



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
KOLKATA, COURT- I**

I.A. (IB) NO. 160/KB/2026

In

C.P. (IB) NO. 345/KB/2022

*An application under Section 60(5) of the IBC, 2016 read with Rule 11 of
the NCLT Rules, 2016*

IN THE MATTER OF:

Sujay Shankar Mukherjee

...Applicant

-Versus-

IN THE MATTER OF:

Ashish Chawchharia, Resolution Professional of Riverbank Developers Private
Limited

...Respondent

-- In --

An application under Section 7 of the IBC, 2016

IN THE MATTER OF:

Canara Bank (formerly known as Syndicate Bank)

...Financial Creditor

-Versus-

IN THE MATTER OF:

Riverbank Developers Private Limited

...Corporate Debtor

Date of Pronouncement: 10.09.2026

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Rekha Kantilal Shah, Member (Technical)

APPEARANCE:

Mr. Sourojit Dasgupta, Adv.

] For the Applicant

Mr. Vishwarup Acharyya, Adv.

Mr. Akash Dutta, Adv.

Ms. Pooja Chakrabarti, Adv.

] For the Respondent

Mr. Mohit Dang, Adv.

Mr. Chiraag Agarwal, Adv.



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ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode today.
2. Heard the Learned Counsels appearing for both the parties.
3. Canara Bank initiated insolvency proceedings against M/s. Riverbank Developers Private Limited ('Corporate Debtor'/ 'CD'). By an order dated 03.04.2024, this Tribunal admitted the petition and commenced the Corporate Insolvency Resolution Process (CIRP) against the CD.
4. The present application has been filed under section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 by Mr. Sujay Shankar Mukherjee, ('Allottee Applicant'/ 'Applicant') an allottee of one real estate project of the M/s. Riverbank Developers Private Limited ('Corporate Debtor'/ 'CD'), seeking for the following reliefs:
 - a. *An order be passed directing the respondent , i.e., the resolution professional to reinstate the allotment of the said units being Flat- 2A6 in Tower- 17 of Hiland Greens Phase- I along with one covered car parking space in favour of the Applicant.*
 - b. *In the alternative, the Resolution Professional be directed to allot any other flat along with one covered car parking space in favour of the Applicant;*
 - c. *The Resolution Professional be directed to take necessary steps in accordance with law to complete the process of registration and possession of the said units that may be allotted in favour of the Applicant;*
 - d. *The respondent be restrained from creating any right, title, and interest of any person in respect of Flat- 2A6 in Tower- 17 of Hiland Greens Phase- I along with one covered car parking space, till disposal of this application.*
 - e. *The respondent be directed to allot and/or earmark an alternative flat along with one covered car parking space for the Applicant, till disposal of the application.*
 - f. *Ad-interim orders in terms of the prayers above.*
 - g. *Such further and/or other orders, as this Learned Tribunal deems fit and proper.*



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5. FACTS IN A NUTSHELL:

5.1 In March 2014, the Applicant, based upon the representations made by Corporate Debtor, expressed his desire to purchase one flat along with one covered car parking space in a real estate project developed by the Corporate Debtor under the name of “Hiland Greens”, at 1, New Bata Road, Maheshtala, Kolkata- 700140 (‘said real estate project’).

5.2 By an Allotment Letter dated 01.03.2014, Flat No. 2A6, situated on the second floor of Tower-17 and by an Allotment Letter dated 15.05.2014, a covered car parking space, both in the said real estate project (‘said units’), was allotted to the Allottee Applicant.

5.3 Under the terms of the Allotment Letter and by virtue of agreement between the parties, the Corporate Debtor issued demand letters and/or tax invoices upon the Applicant from time to time, and the Allottee Applicant, upon receipt of such demand letters/invoices, made the requisite payments. The Applicant has made an aggregate payment of Rs. 20,07,303/- (Rupees Twenty Lakh Seven thousand Three Hundred and Three only) towards the purchase of the said units and the receipts and ledger of the same issued by the Corporate Debtor has been annexed as Annexure B of the application petition.

5.4 On 10.12.2020, the Corporate Debtor called upon the Applicant to execute and register the Agreement for Sale. Subsequently, by a letter dated 27.02.2021, the Corporate Debtor purported to hand over physical possession of the said unit after payment of the final instalment by the Allottee Applicant, and further called upon the Allottee Applicant to execute the Deed of Conveyance.

5.5 A joint inspection of the apartment was conducted on 17.03.2021, during which several deficiencies were allegedly noticed, including the absence of the allotted covered parking space, incomplete bathrooms, balconies and floorings, and lack of electricity and water connections.



