BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI-IV
C.P. (IB) NO. 2900 OF 2019
&
IA/1314/ND/2022
IN
C.P. (IB) NO. 2900 OF 2019

IN THE MATTER U/S 7, INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF:

GITASHA KHANNA & ORS ...**FINANCIAL CREDITOR**

VERSUS

AEGIS VALUE HOMES LIMITED ...**CORPORATE DEBTOR**

MEMO OF PARTIES:

1. GITASHA KHANNA
   968, Sector 12-A
   Panchukla 134109
   Haryana

2. AMIT SHARMA
   B-930, First Floor, Green Field Colony
   P.O Amar Nagar, Faridabad-121003
   Through Letter of Authorisation to Mr. G.P Sharma

3. MAMTA BHATIA
   House No. 53, Urban Estate
   Sector 13, Karnal 132001
   Haryana

4. ATAM PRAKASH MALHOTRA JOINTLY NITIN MALHOTRA
   House No. 865
   Sector-6, Karnal 132001
   Haryana

5. INDRA RANI
   H.NO.-509, Babar Pur Mandi
   Distt, Panipat- 132103

6. JIMMI ARORA
   H.NO-21, Sant Nagar, Near Water Pump

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Karnal, Haryana

7. HARMINDER SINGH KAPOOR
533-B, New Prem Nagar, Karnal Distt
Karnal, Haryana

8. YASPAL KHANNA
H.NO-131, New Loyalpur, Chander Nagar
Delhi

9. TRIPTA RANI
H.No-126, Near Milap Nagar
Ambala City-134003, Haryana

10. SAHIL VASUDEV
H.No F-202, Meera Ghati, Karnal
Haryana

11. ANIT SACHDEVA
B-6/103/ Vatika City Home, Sector-83
Gurugram

12. KASAK KALRA
H.No-509, Babr Road Mandi
Distt, Panipat

13. ARJUN KHURANA
H.No-147, Near Charchaman , Karnal
Distt, Karnal, Haryana

.......FINANCIAL CREDITOR

CORAM:

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

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

ORDER DELIVERED ON: 22.09.2022

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (J)

The applicant, Gitasha Khanna and Ors has filed the instant application under Section 7 of the Insolvency and Bankruptcy

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Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Aegis Value Homes Limited referred to as the corporate debtor on the ground that the Corporate Debtor committed a default in payment of Rs. 6,26,84,477/- including interest.

2. It is appropriate to mention that the applicant, Gitasha Khanna and Ors. is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 968, Sector-12A, Panchkula, Haryana.

3. The Respondent Company M/s Aegis Valuable Homes Limited, against whom the Insolvency Resolution Process has been prayed is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at EF-10, 2nd Floor, Inderpuri, Delhi-110012. 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

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respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. The case of the Financial Creditor precisely is that:

a. The Applicant Financial Creditors No. 1 to 13, detailed out in the revised form entered into separate agreements /Letter of Provisional Allotment (LPA) with the corporate debtor and booked residential Flats for provisional allotment in the real estate project of the corporate debtor in the name and style of AEGIS WOODS SCHEME at Haryana and made various payments through cheques to the corporate debtor which is acknowledged on behalf of the corporate debtor.

b. It is submitted that as per clause 14 of said LPA, the possession of the properties was to be delivered within 42 months since the date of booking, subject to force majeure conditions with further grace period of 180 days after expiry of said period of 42 months.

c. Further, the applicant financial creditor sent Demand letter to Corporate Debtor on 30/07/2019 and the same was return undelivered as "Left this addressee".

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d. It is submitted that the total number of flats in the said real estate project of the corporate debtor namely; AEGIS WOODS SCHEME is 122 Flats and the total number of the homebuyers now including the existing applicants are 13, hence the requirements of the ordinance are duly complied with.

e. It is further submitted that the corporate debtor is playing fraud with the investors including the applicant/financial creditor, as the project has not even started, as yet at the time of drawing of the present petition, hence it is not possible in near future and it may take many years to complete the project and it seems that the corporate debtor from the very beginning were not in intention to even start the project and their sole motive was to collect the funds from the innocent public in the name of lucrative real estate project and misappropriate the same.

