

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB- 239/ND/2021**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

1. Amit Kumar Sinha
House No-C-401, The Ivy Apartments,
Sushant Lok-1, Block-A, Near Galleria
Market, Chakarpur (74), Gurgaon, Haryana-122002

..... Applicant/ Financial Creditor No. 1
2. Mr. Gopal Nori Sarma
A4-602, World Spa East, Sector-30,
Gurgaon, Haryana-122001

.....Applicant/ Financial Creditor No. 2
3. Mrs. Sonal Sarin
C-3/3193, Vasant Kunj, Near Delhi Public School,
Vasant Kunj, Vasant Kunj,
South West Delhi, Delhi-110070

.....Applicant/ Financial Creditor No. 3
4. Mr. Srivatsan Rajan
Villa No. 6, World Spa East, Sector-30/41,
Gurgaon, Haryana-122001

.....Applicant/ Financial Creditor No. 4
5. Mr. Rohithari Rajan
B2-404, Uniworld City Sector-30,
Gurgaon, Haryana-122001

.....Applicant/ Financial Creditor No. 5

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6. Mr. Sandeep Barasia
C77, Panchsheel Enclave, Haus Khas,
South Delhi, Delhi-110017
.....Applicant/ Financial Creditor No. 6
7. Mr. Kunaal Kumar
House No-C-77, 2nd Floor, Panchsheel Enclave,
South Delhi, Delhi-110017
.....Applicant/ Financial Creditor No. 7
8. Mr. Sandip Das
909 A, The Magnolia, DEF Galinks, DLF Phase 5,
Galleria DLF-IV, Gurgaon, Haryana-122009
.....Applicant/ Financial Creditor No. 8
9. Mrs. Manjushree Bansal
Flat no 1620-B, The Magnolias,
Golf Course Road, DLF Phase 5,
Gurgaon, Haryana-122009
.....Applicant/Financial Creditor No. 9
10. Mr. Gaurav Shrinagesh
B-403, Palm Spring Apartments,
Golf Course Road, Sector 54,
Gurgaon-122002
.....Applicant/ Financial Creditor No. 10
11. Mrs. Charu Chandrika Garg
258, Sector-A, Pocket-C, Vasant Kunj,
South West Delhi, Delhi-110070
.....Applicant/ Financial Creditor No. 11
12. Mr. Kapil Chadda
99 Fairways Vistas, Dubai Hills. PO Box 900163, Dubai, UAE
.....Applicant/ Financial Creditor No. 12
13. Mr. Rajiv Kumar Jain
House No-460, Sector-29, Arun Vihar, Noida,
Sector-37, Gautam Buddha Nagar, Uttar Pradesh, 201303
.....Applicant/ Financial Creditor No. 13
14. Mr. Rajeev Gupta
28 Union Park, Mumbai Bandra West,
Maharashtra-400050
.....Applicant/ Financial Creditor No. 14

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15. Mr. Manik Sehgal
B-58, Lajpat Nagar-1, Lajpat Nagar,
South Delhi-110024
.....Applicant/ Financial Creditor No. 15
16. Mr. Vivek Pandey
MGE 2 TW 04 12b, M3M, Golf Estate,
PH-2, Sector-65, VTC, Gurgaon, PO Gurgaon,
District: Gurgaon, Haryana-122001
.....Applicant/ Financial Creditor No. 16
17. Mr. Gaurav Bhatnagar
Villa 8, Street 5, Al Wasl, PO Box No. 64057, Dubai, UAE
.....Applicant/ Financial Creditor No. 17
18. Mr. Manoj Kumbhat
1012 La Salle Lane, Southlake, TX 76092 USA
.....Applicant/ Financial Creditor No. 18
19. Mr. Sanjay Misra
Plat No-701, Amber Court-1, M.G Road,
Essel Tower, Gurgaon, Haryana 122009
.....Applicant/Financial Creditor No. 19
20. Mr. Naveen Badhwar
CTC-304, The Crest, DLF City, Phase-5,
Park Drive, Gurgaon Sector-54, Gurgaon, Haryana-122011
.....Applicant/Financial Creditor No. 20
21. Mr. Narender Singh
21 B, South Drive, DLF Chattarpur, South Delhi, Delhi-110074
.....Applicant/Financial Creditor No. 21
22. Mr. Rahul Kale
C-31, DLF The Crest, DLF Phase 5, Sector 56,
Gurgaon-122011, Haryana
.....Applicant/Financial Creditor No. 22
23. Mrs. Pooja Garg
A-903, Bestech ParkView Spa, Sector-47,
South City-II, Gurgaon, South City
II. Farrukhnagar, Gurgaon, Haryana-122018
.....Applicant/ Financial Creditor No. 23

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24. Mr. Raghupati. Singhania
40, Friends Colony East, New Delhi
.....Applicant/Financial Creditor No. 24
25. Mr. Vikrampati Singhania
1/18, Shanti Niketan, New Delhi
.....Applicant/ Financial Creditor No. 25
26. Mr. Ashok Jaipuria
1/27, Shanti Niketan, Moti Bagh,
Chanakyapuri, New Delhi-110021
.....Applicant/ Financial Creditor No. 26
27. M/s. Cosmo Films Limited
1008, DLF Tower-A, Jasola District Centre,
New Delhi-110025
.....Applicant/Financial Creditor No. 27
28. M/s. Armaan Cansa Private Limited
18, Chinar Drive, DLF Chattarpur Farms,
Chattarpur, New Delhi - 110074
.....Applicant/ Financial Creditor No. 28
29. M/s. Brady Estates Private Limited
Brady House, 12-14, Veer Nariman Road, Fort, Mumbai-400001
.....Applicant/Financial Creditor No. 29
30. M/s. Dhanlakshmi Building Development Private Limited
Patriot Office, 3, Bahadur Shah Zafar Marg, New Delhi - 110002
.....Applicant/ Financial Creditor No. 30
31. Mr. Mohender Kathuria
S/o Mr. D D M Kathuria,
14/1107 Heritage City, MG Road, DLF II,
Near MG Road Metro station, Gurgaon, DLF QE, Haryana – 122002
.....Applicant/ Financial Creditor No. 31
32. Mr. Satish Laxman Barapatre, S/o Mr. Laxman Sitaram Barapatre,
8914 Tartan fields DR, Dublin, Ohio 43017,
United States of America
.....Applicant/ Financial Creditor No. 32

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33. Mr. Sandeep Maheshwari, S/o Mr. Ramesh Chand Maheshwari,
123, Gali no. 3, Akanksha Thapar Nagar, Meerut,
Meerut Cantt, Uttar Pradesh – 250001

.....Applicant/ Financial Creditor No. 33

34. Mr. Sacchindrakumar Gopikisan Kalantri,
Kalantri, 996, Sector A, Pocket B&C,
Vasant Kunj, New Delhi – 110070

.....Applicant/ Financial Creditor No. 34

35. Dr. Anupam Gupta
3 Hartopp Road, Four Oaks Park,
Sutton Coldfield – B742RH, United Kingdom

.....Applicant/ Financial Creditor No. 35

36. Mr. Gaurav Sabharwal,
57 – A, Central Avenue, Sainik Farm,
New Delhi – 110062

.....Applicant/ Financial Creditor No. 36

VERSUS

Ireo Private Limited

C-4, First Floor Malviya Nagar, New Delhi-110017

...Respondent/ Corporate Debtor

ORDER DELIVERED ON: 14.10.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

The instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity

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'the Rules') has been filed by Amit Kumar Sinha and Ors. (36 applicants), homebuyers/allottee of project "Ireo Gurgaon Hills" with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Ireo Private Limited, referred to as the corporate debtor.

