of Corporate Insolvency Process (CIRP) against M/s. Today Homes & Infrastructure Private Limited, the Corporate Debtor. The Corporate Debtor is engaged in the business of construction and erection of houses and building.

This Adjudicating Authority vide order dated 31.10.2019 admitted the said application and initiated CIRP of the Corporate Debtor. Moratorium in terms of Section 14 of IBC was declared with respect to the Corporate Debtor after initiation of CIRP vide order dated 31.10.2019 which is still in force.

7. IA-3356/2020:

Mr. Nilesh Sharma, the Applicant in IA-3356/2020 was appointed as the Resolution Professional of the Corporate Debtor vide order dated 09.01.2020 in terms of Section 22 of IBC.

8. The Respondent Nos. 1 to 4 are the erstwhile owners of the land admeasuring 35.2062 acres situated in village Behrampur,



Gurgram, Haryana ("land"), development rights of which were duly transferred by the said owners in favour of a company namely M/s. New India City Developers Pvt. Ltd. (New India') by way of execution of a Development Agreement dated 03.03.2007 New India by way of an agreement dated 30.07.2010, transferred 8,00,000 sq. ft. of Floor Space Index (FSI) (residential) in favour of the Corporate Debtor out of total land ad-measuring 35.2062 acre for developing/ erecting a housing project on the said land on the consideration mentioned in the said project.

9. Before proceeding further, it is pertinent to mention the brief background of the case for better appreciation of the case:-

a) In the year 2007, Shri Mordhwaj Singh, Shri Vikramjit Singh, Shri Ram Narayna Singh and Shri Bhim Singh, the Respondent No. 1-4 herein, owners of the land admeasuring 35.2062 acres situated in village Behrampur, Gurgram, Haryana ("land") entered into an irrevocable and exclusive Development Agreement ("Development Agreement") with New India, thereby entrusting the development of said land in favour of New India as per the terms and conditions of the Agreement. As per the said Agreement, the Owners had entrusted irrevocable rights in favour of New India for development of the said property for Group Housing and Industrial IT Park/Cyber Park. Further, as per the said Agreement, 45% share of duly sanctioned FAR in the Group Housing project was allocated to the owners and the remaining 55% share of FAR was allocated to New India.

b) Subsequently, certain disputes arose between the land owners and New India, which culminated into initiation of arbitration proceedings. During the arbitration proceedings, the land owners and New India entered into a Settlement Agreement and a Consent Award dated 05.09.2009 was passed, wherein it was



- recorded that the land owners would execute a Power of Attorney in favour of New India conferring rights for obtaining license in respect of the said project and New India will complete the development of the entire project as per the agreement dated 03.03.2007 entered into between the parties and shares of owner increased from 45% to 50%.
- c) A license bearing No. 03/2009 was issued by the Directorate Town & Country Planning, Haryana on 12.02.2009 in favour of the land owners and New India, whereby permission for setting up of a Group Housing Colony on a part of the land (21.637 acres) was granted.
- d) Further, in terms of the Consent Award dated 05.09.2009, the land owners on 19.01.2010 executed an irrevocable special Power of Attorney in favour of New India, to represent the owners, apply and obtain all requisite license, permission, NOC from respective Departments for the development of the land.
- e) Simultaneously, on 19.01.2010, the said land owners executed another irrevocable Power of Attorney in favour of the (Corporate Debtor) to sell, transfer, lease, license, construct, mortgage with respect to the land which is to be developed for the project in question. The said Power of Attorney was registered on 20.01.2010. Pursuant to the execution of the Power of Attorney dated 19.01.2010, New India entered into an agreement with the Corporate Debtor on 30.07.2010 whereby New India assigned all the rights, obligations/responsibilities and interests in the entire Floor Space Index ('FSI') totaling to 8,00,000 sq. ft. approximately against a consideration of Rs. 40,00,00,000/-. Additionally, New India also transferred its rights, obligations/responsibilities in favour of the Corporate Debtor as the per the Development