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5.6 The Applicant alleges that despite verbal assurances from the CD with regard to completion of the pending construction and thereafter handing over possession, no further action was taken.

5.7 The Allottee Applicant subsequently sent an email dated 11.02.2022 expressing his intention to cancel the allotment and sought a refund Rs. 18 Lakhs from the Corporate Debtor. The Corporate Debtor, vide an email dated 12.02.2022, acknowledged the request of such cancellation and agreed to make the refund, but the same was never made.

The mail requesting such refund reads as below:

This has reference to our today's meeting where we have mutually agreed to resolve the long pending issue of cancellation of the said agreement of above mentioned flat which is in my name. Please note that keeping in mind the present situation we would request you to consider Rs.18 lacs (Eighteen Lacs) as a final refundable amount against the cancellation of the said agreement.

Now, I would request you to act as early as possible for immediate settlement of the said issue for mutual benefits. Please arrange to pay the amount vide online transfer or NEFT/RTGS in my account whose details are mentioned below for your information. Your reciprocal approach will be highly appreciated.

1) Name - Sujay Shankar Mukherjee,
2) Account Number - [REDACTED]
3) Bank Name - S.B.I
4) Branch Code - [REDACTED]
5) IFSC Code - [REDACTED]

Thanks & Regards,

Sujay Shankar Mukherjee,
Pushpa Beethi Apartment,
Flat - 08,
A-80, New Raipur Road,
Kolkata - 700084.
M - 9433045418

The Corporate Debtor's acknowledgement is as under:

From: Jayanta Ghosh [mailto:jayanta@hillandcal.com]
Sent: Saturday, February 12, 2022 11:31 AM
To: 'Sujay Mukherjee'
Subject: RE: Cancellation Calculation

Dear Mr. Mukherjee,

Thank You for your confirmation. We will inform you as soon we refund you the cancellation amount in your said bank account.

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5.8 Following the public announcement made by the RP, the Allottee Applicant submitted his proof of claim for Rs. 20,07,303/- before the Resolution Professional on 12.04.2024. Out of the said entire claim, only Rs. 18 Lakh was admitted by the Resolution Professional after verification.



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- 5.9 The Applicant refrained from objecting to such partial acceptance of his proof of claim contending that he was allegedly informed that the allottees could apply for possession and registration by filling out a Google Form circulated by the Respondent's office.
- 5.10 On 13.01.2025, when the Applicant allegedly visited the site office to verify the readiness of the flat, he was informed that his allotment had already been cancelled on the basis of his email dated 11.02.2022.
- 5.11 Thereafter, vide mail dated 24.06.2025, the Applicant apprised the Respondent RP with regards to the Applicant's claim and requested him to reinstate the allotment, facilitate registration and hand over possession of the flat. The Resolution Professional did not accede to the request.
- 5.12 Aggrieved by the refusal to restore the allotment and facilitate possession, the Allottee Applicant has filed the present application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking directions for *inter alia* for reinstatement of the allotment or re-allotment of another flat with a car parking space, execution of the conveyance deed and delivery of possession of the flat.
- 5.13 The Applicant in his present application has admitted that he is ready and willing to pay the balance consideration if any.

6. CONTENTIONS OF THE APPLICANT

- 6.1 The Allottee Applicant primarily contends that the Applicant's expression of interest to cancel the agreement was conditional upon the Corporate Debtor's promise to refund the amount, and since no such refund was made, the Applicant's right over the immovable property remained intact.
- 6.2 Further, the Applicant *inter alia* submits that he has availed loan from SBI for purchasing the said units and being the sole earning member in the family of four, the prolonged delay has caused immense financial and mental distress to him.



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6.3 Further, that the burden of EMI payments without possession of the said flat had adversely affected his health and financial stability, and due to such hardship the Applicant was constrained to request for the said refund and cancellation.

7. SUBMISSIONS OF THE RP

The Respondent Resolution Professional, in his reply, admits that the requisite refund was not processed by the Corporate Debtor (in para 10 of reply) and *inter alia* submits that the cancellation of the allotment was made prior to the initiation of the CIRP and that, as an RP, being the facilitator of the CIR Process, his powers are limited to collation and verification of claims filed before him, he does not possess adjudicatory powers and cannot reverse the decision taken by the Corporate Debtor prior to initiation of CIRP with respect to cancellation of units purchased by homebuyers.