2. The Respondent Company M/s. Ireo Private Limited (CIN No. U70101DL2004PTC125163) against whom initiation of Corporate Insolvency Resolution Process has been prayed for was incorporated on 15.03.2004 having its registered office situated at C-4, 1st Floor Malviya Nagar, New Delhi-110017. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Brief facts of the case are that the Corporate Debtor launched a project "Ireo Gurgaon Hills", proposed to build at Gurgaon Faridabad Expressway "Gwal-Phari", Sector 02, Gurugram, Haryana 122002 and as per site layout the project was to comprise of 268 apartments 3BHK & 4BHK apartments units ad-measuring approx. 4786.83 sq. ft. and 6388.05 sq. ft., respectively, it was to build on a land of total area of 15 acres approx.
4. Further, it is submitted that on the representation of the Corporate Debtor, the Applicants/Financial Creditors had booked 32 apartments in the project. Accordingly, "Apartment-Buyer-Agreement" (collectively referred here-in-as "ABAs") for each apartment was executed and the consideration was to be paid by the Applicants/Financial Creditors to the Corporate Debtor. Further, ABA provide that the Corporate Debtor would offer the possession of the apartments units to the Applicants/Financial Creditors within 42 months from the date of approval of the Building Plans/fulfillment of the

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pre-conditions imposed thereunder. ABA further provides that the Corporate Debtor was entitled to grace period of 180 days after the expiry of the commitment period and in the event of Corporate Debtor failed to offer the possession of the apartments units to the Applicants/Financial Creditors even in the end of the grace period, the Corporate Debtor will be liable to pay compensation of Rs. 10 per sq. ft. of the super area for every month's delay until actual possession is delivered. Thereafter, as per e-mail dated 26.03.2019 sent by the Corporate Debtor, the approval for the Building Plan for the project was received on 17.05.2012. Accordingly, in view of clause 14.3 of the ABA, the Applicants/Financial Creditors were entitled to receive possession of the said residential flat by 17.05.2016. However, none of the Applicants/Financial Creditors have been offered possession of their respective apartments units nor any notice of possession in terms of Clause 14.1 read with Clause 14.3 of the ABAs have been issued by the Corporate Debtor till date.

5. It is also submitted that most of the Financial Creditors have already paid substantial portion of total consideration of the apartments units. However, the possession of the apartments units has still not been handed over by the Corporate Debtor and some of the Applicants/Financial Creditors as recent as 19.03.2021 have received an e-mail from the Corporate Debtor informing them that the Corporate Debtor is unable to obtain the Occupation Certificate from the DTCP Haryana and complete the handover obligations due to non-completion of the interior works of the apartments/units owned by the Financial Creditors. Some of the Applicants/Financial Creditors have replied to the said e-mail dated 19.03.2021, denying the submission of the Corporate Debtor and inter-alia stating that completion of interior work and obtaining the OC are not interdependent obligations. Therefore, the Respondent had breach its obligations to complete the construction and deliver the possession of the apartments units. As per Section 5(7) read with Section 5(8) (f) of the Insolvency and Bankruptcy Code, 2016. Accordingly,

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filed the present application under Section 7 of the Code for initiation of corporate insolvency resolution process against Corporate Debtor. It is also submitted that total amount of debt is 298,79,47,031/- inclusive of interest at the rate of 18% per annum from 17.05.2016 till 31.03.2021. Further, it is also submitted that the Applicants/Financial Creditors also filed a complaint before the Haryana Real Estate Regulatory Authority Gurugram (HARERA). The said application was allowed by HARERA and the Corporate Debtor was directed to refund the amount as consideration along with interest. Appeals were filed before the Haryana Real Estate Appellate Tribunal and even 11 Applicants/Financial Creditors also approached to the National Consumer Disputes Re-dressal Commission seeking appropriate relief. Whereas, five Applicants/Financial Creditors also filed application under Section 7 of the I & B Code, before this Tribunal. Therefore, there is a default on the part of the Respondent. Accordingly, prayed for initiating CIRP process against the Respondent/Corporate Debtor.

6. On behalf of the Respondent, the detailed amended reply has been filed denying the allegations levelled in the averments mentioned in the application and submitted that the present application is liable to be dismissed on being barred of limitation as according to the Apartment Buyer Agreement for the allotment of the units proposed to build at Gurgaon Faridabad Expressway "Gwal-Pharie" each units of the same were sold in the year 2012 and the same were deliverable to the within 42 months from the date of the approval of the building plan/fulfilment of the pre-condition imposed therein with the grace period of the 180 days, accordingly, and as per the application version, the possession was to be delivered by 17.05.2016. Therefore, the present application is barred by limitation as the same was required to be filed within 3 years from the alleged date of default i.e., by May 2019, whereas the present application has been filed after 4 years from the date of the alleged default being filed in the month of April

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2021. The Respondent also relied upon citation ***B.K. Educational Services Private Limited Vs. Parag Gupta & Associates; 2019 11 SCC 633.***

7. Further, it is also submitted that under the ABA the Respondent was only obligated to construct and deliver the respective units apartments in a bare-shell condition and it was the individual responsibility of the respective Applicants/Allottees to customize and finish the interior works of their respective units/apartments. The Respondent also relied upon Recital E & Recital H of the ABA.

8. It is also submitted that the Applicants has not come with the clean hands as they failed to disclose that the units were to be handed-over in bare-shell condition and further that as per Clause 13 of the ABA, allottees to carry-out the internal/interior work to his or her satisfaction and Clause 1 of the ABA defines the occupation certificate. Further, the Punjab Scheduled Roads and Controlled Areas Restriction of the Unregulated Development Rules, 1965 provides minimum requirements in relation to the residential building and relied upon Rules 56 of the same. Thus the conjoint reading of Haryana Building Code, 2017 with the ABA, clearly implies that an OC can only be granted to the Respondent once the requirements of Rule 7.15 of the Haryana Building Code, 2017 which supersede Rule 56 of the Punjab Rules, i.e. completion of internal/interior work is to be met by Applicants/Allottees and only due to the default on the part of the Applicants the Respondent could not meet the minimum requirements as prescribed in the said Rule 7.15 of the Haryana Building Code, 2017, consequent to which the Corporate Debtor, was not entitled to apply for an OC. Further, the schedule clearly enumerates each item of work in the apartment and its adjacent spaces and allocates the responsibility to the Respondent or the Allottees in completion of the project. Accordingly, relied upon the Annexure V Schedule III of the same.

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Further, it is also submitted that the Respondent has done its part of obligation according to the contractual requirement.

9. Further, it is also submitted that the Respondent has always been prompt in submitting all drawings, building plans and revision etc., following up the authorities for various approval accordingly, is not on default. Upon discharge of its obligations, the respondent in accordance with ABA applied for grant of an "in-Principle" OC with the concerned authority on 24.09.2018. Though, the Rule do not allow for any "in-principle" OC. The Respondent was constrained to apply for the grant of the same, because despite the Respondent finishing construction of the bare-shell apartment, the Applicants showed no inclination to start the interior work. Thus, the application for grant of "in-principle" OC was rejected for failure to meet the requirement of the Haryana Building Court, which duly reflects that the statutory mandated internal construction and other work that are essential for the grant of OC were not carried out and an internal construction and the other work was the duty and obligation of the Applicant as per term ABA, thus the "in-principle" OC was not approved, because of the failure of the Applicants as Allottees to discharge their freely assumed obligation under ABA.
10. It is also submitted that as per the field report filed by Sewage Treatment Plant dated 26.11.2018, the outer face of all the towers were finished as required for obtaining the occupation certificate. The internal walls of the Rooms, toilets, kitchens and other approved areas in the Apartments/units were not constructed at the site and were bare-shell as on date. As per ABA entered between the Applicant and the Respondent work assigned to the Respondent for obtaining occupation certificate have been completed in time framed provided, but the interior/internal work in the apartments allotted to the applicants were to be completed by the applicants as per

the agreements. Applicants also relied upon copy of letter of department of DTCP Haryana.

11. It is also submitted that the Respondent vide letter dated 09.01.2019 made a representation to the DTCP that the Respondent had fully completed the construction of the project at its end including all internal and external services which has been laid out. The Respondent also represented that there were no dues, EDC etc or any other outstanding amounts to the Government at the time of sanctioning of license No. 26 of 2011 dated 26.04.2011 and 41 of 2014 dated 13.06.2014 in fact the Respondent had fully complied with all its obligation under the ABA to allow the applicants in the allotted premises for completion of their respective apartments. Since the Respondent had applied for occupation certificate after completing all its obligations except finishing of the interior walls and "in-principle" occupation certificate was granted to the Respondent leaving the Applicants to complete their respective interiors and to take the occupation certificate or the respective apartments after finishing their interiors. Further, DTCP vide letter dated 14.02.2019 made a observation that interior work in the apartments was not completed, however, it is also submitted that as per the terms of the ABA, the interior work to be done by Applicant, which the applicant grossly failed to do so. Thus, it is actually the applicant defaulted in performing their part of agreement. Further, it is submitted that respondent after finishing minimum work applied again for occupation certificate vide letter date 06.08.2021. Accordingly, DTCP Haryana directed the respondent to fulfil the certain compliances, which the Company has already proceeded with the completion OC compliances and further to this DTCP permit to complete the interior work and fit outs. The said conditions of the DTCP were renewal of licenses, revalidation of building plan and submission of report from HBPNL within a period of 60 days from the date of grant of Occupation Certificate as no such condition was imposed while approval of Building Plans.