- Agreement dated 03.03.2007 and Consent Award dated 05.09.2009 in favour of the Corporate Debtor.
- f) Subsequently, addendum agreements dated 16.09.2010 and 29.03.2011 were executed where under the total consideration of the purchase of the said FSI was enhanced from Rs. 40 Crores to Rs. 120 Crores.
- g) On 11.10.2010, the Town and Country Planning Department, Haryana Government issued a License No. 77/2010 to the owners for development of the IT Park on an area admeasuring 12.55 acres in village Behrampur, Sector-74, Gurugram-Manesar Urban Complex and the Power of Attorney executed by the owners became operative.
- h) The License bearing No. 03/2009 dated 12.02.2009 was renewed by the Directorate Town and Country Planning, Haryana upto 11.02.2021, vide renewal letter dated 26.08.2019.
- i) The original land owners, the Respondent No. 1 to 4 in IA-3356/2020 have filed a reply affidavit, wherein at the outset it has been submitted that the Applicant (Resolution Professional) obtained an ad interim Ex-parte order on 24.08.2020 in the present IA without placing the correct facts on record, wherein this Adjudicating Authority passed an order directing Respondent No. 5 & 6 to ensure that the Respondent No. 1 to 4 do not interfere with the peaceful possession of the Resolution Professional on the land in question. The Respondent No. 5 & 6 were also directed to provide protection and assistance to the Resolution Professional.

10. The Respondents herein have contended that the Development Agreement dated 03.03.2007 was signed by M/s. New India City Developers Private Limited and the present Respondents whereas the Corporate Debtor i.e., M/s. Today Homes & Infrastructure



Private Limited was not a party to the said Development Agreement. As per the said Development Agreement dated 03.03.2007, the rights of ownership of the part of the land of the present Respondents was to accrue in favor of M/s. New India City Developers Private Limited only upon fulfilling the obligations casted upon it. However, M/s. New India city Developers did not fulfil its obligations and breached the terms of Development Agreement dated 03.03.2007, and therefore the Arbitral Tribunal passed an award on 09.12.2017 in favour of the Respondents wherein the liability of M/s. New India City Developers towards the Respondents herein was fixed approximately to the tune of Rs. 160 Crores including statutory dues to be paid to the Directorate of Town and Country Planning Haryana. This award was passed much prior to the initiation of the present CIRP. Further, the Respondents herein also initiated execution proceedings bearing CIS No. EXE 312/2019 against M/s. New India City Developers Private Limited on the basis of the Arbitration Award dated 09.12.2017 much prior to the initiation of the present CIRP proceedings which are pending before Ld. Additional District Judge-Cum-Presiding Judge Special Commercial Court Gurugram.

11. M/s. New India City Developers Private Limited, challenged the said award dated 09.12.2017 by filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 which were rejected by the Special Commercial Court, Gurugram, vide order dated 06.02.2020. The Respondents herein submitted that they were not parties to the Agreement dated 30.07.2010 executed between M/s. New India City Developers and M/s. Today Homes & Infrastructure Private Limited and therefore, it is not binding upon them.

12. It is submitted that the said Power of Attorney dated 19.01.2010 was revoked by these Respondents vide Registered Deed No. 489



dated 30.08.2019 and the said revocation was published in newspapers on 28.09.2019.

13. The said revocation of Power of Attorney was challenged by the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited before the Civil Judge, Gurugram vide Civil Suit No. 3694/2019 which was dismissed for default on 17.03.2020 and the application for restoration of the suit is still pending before the Civil Court.

14. The Respondents herein have also denied the fact that the Applicant has taken over the possession (physical or constructive) of the land in question and prayed for dismissal of this application.

15. These applications were listed on 29.08.2023 seeking clarification and the following order was passed:-

“IA/3356/2020 IA/3629/2020 IA- 5001/2021:-

These applications were listed seeking clarification on the following aspects:-

1. Who has the actual physical possession of the land in dispute as on date and from which date, supporting documents in this regard shall be filed.

2. Present status of Civil Suit No. 3694/2019 and the Restoration Application filed before the Civil Judge, Senior Division, Gurugram.