5. The Corporate Debtor has filed its reply which is listed here:-

    i. <u>Non-compliance with mandatory timelines</u>: The Petitioners have failed to comply with the strict 30 days' timeline as

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mandated by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 dated 28.12.2019 for modifying and filing the insolvency application in terms of the newly modified clauses of the Ordinance.

ii. Minimum threshold not fulfilled: It is submitted that the total number of applicants filing the insolvency application is 13. The insolvency application is defective since it fails to satisfy the requirement of minimum number of applicants required to initiate the present insolvency proceedings against the Respondent. In this context, it is submitted that:

A. The Project consists of 403 units 267 residential plots, 2 commercial plots, one nursery school plot and 133 residential group housing flats. Accordingly, the threshold limit for maintaining the present application is 41 persons.

B. Even if it is assumed that only the residential flats should be considered independently from other units, the Project has 133 residential flats and the threshold limit would be 14 home buyers.

C. Settlement of Claim: It is submitted that one of the Financial Creditor i.e. Mrs. Jimmi Arora, has settled her claim with the Respondent and has no

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outstanding claim. Thus, the number of Petitioners stands reduced from 13 to 12. Even going by the Petitioner's own claim, 12 Petitioners cannot maintain the present petition in view of the threshold limit introduced in the IBC for home buyers.

iii. Non-Compliance With Mandatory Timelines :-The Petitioners have failed to modify/ amend their petition to add the necessary number of home buyers within the mandatory timelines introduced vide the 2019 Ordinance.

a. In order to file a petition, there must be a minimum of:

(i) one hundred allottees under the same real estate project; or

(ii) ten per cent of the total number of allottees under the same real estate project, whichever is less.

iv. It is submitted that in case of petitions already filed but not admitted till 28.12.2019, the same would have to be modified within 30 days from 28.12.2019, i.e. till 27.01.2020, to meet the minimum threshold introduced.

6. The Financial Creditor then filed its rejoinder to the reply of the Corporate Debtor which is listed as :-

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a. The financial creditor submits that few more applicants joined as applicants in the aforesaid application bearing number CP NO. IB NO. 2900/ND/2019 against the default committed by the corporate debtor and the said applicants jointly wished to initiate CIR Process in accordance with the provisions of Code and therefore, complying with the requirement of the amended ordinance relating to the threshold limit for filing application by real estate Allottees under Section 7 of the Code, 2016. Accordingly, the applicants filed additional documents, along with revised form and same was noted by this Hon'ble Tribunal vide order dated 31 .0 1.2020.

b. The applicants submits that in view of being complied with the aforesaid amendment, the financial creditor wished to proceed with the application bearing number CP NO. IB NO.2900/ND/2019 and filed an application bearing IA No.2040 /ND/2021 seeking to revive the aforesaid application u/s 7 IBC, 2076 and the said application was allowed vide order dated 29.04.2021 of this Hon'ble Tribunal , therefore, the objection regarding the maintainability does not arise.

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7. Therefore, as per part IV of the application it is claimed that a sum of Rs. 6,26,84,477/- is due and payable by the respondent company.

8. The applicant has placed following documents on record to prove its claim:

   i. Copy of the letter of Provisional Allotment/ Agreement with the Corporate Debtor along with their respective payment receipts;

   ii. Layout plan showing the total number of flats in the real estate project, 7'2-.namely; AEGIS WOODS SCHEME.

   iii. Copy of the Adhaar Cards of the Home buyers

   iv. Revised Computation of the Amount as mentioned in Para 1 and 2 of part IV of revised Form.

9. The applicant has filed an IA No. 1314/ND/2022 under Rule 11 of NCLT, Rules, 2016 placing the additional documents on record. The additional documents are taken on record, accordingly, IA/1314/ND/2022 stands allowed.