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12. It is also submitted that applicants having allotted apartments failed to submit a single drawing from amongst and various requirements for this purpose, whereas the every opportunity was given to the applicants by various communications in the shape of ordinary post and through e-mail / telephonic updates etc., the said communications were made in the month of March/April/September 2016, reminding allottees to adhere to their part of obligations qua the project. The Respondent yet again invited the applicants via e-mail in the month of September 2019 and again in March and requested Applicant to finish their part of the obligations, but applicant never adhere to their part of contractual obligations and even after giving constant reminders. Thus, there was no residual obligation remaining on the part of the Respondent. The applicants are wilful defaulters and they have defaulted qua the obligation to make timely payment of instalments and other dues. Accordingly, relied upon the request's letters dated 29.03.2017, 24.04.2017 and 15.05.2017.
13. It is also submitted that the respondent has invested approx. Rs. 507 Crores in the said project and the implementation of the said project was hampered due to non-payment of instalments by allottees including the applicants on time. It is also submitted that applicants are only speculative investors and were looking for short terms gains on resale of the Apartments in question. In view of the general recession in the Real Estate market and stability in the prices, the applicant could not materialise his plans to commercially exploit the apartments in question. The amount accepted by the Respondent is not towards any investment of fixed deposit scheme, wherein the depositor is refunded the money with interest. The applicant is well aware of the terms and conditions of the said agreement. Thus, the present petition has been filed with a malicious intent for the purpose other than the Resolution of Insolvency. Accordingly, prayed for imposing penalty under Section 65 of the Code **and** also relied upon citation: ***Pioneer Urban Land and Infrastructure Pvt. Ltd. And anr Vs.***

Union Bank of India 2019 (8) SCC 416, Navin Raheja Vs. Shipla Jain and others (company Appeal AT (insolvency) No. 864 of 2019.

14. Further, it is also submitted that the project is complete as regard to the duties and obligations of the respondent and well within time, it is the applicants who have defaulted in failing to carry out the internal/interior work as per their wilful undertaking of obligations under the ABA. It is also submitted that the beneficial legislation like the present one is being grossly abused and is being misused with impunity by the Applicants/Home-Buyer to somehow coerce the Respondent/Corporate Debtor to recover their investments with handsome return while the real estate market has rapidly fallen. The intent of the legislature while including genuine home-buyers in the definition of financial creditors was to deter the errant developers, restart projects which were stuck-off and penalize by night operators. However, the rampant misuse of this beneficial legislation had a draconian impact on the ongoing projects as developers are being forced to offer refunds in a desperate bid to stay solvent thereby hampering their ability to complete ongoing projects. Further it is submitted that there is no debt payable by the Respondent to the Applicant within the meaning of Section 3(11) of the Code. Accordingly, prayed for dismissal of the present application under Section 7 of IB Code.
15. On behalf of the applicant, the rejoinder has been filed to the reply filed on behalf of the respondent/corporate debtor alleging that the contents of the reply are false, misconceived and based on conjectures and self-serving assumptions having no basis in law and facts. Preliminary submissions have been made stating that the project started from the year 2012 and the individuals disbursed the payment and executed "Apartment-Buyer-Agreement" with the respondent/corporate debtor and a sum of Rs. 1,62,55,66,748/- have been disbursed by the Financial Creditors to the respondent/corporate debtor. Thus, the total amount of debt owed by the respondent/corporate debtor to the applicants is computed approximately

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Rs. 2,98,79,47,031/- inclusive of interest calculated @ 18% per annum from 17.05.2016 to 31.03.2021.

16. Further, it is submitted that Clause 14.3 of "ABA" provides that the corporate debtor would offer the possession of the apartments to the applicants/financial creditors within 42 months from the date of approval of the building plan or fulfilment of the pre-conditions imposed thereunder. The said clause also has a provision for extension/grace period of 180 days. Clause 14.5 of the ABA provides that in the event of delay beyond 12 months from the end of such grace period the applicant/financial creditor would be at liberty to opt for termination of the ABAs and the refund of the actual paid up instalments along with the compensation for delay. Though, the respondent /corporate debtor vide email dated 26.03.2019 stated that the approval of the building plan was received on 17.05.2012, accordingly, the possession was to be delivered to 17.05.2016 after the date of the approval of the building plan. As per the DTCPs order dated 02.08.2021, the building plans underwent revision and revised building plans was approved on 26.10.2017, but such a revision was not communicated to the applicants/financial creditors even vide corporate debtor's email dated 26.03.2019. Till date none of the applicants/financial creditors have been offered for their respective apartments. Even, no notice of possession in terms of Clause 14.1 and 14.3 of the ABAs has been issued by the respondent/corporate debtor. The Corporate debtor vide email dated 19.03.2021, 09.08.2016, 31.07.2018 and 26.09.2018 acknowledged its liability and default in failure to hand over the possession of the flats. Thus, the respondent/corporate debtor has breached its obligations to construct, complete and deliver the possession of the apartments. The corporate debtor failed to offer the possession of the apartments. Accordingly, the failure to deliver the possession of the apartment is continuing wrong and constituting a

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recurring cause of action till the possession of the apartments are delivered to the Home Buyers.

17. Further, it is submitted that DTCP's order dated 02.08.2021 shows that the revised building plan was sanctioned by the DTCP vide memo dated 26.10.2017. Accordingly, the Corporate Debtor was also directed to renew its licences and revalidate the building plans. Even, the letter dated 16.08.2021 to the DTCP shows that the compounding fees for revalidation of the building plan was only deposited on that day. Therefore, there was delay in delivery of the possession on one pretext or other by Corporate Debtor. Although, after the date of default i.e. 17.05.2016, the respondent/corporate debtor carried out the development works, issued receipts to and accepted payments from many of the applicants/financial creditors. The applicant relied on the citation "***Bhajan Singh Samra Versus Dimpi International Limited 2011 SCC online Delhi 4888.***"
18. It is also submitted that though the respondent/corporate debtor pleaded that they only opted to deliver the apartments in a bare-shell condition and it was individual responsibility of the respective applicants/financial creditors to customized and finish the internal work and such internal works owed to be completed by all the applicants to enable the respondent/corporate debtor to receive/apply for an occupation certificate qua the project, but Clause 14 of "ABA" laid down the procedure for delivery of the possession and further provides for a notice of the possession. The respondent/corporate debtor shirked from its obligation under "ABA" and the respondent/corporate debtor has created a façade that it was unable to offer the possession without occupation certificate, which could only be obtained by the respondent/corporate debtor. The said facts are totally misconceived and baseless. Further, it is submitted that there is no provision in the "ABA" which makes it mandatory for the applicants/financial creditors to complete the internal works before

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offering the possession of the apartments. Clause 13.1 merely provides that if such permission is sought, the company may allow an allottee to carry out interior works prior to handing over the possession provided all obligations are fulfilled by the applicant, however, delivery of the possession is in no manner dependent on completion of interior works. As such "permission" to carry out the interior work cannot be confused/substituted for main delivery of the possession of the apartment. Corporate Debtors own letter dated 09.01.2019 to the DTCP seeking grant of occupation certificate shows that the respondent/corporate debtor sought for the occupation certificate to enable the allottees to complete interior works. Such a letter defeats the arguments of the corporate debtor that it cannot get the occupation certification without completion of the interior works. DTCP vide order dated 02.08.2021 had made certain observations, which clearly shows that the respondent/corporate debtor has not undertaken complete construction in accordance with approved and revised building plans. Respondent/corporate debtor has also deposited compounding fees for internal changes and such depositing of compounding fees was clearly done to regularize/compound certain offences committed by the respondent/corporate debtor, which again proved the default on its part.

19. Further, it is also submitted that the respondent/corporate debtor is claiming that its obligations were discharged with the construction of the structure of the tower that the apartments were to be delivered in a bare-shell condition and an occupation certificate could not be granted as the applicant/financial creditor failed to complete the interior works, whereas on other hand a bare perusal of the DTCP order dated 02.08.2021 shows that the occupation certificate was not granted because the respondent/corporate debtor has not completed the construction as per revised and approved building plan. Thus, the respondent/corporate debtor cannot be allowed to blow hot & cold in the same brief. Therefore,

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the respondent/corporate debtor has made false, contrary and misconceived submissions in its reply.