We have heard the Learned Counsels appearing for both the parties and perused the documents placed on record

ANALYSIS AND FINDINGS

8. DISCERNIBLE FACTS

It is evident from the communications extracted hereunder that the applicant had simply expressed his intention to seek cancellation of allotment, and that he was never issued any formal cancellation order/letter. The communications go thus:

8.1 A demand letter dated 27.02.2021 from Hiland, extracted hereunder, demanding Rs. 2,57,800 and Rs. 1,76,105.00/- as 8th and final instalment before deemed possession date of 14.03.2021.



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HILAND

Demand Letter

To,
Mr. Sujay Shankar Mukherjee
Pushpa Beethi Apt., Flat No. 05, A-80, New Raipur
Road, P.O. - Garla, Kolkata- 700084, WEST BENGAL,
INDIA
PH:- / MobNo:-9433045418

Dated: 27-Feb-21
Application Code No.: HG1BOOK02188/13-14
Project Name.: HILAND GREENS PH-01
Tower.: Tower 17
Apartment No.: 2A6

Co-Applicant(s) N.A

Re: 8th & Final Instalment - Before possession

Dear Sir/ Madam

It is our pleasure to inform you that your apartment will get ready for handover and possession can be obtained by you. We are extremely grateful for your patience and support in our efforts to deliver your apartment. Accordingly, the "8th & Final Instalment - Before possession" has become due for Tower 17 at HILAND GREENS PH-01. Please note that as per the Price and Payment Schedule provided to you along with the allotment letter read with "General Terms & Conditions" you are required to pay the below mentioned amount within the due date. Please note that subject to the terms of clause 13(b) of the GTC, you shall be deemed to have taken possession your apartment on 14/03/2021, and such date shall be considered to be the "date of possession", irrespective of date on which physical possession of the Apartment is taken by you.

Description	Amount Receivable	Advance Payment Received	Balance Due
Corpus Deposit(50.00%)	12,500.00	0.00	12,500.00
Legal Fees(100.00%)	17,700.00	0.00	17,700.00
Stamp Duty(100.00%)	123,300.00	0.00	123,300.00
Registration Fees(100.00%)	22,605.00	0.00	22,605.00
Unit Charge(5.00%)	99,680.00	0.00	99,680.00
Vehicle Parking-1(50.00%)	184,000.00	0.00	184,000.00
SUB TOTAL	429,785.00	0.00	429,785.00
Add: Previous Dues			0.00
Add: Interest due till date @18% p.a. (GST will be applicable @18%)	4,120.00	0.00	4,120.00
NET PAYABLE	433,905.00	0.00	433,905.00

Therefore, please deposit/send us the amount of Rs.257,800.00/- (Rupees Two Lakhs Fifty Seven Thousand Eight Hundred Only) through PO/DD/Cheque favouring "RDPL-HGPH-IA Project Escrow Collection Account" and Rs.176,105.00/- (Rupees One Lakh Seventy Six Thousand One Hundred Five Only) through PO/DD/Cheque favouring "RIVERBANK DEVELOPERS PRIVATE LIMITED" by 14/03/2021 at our Sales & Marketing office, Calcutta Riverside, 1 New Bata Road, Maheshhala, Kolkata - 7000140, OR you can also pay through wire transfer directly in our company's Account, further details being provided below. Extra charges shall be levied for outstation cheques / dollar cheques @ 0.5% of cheque amount and Rs. 1000/- for each bounced cheque.

8.2 A joint inspection memo dated 17.03.2021 where the applicant's observations read as under:

Check List for Joint Inspection

Apartment holder's observations	For office use
1) Garage (JG 24) Not Found	
2) Both Bath Room - incomplete	
3) No Electric Connection Observed	
4) Balcony - Incomplete Construction	
5) Flooring yet not finished.	
6) No Water Connection found	
7) Wall colour not found	
8) Insects and spider's net has taken place in every corner of the wall.	



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8.3 On 11.05.2021 having noted non completion of flat, the Applicant gave the following letter with an intention to rescind/cancel allotment and refund of entire consideration amount within 15 days. Relevant extract reads as follows:

Hence, as per clause 11(d) of the agreement you are liable to pay the compensation for 43 months i.e., from October, 2017 to April, 2021 @ Rs. 12.50/- per square feet i.e., (712 square feet X Rs. 12.50) Rs. 8,900/- per month which comes to Rs. 3,82,700/-. It is pertinent to mention here that the said flat still lies in an incomplete state and the same is evident from joint inspection held on 17.03.2021.

I say that due to such inordinate delay on your part in delivering possession, severe inconvenience and hardship have been cause to me and to add to this my relation with my banker SBI has also been deteriorated.