10. We have heard the Ld Counsel for the parties and perused the case records. First of all, it has to be looked into whether the group housing in the project is part of the entire project or it has to be separately treated for the purpose of maintaining the present petition. Though it is being contended on behalf of the

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Respondent that there are 403 units i.e. consisting of 267 residential, 2 commercial, 1 nursery school plot and 133 residential group housing flats, hence, the threshold limit for maintaining the present petition is 41. After going through the lay out plan, it is apparent that the group housing area though is situated in the land of the entire area developed by the respondent under the 'Aegis Woods Scheme', however, the same is separately demarcated. Apparently, EWS for plotted area and for Group Housing Scheme have been separately carved out in the plan and are situated on different locations. Apart that, the layout plan also depicts that residential, commercial site and Group Housing have to be separately approved as per supplementary zoning plan. Thus, it is established though the 'Group Housing Scheme' is situated in the same area, but it is totally separate from the plotted area and has to be treated as a separate project for the purpose of counting the threshold limit.

11. Further, on behalf of the respondent, it is contended that the group housing area consists of 133 flats, whereas the present petition has been filed only by 13 persons and even one of the petitioner Mrs. Jimmi Arora, had compromised and withdrawn from petition by filing affidavit to that effect, therefore, the threshold limit is not met-out. In this context, it is worthwhile to mention that the residential flats are 122 in numbers and the

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EWS units, which are 18 in number cannot be counted for the purpose of total residential flats in the group housing scheme, as EWS are to be sold to the extent of 50% by Government, whereas 50% are to be sold by the developers itself. Hence, on 50% of the EWS units, the Respondent/Corporate Debtor has no control even otherwise. Those EWS units are meant for Economically Weaker Section of the Society, whereas the plots in the group housing are to be purchased by the persons, who can afford higher price. Hence, EWS units cannot be counted for the purpose of claiming total units in the Group Housing Scheme. Moreover, the EWS units are compulsorily to be raised to the extent of 15% of the total residential flats and 20% of the total plots as the case may be for the Economically Weaker Sections of the society according to the policy dated 17.05.2018/26.02.2021 of the Town & Country Planning Department- Haryana. Further, as per the license given by Town & Country Planning Haryana, both the "plotted area" as well as the 'Group Housing Component' has been charged separately at the tentative rate of Rs. 53.953 lakhs per gross acres on the area measuring 22.5412 acres total plotted residential TP scheme, whereas at the rate of 215.81 lakh per acre for 1.4603 acres 'group housing components, which further supports the fact that both 'Group Housing Components' as well as the 'plotted residential TP

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Scheme' are to be treated differently from each other. Admittedly, the present petition has been filed by 13 person although, one namely Ms. Jimmi Arora is stated to have compromised with the Corporate Debtor. However, no such application for withdrawal of her name from the arrays of the petitioners has ever been filed, therefore, unless the said permission is granted, it could not be said that her name stands deleted from the arrays of the petitioners, that too, when she alongwith the petitioners has voluntarily filed the present petition for taking action under Section 7 of the Code.

12. Even, if the contention of the Ld. Counsel for the respondent is taken that there are 133 Residential flats in the group housing components, even then, the threshold limit is meted out, as the present petition has been filed by 13 persons and figure 0.3 has to be taken towards lower side and has to be counted as round figure.

13. In this context, it is also apposite to mention that the total number of flats actually were 122 in group housing scheme and 18 units of EWS are also included in that, which cannot be treated as a part of group housing as discussed above. Therefore, the total number of flats in group housing scheme actually are 104. This fact is found to be fully supported from the Annexure R2 i.e. layout plan of Group Housing Scheme, which is as under:

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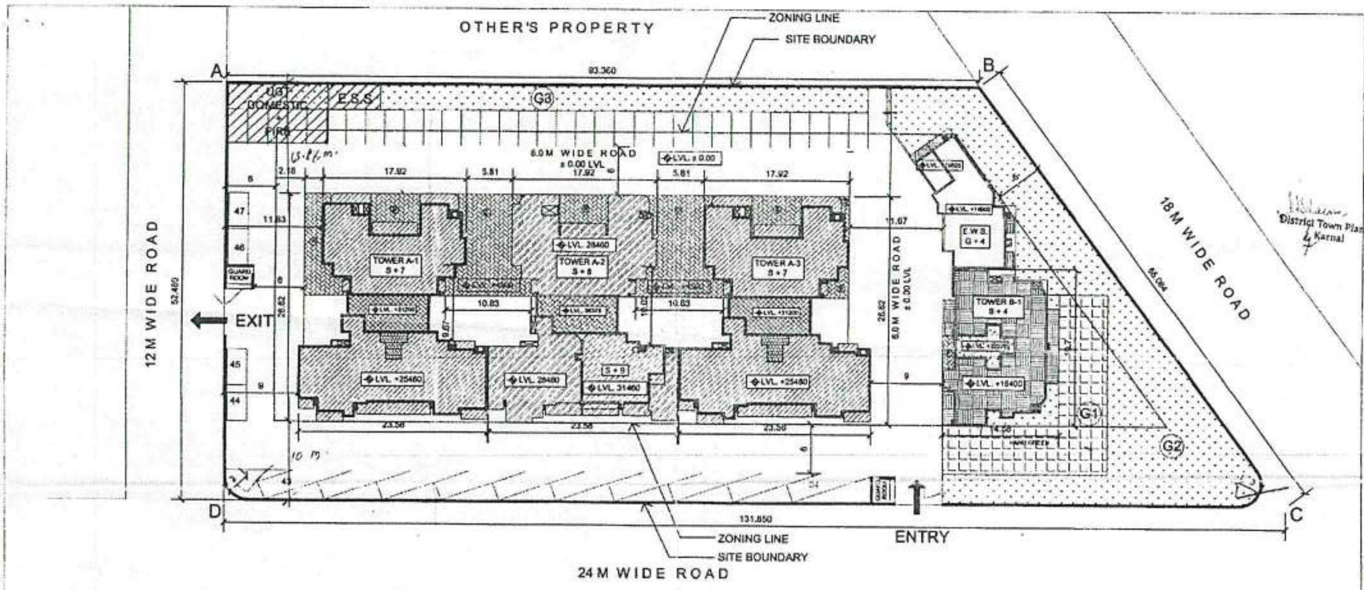
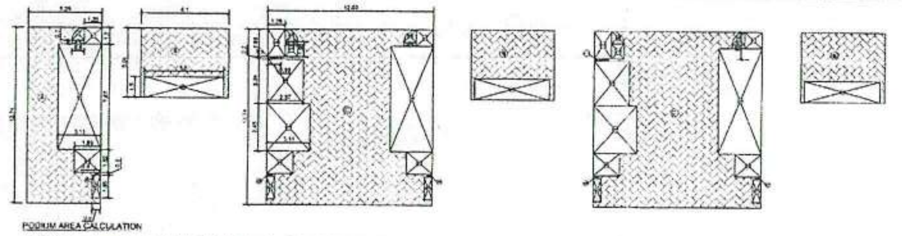
ANNRXURE R/2



District Town Planner Karnal



PODIUM AREA CALCULATION

PODIUM AREA = [(A + D + E + F) + (2 X C) + (3 X B)] - [(6 X (p2 + p5 + p6 + p7)] + (3 X (p1 + p3 + p4 + p8 + p13)] + [2 X (p9 + p10 + p11 + p12)] + (p14 + p15)]
= 496.410 - 182.433
= 313.977 SQ.M.