20. Further, it is submitted that according to Clause 4.10 of the Haryana Building Code, 2017 lists of number of documents and approvals to be submitted along with the application for grant of occupation certificate such as completion certificate from Bureau of Energy Efficiency in accordance to the orders/policies issued by the Renewable Energy Department and Energy Conservation Building Code, 2007, NoC of Fire Safety from the concerned Chief Fire officer. There is nothing on record to show that such documents and approval has been obtained by the respondent/corporate debtor and there is nothing to show that the Environment Clearance and CTE for the project is valid as on date. Further, many apartments are lying unsold in the project as such occupation certificate may not be obtained till the time each and every apartment is sold and all respective buyers complete their internal work. The respondent only relies Rs. 1,62,55,66,748/- i.e. 92.98% (approx.) of total consideration of amount of Rs. 1,74,81,44,745.22/-. The applicant/financial creditor has paid for all the milestones as per the construction linked payment plan and the amounts pending to be paid are only linked to the last two milestones, which the corporate debtor/respondent has failed to achieve. The said two instalments were to be paid in subsequent manner i.e. 10% on filing of occupation certification and 5% BSP + IFMS and other charges on receipt of occupation certification/offer of possession, which evident that the applicant/financial creditor has paid all the dues.
21. It is also submitted respondent/corporate debtor was obliged to deliver the possession of the apartments by 17.05.2016, which it failed. Accordingly, the allottees were entitled to terminate the contract, therefore the applicants/financial creditors are well within their right to

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terminate the "ABA" and claim the refund of the amount. In addition to that, there are number of pending petitions against the respondent corporate debtor. Hence, there is a consequent default on the part of the respondent/corporate debtor. Further, as per the audit compliance report dated 17.09.2021, there were total receipts upto 31.03.2021 of Rs. 444.18 Crores, whereas the total expenditure was Rs. 685.45 Crores, which clearly proves that the project was in heavy losses, which resulted in default qua classification and debt of default and there was failure the deliver the possession of the apartments as per the agreement on the part of the respondent/corporate debtor and also relied upon "*Pioneer Urban Land and Infrastructure Limited Versus Union of India (2019) 8 SCC 416.*" Accordingly, prayed for acceptance of the present application.

22. We have heard Ld. Counsel for both the parties and thoroughly perused the records. After going through the pleadings of both the parties, the following points of determination have arisen:
- i. **Whether the present petitioners being home buyers constitute 10% of the total allottees and are entitled to file the present application against the respondent/corporate debtor?**
 - ii. **Whether the present petition is time barred?**
 - iii. **Whether the respondent has committed default in not delivering the possession of the flats in the project Ireo Gurgaon Hills?**
 - iv. **Whether the applicants are entitled to trigger CIRP proceedings against the Respondent/Corporate Debtor?**
 - v. **Relief.**

FINDINGS WITH REASONS

POINT NO. I:

23. Undisputedly, there were 268 apartments (units) in the project and only 115 units have been allotted. The present petition has been filed by 30 applicant/financial creditors/home buyers, who were allotted 32 apartments. Apart that six more applicants also joined the proceedings by virtue of application for impleadment,

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which was accordingly allowed vide order dated 28.07.2022. In this context, it is relevant to reproduce Section 7 of the IBC, 2016, which is as under :-

“7. (1) A financial creditor either by itself or jointly with ¹[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

24. From the bare perusal of the above said Section 7 (1) of IBC, 2016 , It is clear that if 10% of the total allottees in the real estate project filed the petition, then the eligibility criteria for filling the same shall be met out. In the present matter in hand, there are 36 applicants/financial creditors being allottees of 38 units in the project namely “Ireo Gurgaon Hills”, against a total number of 115 allottees. Hence, the eligibility criteria to maintain the present petition by the present applicants has been met out. Accordingly, the present application on behalf of the present applicants is maintainable. Thus, the present issue, stands decided in the favour of the applicants.

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POINT NO. II:

25. On behalf of the Respondent it is being contended that the present petition is hopelessly time barred as the possession of the bare-shell apartment was to be given within 42 months from the date of approval of the building plan and the flats were booked in the year 2012, accordingly, the date of default has been raised as on 17.05.2016, therefore, the present application ought to have been filed within a period of 3 years from the alleged date of default i.e. by May 2019, whereas the present petition has been filed in April 2021 that is after a period of more than 4 years from the date of alleged default.
26. On the other hand, Ld. Counsel for the Applicants vehemently contended that the application is within this stipulated period as the cause of action is recurring and continuing one, though the possession was to be delivered by May 2016, but the same has not been delivered till date. Further, there was continuous acknowledgment of the debt by the Corporate Debtor vide e-mail dated 09.08.2016, 31.07.2018 and 26.09.2018. The applicants relied upon the citation: **Mehnga Singh Khera Vs. Unitech Ltd. 2019 SCC Online passed by Hon'ble NCDRC, Delhi.** Apparently, the apartments in the project Ireo Gurgaon Hills were booked by most of the home-buyers in the year 2012 and the possession was to be delivered within a period of 42 months, and extended period of 180 days. Though, the possession was to be delivered by May 2016, but it is matter of fact that the physical possession of apartments is still under dispute, therefore, cause of action is continuing one, hence, the principle laid down in **Mehnga Singh Khera (supra)** is squarely applicable to the present facts. Accordingly, the present issue stands decided in the favour of the Applicants.

POINT NO. III & IV:

27. Both these points are inter-connected, accordingly, the same are discussed together in order to avoid repetition of the facts and evidence on the record. Before embarking upon the detailed discussion of the matter in question, it would be appropriate to go through the "Apartments-Buyer-Agreement" entered into between the applicants and the Corporate Debtor. The Recital E, H & Clause 13 of the same are reproduced below:-

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Recital E:

"The company is also fully authorized by the Confirming Party to receive applications for the allotment of residential apartments in bare-shell conditions and to impose conditions make allotments and otherwise deal with, negotiate, finalize, sign an execute the sale, agreements, conveyance deeds and all such incidental documents as may be reasonably necessary to give effect to this agreement, and also to receive the sale consideration and other charges or dues as stated in this agreement from the purchaser/allottees."

Recital H

"The Allottee, after fully satisfying itself with respect to the right, title and interest of the confirming party in the said Land, the approvals and sanctions for Ireo Gurgaon Hills project in favour of the confirming party as well as the designs, specifications and suitability of the proposed construction, has applied to the Company vide application dated [_____] ("Application") for allotment of unfinished residential apartment no [_____] on [_____] floor, [_____] tower having a Super Area of [_____] sq. ft., or thereabouts approximately in bare-shell condition, together with the exclusive right to use [_____] nos. Parking Spaces, which shall form an indivisible part thereof (hereinafter collectively referred to as the "Apartment")."

Further, the Clause 13 of the ABA is as under :

"13.1 Subject to the Allottees having fulfilled all its obligations under this agreement, the company shall permit the Allottees to carry out interior works in the said Apartment prior to handing over the possession of the said Apartment. However, such permission shall not be construed as, and in no way entitle the Allottee to have any right, interest or title whatsoever, in respect of the said Apartment.

XXXX

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13.3 The Allottee shall complete the interior work in the said Apartment within a period of 9 months from the date of grant of permission for interior works, failing which the allottee shall pay to the Company as penalty, Rs. 25/per sq. ft. per month for 0-3 month, Rs. 40/- per sq. ft. per month for 3-6 month & Rs. 50/- per sq. ft. per month more than 6 months, for the period of delay. In the event of delay in completion of interior works beyond a period of 12 months from the date of expiry of the aforesaid period, the company shall entitle to cancel the allotment and terminate this Agreement. The Allottee further agrees that in the event of such termination of this Agreement, the Company shall not be responsible or liable to

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reimburse or refund any cost and expenses incurred by the Allottee in carrying out the interior works in the said Apartment and the Allottee shall not raise any dispute or claim in this regard."