3. Present status of the Execution Proceedings bearing CIS NO. EXE 312/2019 against M/s. New India City Developers Private Limited.

The Development Agreement was executed by the land owners with M/s. New India City Developers Private Limited. The RP to clarify how the development rights flowed from M/s. New India City Developers Private Limited to the Corporate Debtor or to any other stakeholder with supporting documents and with respect to the extent of the land.

The RP shall also give a break-up in a tabular form of the land transferred or given to M/s. New India City Developers Private



Limited, Corporate Debtor and any other stakeholders involved in this matter along with relevant documents, if any.

The Resolution Professional shall file an affidavit clarifying the above aspects within one week.

The Respondent Nos. 1 to 4 (Landowners) are also at liberty to file an affidavit.”

16. In compliance with the said order, the Resolution Professional as well as the land owners filed affidavit clarifying issues raised by this Adjudicating Authority.

17. The issue wise reply given by the Resolution Professional to the queries raised by this Adjudicating Authority is mentioned in brief which is as follows:

First issue:

Who has the actual physical possession of the land in dispute as on date and from which date, supporting documents in this regard shall be filed.

Reply of RP:

With respect to the first issue, the Resolution Professional has submitted that he took physical possession of the Canary Greens Project Land and Mr. Deepak Bansal, IRP after being appointed as RP of the Corporate Debtor. However, he was dispossessed from the project land on 11.08.2020 by the land owners.

Therefore, the RP filed IA No. 3356/2020, wherein this Tribunal vide order dated 24.08.2020 directed the Ld. District Magistrate, Gurugram and Commissioner of Police, Gurugram to ensure that the land owners do not interfere in the peaceful possession of the RP and also directed them to provide protection and assistance to the RP. In compliance with the said directions, the possession of the project land was handed over



back to the RP on 02.09.2020 and a letter dated 02.09.2020 was written by the RP to the Local District Administration/concerned Police Station intimating them about taking over the possession of the said project land. A copy of the said letter dated 02.09.2020 has been placed on record. The RP has also submitted that IA-347/2020 for initiating contempt proceedings against the land owners for violating the directions passed by this Tribunal in its order dated 24.08.2020 and causing hindrance in the possession of the project land which is pending adjudication before this Adjudicating Authority.

Second Issue:

Present status of Civil Suit No. 3694/2019 and the Restoration Application filed before the Civil Judge, Senior Division, Gurugram.

Reply of RP:

With respect to the second issue, the RP has submitted that Civil Suit No. 3694 of 2019 filed before the Civil Judge, Senior Division Gurugram was dismissed for default on 17.03.2020 and thereafter the RP filed an application bearing APP. No. 20/2020 seeking restoration of the suit which is pending.

Third Issue:

Present status of the Execution Proceedings bearing CIS No. EXE 312/2019 against M/s. New India City Developers Private Limited.

Reply of RP:

With respect to the third issue, the RP has submitted that Execution Petition No. 312/2019 filed by the land owners before the District Court Gurugram, seeking execution of the Arbitral Award dated



09.12.2017 titled as M/s. New India City Developers Private Limited vs. Shri Mordhwaj Singh and Ors., is pending .

Fourth Issue:

The Development Agreement was executed by the land owners with M/s. New India City Developers Private Limited. The RP to clarify how the development rights flowed from M/s. New India City Developers Private Limited to the Corporate Debtor or to any other stakeholder with supporting documents and with respect to the extent of the land.

Reply of RP:

With respect to the fourth issue, the RP has submitted that the Development Rights as obtained by New India vide Agreement dated. 03.03.2007 and Consent Award dated. 05.09.2009 were duly transferred by New India in favour of the Corporate Debtor herein in respect of 8,00,000 sq. ft. (arising out of 10.81 acres of land approximately) vide Agreement dated 30.07.2010, Addendum to Agreement dated 16.09.2010 and second Addendum to Agreement dated 29.03.2011 for a consideration of Rs. 120 Crores discharged by the Corporate Debtor by issuance of its equity shares. As per the said Agreements all the liabilities were to be borne by New India only.