A = 5.290 X 12.740 = 67.395 SQ.M.
B = 6.100 X 5.060 = 30.866 SQ.M.
C = 12.030 X 12.740 = 153.262 SQ.M.
D = 2.160 X 5.420 = 11.707 SQ.M.
E = 3.110 X 3.870 = 12.036 SQ.M.
F = 1.500 X 4.100 = 6.150 SQ.M.
p1 = 1.250 X 1.200 = 1.500 SQ.M.
p2 = 1/2 X (3.14 X 0.900 X 0.900) = 0.636 SQ.M.
p3 = 0.900 X 0.300 = 0.270 SQ.M.
p4 = 3.110 X 7.670 = 23.854 SQ.M.
p5 = 1.890 X 1.620 = 3.062 SQ.M.
p6 = 0.400 X 0.200 = 0.080 SQ.M.
p7 = 0.600 X 1.650 = 0.990 SQ.M.
p8 = 5.500 X 1.500 = 8.250 SQ.M.
p9 = 2.570 X 3.240 = 8.327 SQ.M.
p10 = 3.110 X 3.450 = 10.730 SQ.M.
p11 = 0.950 X 0.200 = 0.190 SQ.M.
p12 = 1.250 X 1.980 = 2.475 SQ.M.
p13 = 0.900 X 1.080 = 0.972 SQ.M.
p14 = 0.300 X 1.980 = 0.594 SQ.M.
p15 = 1.620 X 3.240 = 5.249 SQ.M.

F.A.R. AREA CALCULATION

F.A.R. STATEMENT FOR GROUP HOUSING

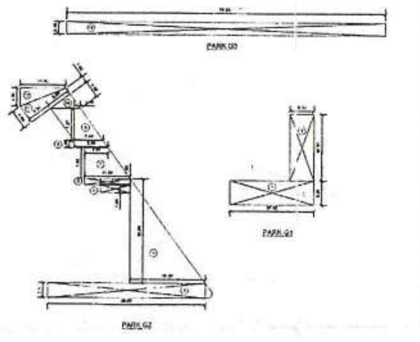
BLOCK NAME	NO. OF BLOCKS	HEIGHT	NO. OF UNITS	STILT / GR. FLOOR (SQ.M)	1ST FL. (SQ.M.)	2ND FL. (SQ.M.)	3RD FL. (SQ.M.)	4TH FL. (SQ.M.)	5TH FL. (SQ.M.)	6TH FL. (SQ.M.)	7TH FL. (SQ.M.)	8TH FL. (SQ.M.)	9TH FL. (SQ.M.)	TOTAL (SQ.M.)
TOWER A1	1	S + 7	28	52.395	395.305	395.305	395.305	395.305	395.305	395.305	395.305	0.000	0.000	2,819.530
TOWER A2	1	S + 8/9	32	52.395	395.305	395.305	395.305	395.305	395.305	395.305	395.305	391.893	70.307	3,281.730
TOWER A3	1	S + 7	28	52.395	395.305	395.305	395.305	395.305	395.305	395.305	395.305	0.000	0.000	2,819.530
TOWER B	1	S + 4	16	23.599	207.071	207.071	207.071	207.071	0.000	0.000	0.000	0.000	0.000	851.883
E.W.S.	1	G+3/4	18	68.173	116.224	114.049	114.049	114.049	0.000	0.000	0.000	0.000	0.000	526.544
SHOP	1	G		23.278	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	23.278
TOTAL	6		104+18 E.W.S.											10,322.495

GREEN AREA CALCULATION

1 = 20.58 X 06.00 = 123.480 SQ.M.
2 = 06.00 X 16.50 = 99.000 SQ.M.
3 = 39.63 X 03.80 = 150.594 SQ.M.
4 = 1/2 X 19.00 X 25.88 = 245.860 SQ.M.
5 = 07.50 X 01.90 = 14.250 SQ.M.
6 = 11.56 X 01.60 = 18.496 SQ.M.
7 = (11.56+5.94)1/2 X 7.66 = 67.025 SQ.M.
8 = (8.66+7.43)1/2 X 1.68 = 13.515 SQ.M.
9 = (7.43+1.58)1/2 X 7.97 = 35.905 SQ.M.
10 = 1/2 X 04.39 X 06.00 = 13.170 SQ.M.
11 = (4.89+1.80)1/2 X 11.90 = 39.805 SQ.M.
12 = 1/2 X 04.54 X 11.40 = 25.878 SQ.M.
13 = 79.20 X 03.16 = 250.270 SQ.M.