28. From the bare perusal of the above said recital & clauses, it is apparent that the Respondent/Corporate Debtor herein had to provide the residential apartment in "bare-shell condition", whereas there were obligations on the allottees, which are to be fulfilled i.e., to carry out the interior work in the said apartment prior to handing over the possession of the said apartment. Further, it is also laid down that the said permission shall not be construed as and in no way entitled the allottee to have any right, interest or title whatsoever in the said apartment. Although, the abovesaid Apartment-Buyer-Agreement appears to be loaded in the favour of the Corporate Debtor, but once the parties have agreed voluntarily and they are made aware of the fact that certain payment qua the apartment has to be given to the Corporate Debtor while entering into the such Agreement that the rest of the interior work has to be completed by the home-buyer/Allottees themselves, according to their choice, therefore, the parties are bound by that agreement. In this context, it is also pertinent to mention that the cost of each apartment in "Ireo-Gurgaon-Hills" is Rs. 5 crores approximately. Then, certainly the allottees are of such a class that they have preferred to get the interior work done in the project according to their choice by investing the amount from their own pocket. Clause 13.3 clearly lays down that the allottee shall complete the interior work in the said apartment within the period of 9 months from the date of grant of the permission of the interior work, failing which, the allottee shall be liable to pay certain cost on monthly basis for such a delay. Thus, there was a specific agreement between the parties, according to the building plan, that other work has to be carried out by the Respondent/Corporate Debtor, whereas the "interior work" in the bare-shell apartment to be provided by the Respondent/Corporate Debtor, was to be done by the allottees.
29. On behalf of the Applicant, Ld. Counsel stressed upon the arguments that no "Occupancy Certificate" was obtained and the project was delayed, therefore, a right had accrued in favour of the applicant to initiate CIRP proceedings against the Respondent/Corporate Debtor. In this context, it is worthwhile to go through the

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complaints that some of the home-buyers had made to the DTCP office Haryana qua the project. Later on, one writ petition No. 4475/2017 was filed, wherein the Hon'ble High Court vide order dated 06.03.2017 had given a direction to the DTCP office to pass a reasoned order, which was accordingly, passed on 27.09.2017. In this context, it would be appropriate to reproduce the order passed by the DTCP dated 02.08.2021, which is as under: -

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ORDER

The Licence No. 36 of 2011 dated 26.04.2011 and Licence No. 41 of 2014 were granted in favour of Nucleus Conbuild Pvt. for setting up of Group Housing Colony on land measuring 15.55625 acre in sector-2, Gwal Pahari, Gurugram. These licences are valid upto 25.04.2021 and 12.06.2021 respectively.

2. The building plans of the group Housing were approved on 17.05.2012. The allottees of the apartments in the said project had filed CWP No. 4475 of 2017 and the same was disposed of vide orders dated 06.03.2017 with a direction to take cognizance of the complaints received from the petitioners and pass reasoned order. The orders in this case were passed 27.09.2017. The issue of approval of building plans was also deliberated in the speaking orders.

3. The petitioners alleged that they were allotted bare shell apartments in the projects as per the brochure whereas detailed plans have been approved. The copy of the builder buyer agreement was also referred. As per the said agreement the apartment was to be allotted as bare shell. In this regard, this issue has been decided on 27.09.2017 by the then DTCP as under:-

"With regard to contention of the petitioners that they were allotted bare shell apartments in the project as per the brochure, whereas detailed plans have been approved, I hold the issue as bilateral between the two parties as per their contract agreement in-between. The Department has to examine the building plans in accordance with the applicable building byelaws. There is no challenge on the technical ground, hence the issue raised is not considered maintainable as far as Department of Town and Country Planning is concerned. The complainant agreed that he insisted bare shell apartment given and accordingly accepted to the extent that it is matter of consent.

..... X ... X X

The Department examines building plans as per the terms and conditions of grant of license and applicable building byelaws thereon. Even as per latest Building Code adopted by the State, provision No. 4.6 allows us to accept any revision in the Building Plans during the period of construction. We are duty bound to accept such building plans if the same is in accordance of Building Code, if appropriate procedure is adopted. If any bilateral issue is violated or subsumed in the process, it is left to the individual parties to enforce any such contractual issue. The Building Plans are reported to be in order as per Rules 1965 and Haryana Building Code-2017. It has been further reported at the time of hearing that the construction of concrete walls/columns is not violation of building by laws unless it affects the minimum light and ventilation required for the building or part of the building. The deviations from approved building plans, if covered under the composition policy, can be compounded before grant of Occupation certificate. Hence, the objection is not technically tenable on technical grounds".

4. The revised Building Plans were approved on 26.10.2017. The building Plans of Towers-A, B, C & D are valid upto 25.10.2022 and the validity of building Plans of EWS Block, Convenient Shopping was upto 25.10.2019 as the height of the same is less than 15 mtrs.

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5. The Licensee had applied had applied for grant of Occupation Certificate for Towers-A, B, C, D, EWS Block, Convenient Shopping and Basement (under Tower-A, B, C, D) falling on GH scheme measuring 15.55625 acres on 24.09.2018.

6. DTP, Gurugram after inspecting the site, vide his report dated 16.11.2018 informed that the internal walls of rooms, toilets, kitchens and others approved in the units are not constructed at site and are bare shell as on date and builder-buyer agreement was attached. Outer façade of all the towers is finished. Entire area of units were taken as internal changes in composition perform.

7. The licensee vide application dated 3.10.2019 informed that they have completed work of internal partitions, fittings and fixtures and requested for grant of Occupation Certificate.

8. STP, Gurugram vide letter dated 4.12.2019 sent a fresh report and the following note was inserted in the report:-

"Now, the applicant company has given an application in this office as referred above stating that they have completed in the internal partition walls made of fibre cement flat sheets, specified under IS Code 14862:2000. These sheets covers sheets intended for external applications such as cladding facades, curtain walls, soffits etc. and sheets intended for internal use such as partitions, floors, ceilings etc., with a wide range of properties appropriate to the type of application. These sheets may have either a smooth or textured surface. They have constructed non-load bearing dry walls for internal partition in the apartments/units.

The applicant company informed that "we have entered into apartment Buyers Agreement with allottees with this specific condition that the allottee shall carry out interior works in their respective units. The same has been inspected at site & photographs are enclosed herewith alongwith videography. The site is visited in all aspects and all internal work partition in the form of cement fibre board fitting and fixtures of the unit has been done and decision regarding fulfillment of minimum provision with regard to dwelling units for occupation as per HBC Clause 7.15 (which refers each dwelling units shall have minimum provisions, for granting permission to construct or use/occupy i.e. living/bed rooms and one kitchen, one bath/one W/C) and as per IS code mentioned above, may be taken at the level of Directorate".

9. Thereafter, vide memo dated 27.11.2020, DTP Gurugram has informed that the status of construction is the same as of now i.e. as conveyed earlier vide memo dated 04.12.2019.

10. It has been brought to my notice that in the approved revised Building Plans vide memo dated 26.10.2017, the division of internal spaces within the apartments was clearly indicated. The comments of Architect (HQ) regarding pros and

cons of grant of Occupation certificate for bare shell construction have been taken into consideration. Now, the applicant company has applied for Occupation certificate by providing only for a toilet and kitchen and internal partitions made of fiber cement flat sheet and complete construction has not been done in accordance with approved Building Plans.

11. As per Code 1.2 (xxii) of the Haryana Building Code-2017, "dwelling Unit" means a building or a part thereof which is used or is intended to be used by a person or family for habitation comprising of Kitchen, toilet and room;

12. Architect (H.Q) has further referred the provisions of code 4.6(2) and code 7.15 of HBC -2017 which are reproduced as under:-

4.6(2) Any notice and building approval is not necessary for compoundable alterations/ violations, which do not otherwise violate any provisions regarding general building requirements, structural stability and fire safety requirements of this building Code.

7.15 Minimum provisions with regard to dwelling unit

Each dwelling unit shall have following minimum provisions, for granting permission to construct or use/ occupy:

Economic Weaker Section (EWS)	Other than EWS
(iv) Living/ bedrooms;	(iv) Living/ bedrooms;
(v) One Pantry;	(v) One kitchen;
(vi) One Bathroom and water closet (W.C) integrated.	(vi) One Bathroom and One latrine or W.C integrated.

13. As per comments of Architect (H.Q), even though the applicant company has fulfilled the minimum requirement of a dwelling unit as per code 7.15 of HBC -2017, however, if the case is to be considered then the internal changes from earlier approved plans i.e. internal partitions with change of material would be required to be compounded as per code 4.6(2).

14. In view of the comments of Architect (H.Q), it is clear that the case for grant of Occupation certificate is considerable after compounding of internal changes. The licensee in this case has already deposited composition fee in advance for internal changes. The same is considerable in view of the provisions of HBC as well as composition policy of the department.