The Corporate Debtor in terms of the Development Agreement duly advertised its Housing Projects consisting of 583 units in 8 towers. In terms of the Development Agreement, the Corporate Debtor paid consideration of Rs. 120,00,00,000/- (Rupees One Hundred and Twenty Crores Only) to New India in the form of its equity shares. The same is duly corroborated by Agreement dated 30.07.2010, addendums to agreement dated 16.09.2010 and 29.03.2011



between the Corporate Debtor and New India. The said Agreements are attached with the IA No. 3356/2020.

Fifth Issue:

The RP shall also give a break-up in a tabular form of the land transferred or given to M/s. New India City Developers Private Limited, Corporate Debtor and any other stakeholders involved in this matter along with relevant documents, if any.

Reply of RP:

With respect to the fifth issue, the Erstwhile owners of the land transferred development rights in total land admeasuring 35.2062 acres situated in village Behrampur, Gurugram, Haryana (Land') in favour of New India City Developers Pvt. Ltd. by way of a Development Agreement dated 03.03.2007 and a registered Power of Attorney dated 19.01.2010.

- I. As per notification No. CCP(NCR)/FDP(G)/2007/359 dated 05.02.2007 issued by DTCP, Haryana, out of the said land area fell in Residential Zone.
- II. As per notification No. CCP(NCR)/FDP(G)/2007/359 dated 05.02.2007 issued by DTCP, Haryana, out of the said land area fell in Industrial Zone.
- III. Undivided land area between the owner and the license to be taken into the consideration after actual division takes place.
- IV. Integral Development Area for which the Landowner and the New India took the License from DTCP, Haryana.
- V. Area belongs to Land Owner - 45% of FAR as per Agreement dated 03.03.2007, the said FAR was however subsequently changed to 50% in light of the consent award dated 05.09.2009.



- VI. Area belongs to Developer/New India - 55% of FAR as per Agreement dated 03.03.2007, the said FAR was however subsequently changed to 50% in light of the consent award dated 05.09.2009.
 - VII. Corporate Debtor in terms of the Agreement with New India dated 30.07.2010/16.09.2010/29.03.2011 was transferred entire FSI totaling to 8,00,000 sq. ft. area (residential) for developing/ erecting a housing project on the said Land.
 - VIII. Corporate Debtor launched instant residential project on the licensed portion of the land i.e. 10.8185 acres of land out of total 35.2062 acre by the name of 'Canary Greens'.
- 18.** The Respondent Nos. 1 to 4 i.e., the land owners also filed an affidavit with respect to the queries raised by this Adjudicating Authority vide order dated 29.08.2023.
- I. With respect to the query No. 1 which relates to the actual physical possession of the land in dispute, the land owners have submitted that the possession of the land in question is with the land owners w.e.f., 30.08.2019 i.e., date on which the Power of Attorney dated 9.01.2010, registered on 20.01.2010, executed by the land owners in favour of the Corporate Debtor was revoked by a registered deed dated 30.08.2019 by the land owners, which is prior to the passing of the CIRP order dated 31.10.2019. The land owners further submitted that the fact that the Resolution Professional has filed an IA-3356/2020 on 18.08.2020 praying for restoration of the physical possession of the land shows that the Resolution Professional does not have the possession with him and the actual possession of the land is with the land owners. The land owners have also responded to the other issues raised by this Adjudicating Authority which are not being adverted to at this stage.



19. In view of the clarifications given by the Resolution Professional and the Respondent Nos. 1 to 4, the land owners and the various contentions raised by the parties, the following issues emerged for consideration by this Adjudicating Authority.

20. In the above backdrop of facts and debates, the following issues emerge for consideration by this Adjudicating Authority.

1. Whether the Development Agreement entered into between the land owners and New India gives right to the New India to develop the land without having any right title over the disputed land.
2. Whether the alleged irrevocable Power of Attorney executed by Respondent No. 1 to 4 in favour of New India & M/s. Today Homes & Infrastructure Private Limited can be acted upon and considered to be valid despite the fact that the land owners i.e. (Respondent No. 1 to 4) have revoked the said Power of Attorney vide Registered Deed No. 489 dated 30.08.2019.
3. Whether the Resolution Professional has the actual possession of the land in question.