G1 = 1 + 2 = 222.480 SQ.M.
G2 = 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 + 11 + 12 = 624.498 SQ.M.
G3 = 13 = 250.270 SQ.M.

GREEN AREA = G1 + G2 + G3
= 1097.248 SQ.M.



DENSITY CALCULATION

PROPOSED DENSITY CALCULATION			
DESCRIPTION	NO.	Persons/DUs	Total Persons
TOTAL NO OF DU'S	104	5	520
E.W.S.	18	2	36
DOMESTIC SERVANTS	11	2	22
TOTAL PLOT AREA OF GROUP HOUSING		1.460000	Acres
PROPOSED DENSITY	395.890		PPA
	133	578	

DWELLING UNIT CHART

PROPOSED NO. OF DU'S	
TOWER	NO. OF DU'S
TOWER A1	28
TOWER A2	32
TOWER A3	28
TOWER B	16
TOTAL	104 D.U.s

GROUND COVERAGE CALCULATION

GROUND COVERAGE CALCULATIONS	
BLOCK NAME	GROUND COVERAGE (SQ.M.)
TOWER A1	454.172
TOWER A2	454.172
TOWER A3	454.172
TOWER B	239.531
E.W.S.	122.059
SHOP	23.278
PODIUM	313.977
TOTAL	2,061.361

DESCRIPTION

DESCRIPTION			AREA (SQM)	
TOTAL PLOT AREA	1.4600	ACRES	5909.510	SQM
PERMISSIBLE F.A.R. @175	175	OF GROUP HOUSING SITE AREA	10341.643	SQM
PROPOSED F.A.R. FOR GROUP HOUSING	174.68		10322.495	SQM
PERMISSIBLE GROUND COVERAGE	35%	OF SITE AREA	2068.329	SQM
PROPOSED GROUND COVERAGE	34.940%	OF SITE AREA	2097.561	SQM
PERMISSIBLE DENSITY	400PPA	i.e. 116 DUS		
PROPOSED DENSITY	395.890PPA	104DUS + 18E.W.S.		
PERMISSIBLE GREEN AREA	15%	OF SITE AREA	886.427	SQM
PROPOSED GREEN AREA	18.568%	OF SITE AREA	1097.248	SQM
PROPOSED BUILT UP AREA	13,901.303 SQM			

ARCHITECT'S SIGNATURE	OWNER'S SIGNATURE
[signature]	[signature]

PROJECT TITLE

PROPOSED GROUP HOUSING SCHEME MEASURING 1.46 ACRES (5909.51 SQ.M.) PROVIDED IN T.P. SCHEME APPROVED BY THE GOVERNMENT VIDE ENDORSEMENT NO. 20/38/2010-3CI DATED 30.03.2015 MEASURING 24.94 ACRES AT BUDHA-KHERA PHOOSGARH LINK ROAD, SECTOR 33, KARNAL.

DRAWING TITLE	(SUBMISSION DRAWING)	DRG. NO.
LAYOUT PLAN		01
SCALE - 1 : 300	DATE - APRIL 2015	

R.K. & ASSOCIATES
Architects, Engineers & Planners
E-31, GREEN PARK MAIN, NEW DELHI - 110016, INDIA
Tel.: 2696-3158, 2651-6781, 2656-7357
Fax: (011) 2686-2540 E-mail: rkassociates@gmail.com

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Tower	No. Of Dwelling Units (DUs)
Tower A1	28
Tower A2	32
Tower A3	28
Tower B	16
Total	104 DUs
EWS Category	18 Units
Grand Total of Units	122 Units

14. The present petition has been filed by 12 persons, even if the name of Ms. Jimmi Arora is treated to be deleted. There are four Towers i.e. A1 to A3 & Tower-B in the Group Housing Scheme having flats 28,38 28 and 18 respectively, apart from 18 units of EWS. Apparently, the threshold limit of 10% of the total flats 104 is meted out. Thus, the present petition is maintainable on behalf of the petitioners.