15. Mr. Lalit Goyal on behalf of licensee appeared before me for hearing on 9.6.2021 to explain his justification for grant of Occupation Certificate on the above mentioned issues. His submissions are outlined as under:-

j) The building has been constructed in accordance with the building bye-laws and in accordance with the terms and conditions of Builder - Buyer agreement.

k) The relevant clauses of Builder - Buyer agreement are as under:-

13.2. The Allottee undertakes and agrees that the interior works carried out by it in the said apartment shall strictly conform to the National

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Building Code of India, 2011 published by the Bureau of Indian Standards. The allottee shall obtain prior approval from the Company on all the internal layouts, detailed drawings and designs, before commencement of interior works in the said Apartment. It is made clear to the allottee that the interior works shall only be allowed to be carried out during the normal works hours i.e. 8.30 a.m. to 7.00 p.m. on normal working days and no interior works shall be carried out on Sundays and public holidays. However, the company may at its sole discretion permit the allottee to carry interior works beyond the specified working hours and on Sundays or any public holiday upon receiving a written request from the allottee in this regard.

19.1. The company has made it expressly clear to the allottee that the rights of the company in the said apartment agreed to be conveyed/sold/transferred herein are circumscribed by the subject to the conditions imposed by the DTCP and/or any other statutory authority (ies).

19.2. The allottee shall observe all terms and conditions of this Apartment, and also those conditions, restrictions and other stipulations imposed in respect of Ireo Gurgaon Hills project by virtue of the Licence and shall also abide by the applicable Zoning Plans, Building Plans and all laws, bye-laws, rules, regulations and policies applicable to the said Apartment and/or Ireo Gurgaon Hills project or as imposed or may be imposed in future under any applicable law. The allottee shall also observe the rules, regulations and policies as may be made pursuant to and/or set out in the Maintenance Agreement.

- l) The renovation works are done in every kind of Group Housing without the requirement of approval from DTCP.
- m) The interior design is prerogative of flat owner and he himself has got done interiors of his flat according to his taste and requirements.
- n) With no compromise on structure, non load bearing elements like partitions can be altered or removed. Even glass partition of attached toilet are being executed.
- o) Dry wall concept is in place in different countries across the world.
- p) The minimum requirement of a dwelling unit is fulfilled.
- q) All the requirements from public health point of view, structural point of view, fire NOC, environmental clearance are complied with.
- r) He was bound to do construction as per Builder - Buyer agreement to avoid legal complications before HRERA.

16. In view of above submissions, he requested for grant of Occupation Certificate on the conditions that may be imposed by the Department. He agreed to comply all the conditions imposed while granting Occupation Certificate.

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17. The applicant has deposited composition fee for internal changes and now the issues that remains to be decided are as under:-

- d) Whether, the Builder Buyer agreement is binding on the department for granting approvals.
- e) Whether the Occupation Certificate can be granted for bare shell apartment.
- f) Whether Occupation Certificate can be granted for an apartment where minimum requirement of habitable unit is fulfilled but further internal works are to be carried out?

18. The issues mentioned in para 17 are decided as under:-

- (d) The Builder Buyer agreement is not binding on the department for granting approvals and the approvals are to be granted in accordance with the applicable Acts and rules. As per the orders of Hon'ble Supreme Court of India passed in CA No. 550 of 2003 the department can not intervene in the bilateral agreement executed between the other parties i.e. Builder and Buyer.
- (e) Occupation Certificate can be granted in case of bare shell where minimum requirement of habitable dwelling unit is fulfilled.
- (f) Occupation Certificate can be granted for an apartment where minimum requirement of habitable unit is fulfilled even if further internal works are to be carried out.

In view of the above deliberations, the present case is decided in following terms:-

- (v) The case for grant of occupation certificate be put up without any further loss of time.
- (vi) The Occupation Certificate shall be released on the fulfillment of the following conditions:-
 - (d) Renewal of licences.
 - (e) Revalidation of Building Plans.
 - (f) Submission of report from HVPNL within a period of 60 days from the date of grant of Occupation Certificate as no such condition was imposed while approval of Building Plans.
- (vii) The Occupation Certificate is being granted in order to give possession to the allottees to complete internal works as per the approved Building Plans.
- (viii) No deviation from approved building plans is allowed as the same may affect the structural safety aspects, however, the Department shall not have any objection if any internal wall is not constructed.

The orders reserved on 9.06.2021 are pronounced today. To be communicated to the concerned.

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(K. Makrand Pandurang)
DTCP, 02/02/2021

30. From the bare perusal of the abovesaid order, it is apparent that vide order dated 27.09.2017 which was passed by the DTCP in compliance to the order passed in CWP No. 4475 of 2017, it was clearly laid down that, Applicants were allotted bare-shell

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apartment in the project as per the brochure, whereas the detailed plans have been approved. Accordingly, DTCP held the issues as *bilateral between two parties as per the contract agreement in between*. Further, it is also specifically stated in the said order that there is no challenge on the technical ground, hence issue raised is not considered maintainable as far as the Department of Town & Country Planning is concerned. It is also laid down that the complainant agreed and insisted that bare-shell apartment be given and accordingly, accepted to that extent, it is the matter of consent. Thus, it is established on the record that the applicant herein voluntarily agreed to have a bare-shell apartment. Further, the DTCP in the same order also noted that at the time of hearing that matter the construction of concrete walls columns was not in violation of building by-laws and if there is any deviation from the approved building plan, if covered under composition clause that can be compounded for grant of occupation certificate. Hence, the said objection was also not held to be technically tenable on the technical grounds. In the same order, it is also specifically mentioned that the revised building plans were approved on 26.10.2017 and the same was valid up to 25.10.2022, whereas the building plan of EWS block and convenient shopping was up to 25.10.2019, as the height of the same was less than 15 mtrs. . It is further laid down that the Respondent/Corporate Debtor had applied for Occupation Certificate on 24.09.2018 with respect to Towers A,B,C & D, EWS Block, Convenient Shopping and Basement under the tower falling on GH Scheme measuring 15.5 acres approximately.

31. From the perusal of the said order, it is also established that DTP Gurgaon has inspected the site and thereafter, only then order was passed. Even, vide application dated 03.10.2019 the Respondent informed the DTCP office that the entire internal partition fitting and fixtures have been completed and accordingly, requested for Occupation Certificate. Thereafter, on 04.12.2019, a fresh report was called from STP Gurgaon. Senior Town Planner has reported that the status of construction was same as of now, which was conveyed earlier vide memo dated 04.12.2019. Further, the Architect ('HQ') report as obtained by the DTCP - Haryana also laid down that minimum provision with regard to dwelling unit is that it should have a living-rooms, bed-rooms, one Kitchen, One bathroom, one latrine and WC integrated. Architect (HQ) had also

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reported that the minimum requirement of a dwelling unit as per Section 7.15 of HBC 2017 has been fulfilled and if there are any slight internal changes from the earlier approved plans, that would be compoundable as per Section 4.6 (2) of the Code (HBC 2017). Thus, it is also established that on part of the Respondent, all the obligations required were completed by 2017 itself, as the architect comments were obtained on 26.10.2017, qua approved revised plan. So far as, the definition of "dwelling units" is concerned, it should have minimum living room, bed-room, one kitchen, one bath-room, one latrine or WC integrated. In the said order dated 02.08.2021, DTCP clearly laid down that the occupation certificate can be granted for an apartment, where minimum requirement of habitable unit is fulfilled, even if further internal work is to be carried out. Accordingly, the Respondent was to get the occupation certificate on fulfillment of the following conditions, i.e. renewal of license, re-validation of building plan and submission of report from HBPNL within a period of 60 days from the date of grant of OC. Further, it is also laid down that the occupation certificate is only granted in order to give the possession to the allottees to complete the internal work as the approved building plan and no deviation from the approved building plan shall be allowed and the same may affect structural safety aspects. From the letter dated 16.08.2021 of Nucleus Conbuild Private Limited addressed to Director, Town & Country Planning, it is apparent that compounding fees for revalidation of building plan in the form of demand draft of Rs. 47,50,000/- was submitted to the director of DTCP. Simultaneously, the application for renewal of license for EWS & Commercial shopping was also moved by depositing Rs.2,00,000/- as the building plan qua TOWER ABCD was already valid until Oct,2022. Thus, it is established on the record that though the "Occupancy Certificate" has been given on 02.08.2021, but all the requisite formalities on the part of the Respondent/Corporate Debtor for obtaining the same were already completed way back in year 2017, when, the Respondent/Corporate Debtor vide e-mail dated 22.02.2017, informed the Allottees to start the interior work. The relevant e-mail/letter written by the Respondent/Corporate Debtor is reproduced herein: -

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Sanjay Kumar

From: Parul Verma
Sent: Wednesday, February 22, 2017 3:56 PM
To: binajain@eim.ae
Cc: Customercare
Subject: Gurgaon Hills - Reminder to carry out interiors (Unit no. GH-B-06-32)

Dear Sir/Mam,

Greetings for the day!