21. Mr. Saurabh Kripal, Learned Senior Counsel submitted that the landowners (Respondent Nos. 1 to 4) executed Development Agreement in favour of the New India City Developers Private Limited on 03.03.2007 for developing the said land in question giving absolute right to New India to develop, sell/transfer etc. on the said land of 10.81 acres. Thus, the landowners were left with no right in the land after entering into the said Development Agreement.

Mr. Kripal, Learned Senior Counsel referred to various clauses of the Development Agreement which are:

Clause-e of the Development Agreement reads as follows:



“The owners being desirous of developing the scheduled property has decided to entrust the development of the scheduled property to the Developer exclusively and irrevocably on the terms and conditions hereinafter contained.”

Clause-1 of the said agreement reads as follows:

“The Owners hereby entrust to the Developer exclusive and revocable rights for development of the scheduled property for group housing and/or Industrial IT Park /Cyber Park and or and as may be permissible under law along with any other land.”

Clause-7 of the Development Agreement provides for right to sub-contract, the said clause is extracted below:

“The Developer shall be entitled to carry on the development on, the scheduled property either independently or by appointing partners contractors, sub- contractors or other agencies. The Developer shall alone be responsible for the payment of the cost of Development or labour and other charges payable to such contractors, sub-contractors and the owners shall in no way be responsible for any failure or default of the developer. The owners shall only be entitled to sub-contract, development/construction in favour of contractors/sub-contractors as it deems fit with regard to the Owner's allocation. However any dispute or liability arising out of or in connection with the said development of the owner's allocation, the owner shall be exclusively liable for the same and shall indemnify and keep harmless the developer. The developer shall be bound to promote and develop the project as a Today Group Project.”

22. Mr. Saurabh Kripal, Learned Senior Counsel appearing for the Resolution Professional has submitted that the said development rights were duly transferred by New India in favour of the Corporate Debtor for the land admeasuring 10.81 acres approximately vide agreement dated 30.07.2010, Addendum to agreement dated 29.03.2011 for a consideration of Rs. 120 crores discharged by the Corporate Debtor by issuance of its equity shares. The right to develop the abovementioned 10.81 acres of land by the Corporate Debtor wherein the project Canary Greens is being developed was



coupled with a duly executed irrevocable Power of Attorney dated 19.01.2010 as entered between the Land Owners and the Corporate Debtor.

23. Mr. Kripal, Learned Senior Counsel has also submitted that, the Corporate Debtor in terms of the Development Agreement duly advertised its housing projects consisting of 583 units in 8 towers. By virtue of the said Development Agreement, right to develop the said subject land including right to transfer the said development including proportionate share in the land was transferred to the Corporate Debtor due to which, the said right is now a “property” of the Corporate Debtor as per Section 3(27) of the Code.

24. Mr. Kripal, Learned Senior Counsel relied upon a judgment passed by the Hon’ble Supreme Court of India in the matter of **Victory Iron Works Limited versus Jitendra Lohia and Another**, 2023 SCC Online SC 260 and submitted that the Hon’ble Supreme Court has recognized the development rights created in favour of the Corporate Debtor and under Development Agreement. The relevant observations of the Hon’ble Supreme Court are as follows:

“The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute “Property” within the meaning of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”. Since the expression “asset’ in common parlance denotes “property of any kind”, the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 180 and Section 52(a) of IBC.”



“It must be mentioned here that the explanation was originally limited to “the sub-section” but by Act 26 of 2018, the word “sub-section” was substituted by the word “section”. Therefore, the explanation under Section 18 will not provide an escape route for the Appellants. In any case, the bundle of rights and interests created in favour of the Corporate Debtor may even tantamount to creation of an implied agency under Chapter-X of the Indian Contract, 1872 and such agency may not even be amenable to termination in view of Section 202 of the said Act, since the creation of the same in favour of the Corporate Debtor was coupled with flow of consideration.”