In view of the facts and circumstances as stated above there is no reason for me to go with the matter anymore inasmuch as the purpose for which it was booked has been frustrated and hence, I intend to rescind and/or cancel the said agreement and you are accordingly requested to refund the entire amount of consideration money paid by me in respect of the aforesaid flat and the parking space along with the compensation money as stated hereinabove within 15 days hereof.

8.4 It was thus communication of the applicants' intention to cancel the agreement with Hiland. The sales & marketing office responded to the request for cancellation on 12.02.2022 as follows:

From: Jayanta Ghosh [mailto:jayanta@hilandcal.com]
Sent: Saturday, February 12, 2022 11:31 AM
To: 'Sujay Mukherjee'
Subject: RE: Cancellation Calculation

Dear Mr. Mukherjee,

Thank You for your confirmation. We will inform you as soon we refund you the cancellation amount in your said bank account.

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8.5 Applicants' communication dated 11.02.2022 that reads as follows:

From: Sujay Mukherjee [mailto:sayudh100@gmail.com]
Sent: 11 February 2022 19:44
To: jayanta@hilandcal.com
Subject: Fwd: Cancellation Calculation

To,
Mr. Jayanta Ghosh,
River Bank Developers Private Limited,
225 C. A.J.C Bose Road,
4th Floor,
Kolkata - 700020.

Re - cancellation of agreement in respect to Flat - 2A6 at Tower - 17 & refund of the amount as mentioned.

Dear Mr. Ghosh,

This has reference to our today's meeting where we have mutually agreed to resolve the long pending issue of cancellation of the said agreement of above mentioned flat which is in my name. Please note that keeping in mind the present situation we would request you to consider Rs.18 lacs (Eighteen Lacs) as a final refundable amount against the cancellation of the said agreement.

Now, I would request you to act as early as possible for immediate settlement of the said issue for mutual benefits. Please arrange to pay the amount vide online transfer or NEFT/RTGS in my account whose details are mentioned below for your information. Your reciprocal approach will be highly appreciated.

Yr Name - Sujay Ghoshdas Mukherjee.

The communication shows that settlement is not final and is subject to refund.

8.6 Mail from Hiland dated 25.09.2021 with no attachments whatsoever:

From: Jayanta Ghosh <jayanta@hilandcal.com>
Date: Sat, 25 Sep, 2021, 12:33 pm
Subject: Cancellation Calculation
To: <sayudh100@gmail.com>

Dear Mr. Mukherjee,

Please find the attached cancellation calculation of your apartment no. 2A6 in tower no. 17 at Hiland Greens Phase-I. Please acknowledge the mail and let us know so that we can start process your refund.

The chain of correspondence as enumerated above explicitly demonstrate that the cancellation was never finalised and that cancellation could not have been finalised without the refund.

9. ISSUES

9.1 Given the factual background as above, the primary issues arising for our consideration is (i) whether the cancellation of allotment prior to initiation of CIRP was final and conclusive, (ii) if not, whether the cancellation of the allotment was conditional upon the actual payment of the refund of Rs. 18 Lakh to be made by the



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Corporate Debtor to the Applicant, and (iii) In that event, whether the Applicant, deserves to be adequately compensated since his allotted unit stands allotted to another allottee.

10. DISCUSSIONS

10.1 To address this issue, we shall first note the observation of the Hon'ble Telangana Real Estate Appellate Tribunal, Hyderabad in **M/s Aliens Developers Private Limited v. Telangana Real Estate Regulatory Authority & Anr.** (T.A. No. 8 of 2026) having noted that the developer had not refunded the amount due upon cancellation, which is as follows:

“14. In the present case, it is evident that the appellant/developer had not refunded the agreed amount at the time of filing of the complaint by the 2nd respondent/complainant i.e., 15.05.2025. The cancellation of allotment becomes final only when the entire refund amount is remitted back to the complainant as agreed. Since the cancellation has not attained its finality, the 2nd respondent/complainant continues to be recognized as an allottee, rendering the appellant's contention that the 2nd respondent/complainant has ceased to be an allottee untenable.”

(Emphasis Supplied)

10.2 It is an admitted position that the Applicant expressed his intention to rescind and/or cancel the allotment simultaneous with refund of Rs. 18 Lakh, but the Corporate Debtor did neither issue a formal communication of cancellation of allotment nor refunded any amount towards such cancellation, as such the cancellation of allotment was never conclusive and effected.