We would like to inform you that you were invited to "Start the Interiors Works" of your exclusive and premium apartment at the Gurgaon Hills vide our email dated 18-Apr-16. All the relevant drawings were also sent to you.

However since you had missed the opportunity, you are once again requested to touch base with us.

You will appreciate that much time has gone by and as per the buyer's agreement duly signed and agreed by you "The Allottee shall complete the interior works in the said Apartment within a period of 9 months from the date of grant of permission for interior works".

The interior works can be carried out at the site post submission and approval of drawings from our engineers/consultants for fire/safety related compliances.

We have a designated team member from our Customer Experience Team **Ms. Parul Verma-Manager- Customer Experience**, who shall be your point of contact. You are requested to take prior appointment before scheduling your visit at our office / site.

Once you are ready to provide us the drawings and meeting with the architect. You will be required to interact with **Mr. T S Ravichandran** (details mentioned below)

Mr. T S Ravichandran
AVP- Projects and Design Management
Contact No. - 9717388874

It may be noted that the permission for commencement of the interior works was granted to the apartment owners for their respective unit.

It may also be noted that all the dues have to be cleared before you to take physical measurement for your apartment and start the interior works.

Should you need any assistance in this regard or should you wish to share any of your observation or inputs please feel free to share the same with the designated team marked in this mail.

Warm regards,

Tipi Ray
Head - Customer Experience

32. Further, even in the month of August 2019, repeatedly, the reminders have been sent on behalf of the Respondent/Corporate Debtor to the allottees to complete the internal finishing. Despite repeated reminders on the part of the Respondent/Corporate Debtor to the allottees to perform their part of agreement i.e., to complete the interior work of the apartments. Even, DTCP, vide order dated 22.08.2021 have also mentioned in the order that the same has not been undertaken by the applicants and the OC can be granted subject to only 3 conditions i.e., (i)renewal of licenses, (ii)revalidation of building plan and (iii)submission of report from HVPNL and also to complete the internal work by the allottees as the per contract. It is matter

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33. From the above said photographs, it can be observed that almost the construction work at the site has already been completed by the Respondent/Corporate Debtor and only due to lack of the allottees interest to complete their part of doing interior work in the bare-shell units, the Completion Certificate cannot not be obtained. So far as, the other requisite formalities are concerned the same are already completed except some casual formalities. Apart that vide DTCP, Haryana memo No. 18110 dated 29.06.2022, the occupancy certificate has already been issued, which is as under:

REGD.
FORM BR-VII
(See Code 4.11(2), (4) and (5))
Form of Occupation Certificate

From

Director,
Town & Country Planning Department,
Haryana, Nagar Yojna Bhawan, Plot No-3,
Block-A, Madhya Marg, Sector-18A, Chandigarh.
Tele-Fax: 0172-2548475; Tel.: 0172-2549851,
E-mail: tcpharyana7@gmail.com
Website www.tcpharyana.gov.in

To

Nucleus Conbuild Pvt. Ltd.,
304, 3rd Floor, Kanchan House,
Karampura Commercial Complex,
New Delhi-110015.

Memo No. ZP-722/JD(RM)/2022/18110 Dated: 29-06-2022

Whereas Nucleus conbuild pvt. Ltd. has applied for the issue of an occupation certificate in respect of the buildings described below:-

DESCRIPTION OF BUILDING

City: Gwal Pahari, Gurugram:-

- Licence no. 36 of 2011 dated 26.04.2011 and additional licence no. 41 of 2014 dated 13.06.2014 to Nucleus conbuild pvt. Ltd.
- Total area of the Tower-A, B, C, D, EWS, Convenient Shopping and Basement (Under Tower-A, B, C & D) falling on group Housing scheme measuring (11.06875 + 4.4875) = 15.55625 acres.
- Sector-2, Gwal Pahari, Gurugram.
- Indicating description of building, covered area, towers, nature of building etc.


Tower/Block no.	No. of Dwelling units	No. of Floors	FAR Sanctioned		FAR Achieved	
			Area in Sqm.	%	Area in Sqm.	%
Block-A	40	Ground Floor to 20 th Floor	15095.65	23.981	14569.73	23.146
Block-B	51	Ground Floor to 26 th Floor	19462.761	30.919	18788.053	29.847
Block-C	52	Ground Floor to 26 th Floor	19511.676	30.997	18877.980	29.910
Block-D	52	Ground Floor to 26 th Floor	19556.347	31.068	18872.638	29.981
EWS	45	Lower Ground Floor to 1 st Floor	1161.839	1.846	1089.525	1.731
Convenient Shopping		Ground Floor	304.622	0.484	304.622	0.484
Total	240 Dwelling Units out of above 45 EWS Flats		75092.895	119.295	72452.548	115.090
NON FAR AREA IN SQM.						
Basement (under Tower-A, B, C & D)			34512.969		24661.183	
Meter Room			11.573		11.573	

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Isolator Room	16.763	16.763
Guard Room	10.968	10.968
Surface Staircase	99.978	99.978
Total	34672.251	24802.465

I hereby grant permission for the occupation of the said buildings, after considering NOC from fire safety, Supervising Engineer, Mr. Shubhankar Das, Public Health Functional report from SE, HSVP and after charging the composition charges amount of ₹ 3809514/- for the variations vis-à-vis approved building plans with following conditions: -

1. The building shall be used for the purposes for which the occupation certificate is being granted and in accordance with the uses defined in the approved Zoning Regulations/Zoning Plan and terms and conditions of the licence.
2. That you shall apply for the connection for disposal of sewerage, drainage & water supply from HSVP as and when the services are made available, within 15 days from its availability. You shall also maintain the internal services to the satisfaction of the Director till the colony is handed over after granting final completion.
3. That you shall be fully responsible for supply of water, disposal of sewerage and storm water of your colony till these services are made available by HSVP/State Government as per their scheme.
4. That in case some additional structures are required to be constructed as decided by HSVP at later stage, the same will be binding upon you.
5. That you shall maintain roof top rain water harvesting system properly and keep it operational all the time as per the provisions of Haryana Building Code, 2017.
6. The basements shall be used as per provisions of approved zoning plan and building plans.
7. That the outer facade of the buildings shall not be used for the purposes of advertisement and placement of hoardings.
8. That you shall neither erect nor allow the erection of any Communication and Transmission Tower on top of the building blocks.
9. That you shall comply with all conditions laid down in the Memo. No FS/2018/159 dated 31.10.2018 of Director General, Fire Service, Haryana, Panchkula with regard to fire safety measures.
10. That you shall use Light-Emitting Diode lamps (LED) in the building as well as street lighting.
11. That provision of parking shall be made within the area earmarked/ designated for parking in the site plan and no vehicle shall be allowed to park outside the premises.
12. The occupation certificate is being granted in order to give possession to the allottees to complete internal works as per the approved Building Plans.
13. No deviation from approved building plans is allowed as the same may effect the structural safety aspects, however, the Department shall not have any objection if any internal wall is not constructed.
14. That you shall submit the report of SE, HVPNL within a period of 60 days from issuance of occupation certificate.
15. Any violation of the above said conditions shall render this occupation certificate null and void.


 (K. Makrand Pandurang, IAS)
 Director, Town and Country Planning,
 Haryana, Chandigarh.