- 25.** He, therefore, submitted that the rights and interest thus created are liable to be protected and such rights are not amenable to termination in terms of Section 202 of the Contract Act.
- 26.** Mr. Kripal, Learned Senior Counsel also submitted that the Resolution Plan is in consonance with the development rights vested with the Corporate Debtor by virtue of the Power of Attorney dated 19.01.2010 executed by the land owners in favour of the Corporate Debtor which constitute the intangible assets of the Corporate Debtor. Mr. Kripal, Learned Senior Counsel relied upon a judgment passed by NCLAT in the matter of ***New Okhla Industrial Development Authority versus Amit Agarwal, RP of Boulevard Projects Pvt. Ltd.*** (Company Appeal (AT) (Ins) No. 305/ 2021 in support of said contention.
- 27.** He further submitted that the revocation of Power of Attorney dated 19.01.2010 is non-est and bad in-law. Further, Civil Suit bearing No. 3694-209 has been filed before the Civil Judge Senior Judge, Gurugram seeking a decree for declaring that the Power of Attorney dated 19.01.2019 be valid. He further submitted that the Registered Deed executed between two parties cannot be revoked by unilateral registration of deed of revocation by one of the parties.



28. Be that as it may, the Resolution Applicant/Applicant, in this application has prayed for directing the Respondent No. 1 to 4 (land owners) to restore the peaceful vacant and physical possession of Canary Greens admeasuring 10.81 acres that is the land in question. The Resolution Professional has also prayed for directing the Respondent No. 5 and 6 to assist the Applicant in restoring the peaceful vacant and physical possession of the land in question. We are therefore, required to examine as to whether the Resolution Professional has the possession of the land in question. The Resolution Professional in the present application as well as in the affidavit filed by him pursuant to the order dated 29.08.2020 has submitted that he has got the possession of the land by virtue of the order dated 24.08.2020 passed in IA-3356/2020. However, the Resolution Professional could not place on record any evidence to show that the physical possession of the land in question was handed over to him. Furthermore, the Resolution Professional has filed the present application seeking a direction to Respondent No. 1 to 4 to hand over the possession of the land in question, the Respondent No. 1 to 4, the land owners have also disputed the fact that the possession of the land is with the Resolution Professional. In view of the said position, we are unable to convince ourselves that the possession of the land was handed over to the Resolution Professional and that the Resolution Professional is in possession of the land in question. Furthermore, we feel that the issue of possession has to be decided by a Civil Court having jurisdiction on the basis of oral and documentary evidence and this Adjudicating Authority is not competent to decide the same. We, therefore, cannot grant any relief as prayed for by the Resolution Professional in this application. Since, we are deciding the issue of possession only at this stage, we do not feel it appropriate to decide the other



questions with respect to rights of the Corporate Debtor under the Development Agreement, etc.

29. The present application i.e. IA-3356/2020 is **disposed of** accordingly.

30. IA-3629/2020:

This application has been filed by the erstwhile land owners and Respondent No. 1 to 4 in IA-3356/2020, seeking directions from this Adjudicating Authority to modify the ad interim Ex-parte order dated 24.08.2020 passed in IA-3356/2020 in IB-2130/ND/2019 on the ground that the said order was obtained by the Respondents without disclosing complete and correct facts of the case and without affording an opportunity for hearing of the Applicant herein.

In view of the order passed in IA-3356/2020, we do not deem it appropriate to pass any order in this application.

IA-3629/2020 is **disposed of** accordingly.

31. IA-5001/2021:

This application has been filed by the Applicants herein, who are claiming to be the land owners of the land ad-measuring 10.81 acres situated in Village Behrampur, Tehsil & District Gurugram in the State of Haryana seeking a direction to the Resolution Professional to exclude the project land ad-measuring 10.81 acres from the proposed Resolution Plan.

In view of the order passed in IA-3356/2020, we do not deem it appropriate to pass any order in this application.

IA-5001/2021 is **disposed of** accordingly.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**