15. Now, so far as the payment is concerned, as per the 'Letter of Provisional Allotment' placed on the record by the applicant, it is established that the respective amounts were taken from the applicants, but the residential flats were not delivered according to the promise, resultantly, a sum of Rs. 6,26,84,477.00/- along with interest 24% per annum from the due date were due against the respondent, which were never repaid. Moreover, the respondent has not completed the project within the stipulated period as laid down in the agreement/provisional allotment letter,

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therefore, the respondent has committed default not only in repaying the amount, but also by not delivering the flats to the petitioner herein within the stipulated period of 42+6= 48 Months. Hence, the present petition is maintainable on both counts.

16. Now it is, to be seen, whether the present petition has been filed within the prescribed period of limitation or not. No doubt, the petition has to be filed within the period of 3 years of the date of default. In this regard, it is to be mentioned that most of the agreements/provisional allotment were executed between Feb 2014 to May 2014, whereas the present petition has been filed on 31.10.2019. The respondents by virtue of provisional allotment letters, which was duly executed in the favour of the home-buyers, agreed to refund the amount received along with simple interest at the rate of 18% per annum with effect from the date of payment till the date of refund. Further, the respondent agreed to hand-over the possession of the flats within a period of 42 months extended by another 6 months. The agreements were executed in the year 2014 and possession was to be handed over by 2019, which is not handed over till date. Apart that, the payment received has also not been returned, as per the agreement clause (c) of 'DEVELOPERS REPRESENTATION' part, the interest was to be calculated from the date of payment till the

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date of refund. The refund has not been made till date. Hence, there is a continuous default on the part of the respondent, accordingly, the limitation period stand enlarged. Apart that, the first date of default relied on by the majority of the applicants is the promised "date of possession" i.e. February 2019 to May 2019, considering which the period of limitation ends in February 2022 to May 2022. We are aware that vide order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020, the Hon'ble Supreme Court has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Further, in this regard the Hon'ble NCLAT vide its order dated 10.01.2022 in the matter of **M/s. Essjay Ericsson Private Limited Versus M/s. Frontline (NCR) Business Solutions Private Limited in Company Appeal (AT) (Insolvency) No. 936 of 2021** has also held that :

> ***"When the Hon'ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon'ble Supreme Court has granted extension of period of limitation, it cannot be said that appal, suit or application, which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the***

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Hon'ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no direction left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise."

17. In view of the aforesaid proposition of law, this Tribunal, is of the view, the present application has been filed on 31.10.2021, hence, the same has been filed within the prescribed period of limitation.

18. In sequel of the foregoing discussion, this Tribunal is of affirm view that the petitioners succeeded in proving that the respondent despite assurance not only failed to deliver the possession of the flats of Group Housing Scheme, but also failed to refund the amount received from the home-buyers till date. Hence, the petition succeeds.

19. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is for an amount exceeding the pecuniary threshold of Rupees

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one hundred lakhs, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

20. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

21. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.

22. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.

23. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Ms.

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Hemi Gupta for appointment as Interim Resolution Professional having Registration No. IBBI/IPA-002/IP-N-00147/2017-2018/10383 resident of 24, Medi Canter, Opp. Eves Petrol Pump, Hapur Road, Meerut- 250002, Uttar Pradesh with email - id. hemigupta@rediffmail.com. Ms. Hemi Gupta has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by her that no disciplinary proceedings are pending against her in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Ms. Hemi Gupta as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied. Ms. Hemi Gupta, having registration number IBBI/IPA-002/IP-N-00147/2017-2018/10383 is appointed as an Interim Resolution Professional for corporate debtor.

24. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to

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admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

25. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Ms. Hemi Gupta, to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

26. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> *"(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

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(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearance or similar grant or given by the Central government , State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period".

26. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

27. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are

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under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

27. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)