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34. So far as, the environmental clearance etc. are concerned, the building plan can be approved only if the environmental sanction has been obtained from the Competent Authority. Once, the building plan has been duly approved by the DTCP, Haryana, the presumption is that the all the requisite formalities qua obtaining occupation certificate stood completed. If there is any slight violation with respect to the building, that can be compounded. Compounding fees has already been deposited by the Respondent/Corporate Debtor. Hence the Respondent/Corporate Debtor had completed their part of the obligation, which relates back to year 2017, when the letters were addressed to the allottees to complete the interior work which the allottees failed to do so. Even, during this "transit phase" (i.e., obtaining in-Principle OC & "occupancy certificate"), the applicants did not bother to take any step to start the interior work, what to speak of completing the same).
35. Now, it has to be seen whether on the basis of all these allegations by the Allottees, the Respondent/Corporate Debtor can be put to insolvency. In this regard, reliance can be placed on citations: *Pioneer Urban Land and Infrastructure Pvt. Ltd. And anr. Vs. Union Bank of India 2019 (8) SCC 416 & Navin Raheja Vs. Shipla Jain and others (company Appeal AT (insolvency) No. 864 of 219*. In the matter of *Navin Raheja (supra)*, it has been held as under:-

"36. From the aforesaid findings, it is clear that the Adjudicating Authority (National Company Law Tribunal) before admitting a case can find out whether the application filed by trigger-happy allottees who would be able to ignite the process of removal of the management of the Real Estate project and/lead the 'Corporate Debtor' to its death.

37. It has come to our notice that in large number of cases, in the language of the Hon'ble Supreme Court, the allottees are speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They do not want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it.

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45. The aforesaid facts also make it clear that the 1st and 2nd Respondents filed the application under Section 7, fraudulently with malicious intent for the purpose other than for resolution or liquidation

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and they knocked the doors of the Adjudicating Authority for refund of money and not for Flat/premises and thereby wanted to jump ship and really get back the amount, by way of coercive measure"

36. So far as, the *Pioneer (supra)* judgment is concerned, the Hon'ble Supreme Court laid down the following principle, which is as under:-

"50. It can thus be seen that just as information utilities provide the kind of information as to default that banks and financial institutions are provided under Sections 214 to 216 of the Code read with Regulations 25 and 27 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, allottees of real estate projects can come armed with the same kind of information, this time provided by the promoter or real estate developer itself, on the basis of which, prima facie at least, a "default" relating to amounts due and payable to the allottee is made out in an application under Section 7 of the Code. We may mention here that once this prima facie case is made out, the burden shifts on the promoter/real estate developer to point out in their reply and in the hearing before the NCLT, that the allottee is himself a defaulter and would, therefore, on a reading of the agreement and the applicable RERA Rules and Regulations, not be entitled to any relief including payment of compensation and/or refund, entailing a dismissal of the said application. At this stage also, it is important to point out, in answer to the arguments made by the Petitioners, that under Section 65 of the Code, the real estate developer can also point out that the insolvency resolution process under the Code has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency. This the real estate developer may do by pointing out, for example, that the allottee who has knocked at the doors of the NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the Petitioners' contention that a wholly one-sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death."

37. The Hon'ble Supreme Court of India clearly laid down that if the allottees themselves are in default, the Respondent/Corporate Debtor/builder cannot be put to its death. No doubt, the Applicants/Allottees have put their huge amount in the project as each flat costs Rs. 5 crores approximately, but simultaneously, the Respondent/Corporate Debtor has also put Rs. 500 crores or thereabout in the project. Apparently, the project which consists of Four Towers, EWS & commercial shops is almost complete. Merely, on the basis that the Occupation Certification/completion certificate was not issued by

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DTCP Haryana, it could not be said that the project "Ireo Gurgaon Hills" was not completed within the stipulated period. In fact, the project was already completed except interior work, which was to be done by the Applicants/Allottees themselves. In this context, it is also worthwhile to mention that though the last 2 years, the entire world was suffering from Covid-19, but despite that the Respondent/Corporate Debtor made consistent efforts to get the Occupancy Certificate. Although, the said process of obtaining occupancy certificate was initiated by the Respondent/Corporate Debtor in the year 2018 itself, though the "In-Principle OC" was granted on 02.08.2021. DTCP vide order dated 02.08.2021 merely, stated that the renewal license, revalidation of building plan, report of HVPNL were to be submitted. Actually, all these formalities were already completed as discussed above. Finally, the Occupancy Certificate has also been issued by DTCP-Haryana, vide order dated 29.06.2022. In fact, the process of obtaining occupancy certificate was already initiated by the corporate debtor, hence, the Respondent/Corporate Debtor could not be blamed for the same rather the fault is on the part of the applicants, who failed not only to make the payment of the regular instalments, but also failed to complete the interior work in the apartments. Thus, it is established that the bare-shell units in the project were already stood ready by February, 2017.

38. Ld. Counsel for the applicant relied upon citation ***Amit Katyal Vs. Meera Ahuja, 2020 SCC Online NCLT 748*** and contended that even if, OC has been granted during the pendency of the application under Section 7 of the Code, the CIR proceedings can be initiated against the developer. In this context, it is to be mentioned that the said matter of ***Amit Katyal (supra)*** has gone up to the Hon'ble Supreme Court of India, where the same was settled between the parties. Moreover, the facts and circumstances of the said matter are totally different from the matter in hand, as the applicants herein have to perform their part of obligation of doing interior work in the flats, which was not accordingly, performed by them, hence the applicant themselves are at fault, whereas the same was not so in the abovesaid case. Apparently, there is a hidden motive of the applicants to get their money back by creating undue pressure upon the Respondent/Corporate Debtor to put it under insolvency. The applicants herein are "***speculative investors***" because of the reason that this project meant for

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“high class gentry”, who intend to invest huge amount of Rs. 5 Crore (approx.), on a mere bare-shell apartment and further intended to do the interior work at their own cost. Actually, this project ‘Ireo Gurgaon Hills’ is having premium apartments and is situated at Gurgaon-Faridabad Expressway “Gwal-Pharie”, having a spectacular classic view of the hilly & lush green area. These applicants actually purchased those apartments not to have a shelter on their head, but these flats were actually booked as **‘Holiday Homez’**, therefore such like allottees could not be classified as **‘genuine home-buyers’**. Thus, the applicants herein are speculative investors, who just invested their amounts in the project to earn profits later-on or to enjoy the posh locality. Now, the applicants want to get their money back, which further shows their conduct that they are least interested in getting the apartments and that is why they have not completed their own part of obligations as per the agreement and kept on sleeping over the same since February-2017 with ulterior motive. Accordingly, the applicants herein are estopped to allege that occupancy certificate/completion certificate has not been obtained by the Corporate Debtor. In fact, the Respondent/Corporate Debtor has been continuously making efforts to obtain the occupancy certificate since 2018. Even, this fact also stands corroborated from the “In-Principle OC” dated 20.08.2021. Thus, all sincere efforts were being made by the Respondent/Corporate Debtor since 2017 and DTCP, Haryana only submitted the report on 04.12.2019, which was also confirmed vide memo dated 27.11.2020. Apparently, this petition has been filed on 20.04.2021, whereas all the requisite formalities for obtaining the occupancy certificate were already completed by the Respondent/Corporate Debtor. In fact, the applicants themselves failed to perform their part of agreement despite repeated communications. Hence, the applicants/allotees herein cannot take the benefit of their own wrong doings.

39. Apart that, mere on the basis that certain irregularities are there before obtaining the occupancy certificate, the respondent/Corporate Debtor could not be put to insolvency, as the result of the same would be disastrous, in case no resolution applicant comes forward. In this regard, the reliance can again be placed on the citation ***Pioneer Urban Land & Infrastructure Pvt. Ltd. (supra)***, wherein Hon’ble Apex Court also laid down that in case the application under Section 7 of the Code is admitted and

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some other developer takes over or complete the project, though it could not be ascertained at that time, even the same would take years together to complete the project and Allottees would not be able to take the possession of the units and if the case may come to a situation that, no resolution plan is being submitted by any other of the builder, then ultimately the Respondent/Corporate Debtor would get to death and the winding-up would be the result of the same, which would leave all the Allottees blank handed, as they would neither get the apartments/ flats nor they would be able to get the money. Therefore, in the given situation, where the project is almost complete and the Occupancy Certificate has already been issued by the DTCP Office and the applicants failed to perform their part of contract, the Corporate Insolvency Resolution Proceedings cannot be triggered against the Respondent/Corporate Debtor.

RELIEF:

40. In sequel of the abovesaid discussion, this Tribunal is of affirm view that the applicants/ allottees themselves are in default as they failed to complete their part of obligation of the Apartment-Buyer-Agreement, whereas the respondent/corporate debtor had completed its part of obligations, therefore, the applicant/allotees herein failed to make out the case under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process proceedings against the Corporate Debtor.
41. Consequently, the present petition under Section 7 of the I&B Code, 2016 stands **dismissed**, with no order as to costs.

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DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

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DHARMINDER SINGH
MEMBER (JUDICIAL)