10.3 Coming to the second issue, it is noted that irrefutably and undeniably the applicant allottee had made full payment/substantial payment towards the allotment made in favour of the Allottee Applicant of the unit being Flat- 2A6 in Tower- 17 of Hiland Greens Phase- I together with the covered garage. The cancellation of the allotment of the said unit after receipt of a significant sum duly paid by the Applicant over a period of time and without refund of the sum the allottee had paid for acquiring the unit in question, would be inequitable and highly unfair.



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10.4 The Hon'ble NCLAT in **Puneet Kaur vs. K V Developers Private Limited & Ors.** (2022) ibclaw.in 416 NCLAT noted the vulnerability of the homebuyers and considered them with a compassionate and liberal view in *inter alia* the following words:

"15.The Homebuyers are a class belonging to middle class of society and majority of whom, who book flat has taken loan from Banks and other financial institutions and they are saddled with liability to pay their loan from their hardearned income they make payment to the Corporate Debtor in hope of getting a possession of the flat for their residence..."

...

21. When the allotment letters have been issued to the Homebuyers, payments have been received, there are Homebuyers and there is obligation on the part of real estate Company to provide possession of the houses along with other attached liabilities.... The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. ...

...

25. ...The Appellant(s), who are Homebuyers and have made payments to the Corporate Debtor, has every right to agitate their claim...

...

27. ... Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration..."

(Emphasis Supplied)



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- 10.5 It is an admitted position that the Applicant was deprived of rightful timely possession of the allotted unit despite making due payments. In view of the prevailing uncertainty coupled with the financial burden he had to face, the constraint faced by the Applicant homebuyer to decide on forfeiting the flat for recovering the sum paid by it is completely justified as any prudent person would do.
- 10.6 It is evident that the intention of the Applicant to cancel the allotment was proposed to be acted upon and completed with the act of refund of consideration of money, but the cancellation was not finalized and communicated and no refund was made. In terms of the Ld. Telengana Real Estate Appellate Tribunal noted supra coupled with the decision of the Hon'ble NCLAT as noted above, it is in the interest of justice to conclude that cancellation of the allotment was conditional upon the actual payment of the refund of Rs. 18 Lakh to be made by the Corporate Debtor to the Applicant. Hence, such cancellation if any recorded by the CD is ought to be treated as invalid.
- 10.7 The reliance on the Hon'ble NCLAT's ruling in **Supriya Singh and Ors. v. Ansal Urban Condominiums Pvt. Ltd. and Anr.** by the Respondents, to contend that the RP has no power to reverse a cancellation effected by the erstwhile management of the CD, is of no assistance as this is not the question before us. The present issue for consideration is whether the cancellation effected by the erstwhile management is valid in the first place. Having held such cancellation to be invalid, there is no cancellation left for the RP to reverse. Hence, the reliance placed on this precedent, being misplaced, is accordingly rejected.
- 10.8 Once we treat such cancellation to be invalid, for the subsequent allotment and grant of possession of the same unit to a third party, we are of the considered opinion that present Allottee Applicant deserves to be compensated adequately.
- 10.9 Regulation 4E of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 empowers the RP to allot apartment to the allottee who has requested the same and performed his part under the agreement. It envisages as follows:



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“4E. Handing over the possession: *After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional shall hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement.”*

11. Having held the cancellation of allotment without refund of money as invalid and void, we pass the following order:

a. The Applicant shall be at liberty to either seek-

(i) An alternative allotment upon payment of all necessary charges and any escalation amount that would be charged from any other similar allottee,

OR

(ii) full refund of the paid amount with interest in accordance with statutory rates which shall be duly provided for in the plan.

b. In the event the Applicant seeks alternative allotment as granted in a(i) hereinabove-

(i) the Resolution Professional shall allot such unit, being one flat in Hiland Greens Phase- I along with one covered car parking space therein, as is available and approved by the CoC with 66% votes in favour of the Allottee Applicant, within 15 working days of upload of this order;

(ii) The Applicant in that case shall clear all charges that he would be required to bear.

(iii) The Respondent or any other person shall not create any new any right, title, and interest of any third person in respect of the flat to be so allotted to the Allottee Applicant in discharge of this order.

(iv) Further, the Resolution Professional shall take necessary steps in accordance with law to complete the process of registration and handover possession of the said units that shall be allotted in favour of the Allottee Applicant, in due course.



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12. Accordingly, the IA stands **allowed and disposed of**.
13. Urgent Certified Copies of this order, if applied for, shall be furnished by the Registry upon compliance of all the requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order dated on 10.09.2026.

Bhatt, O. [LRA]