



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH-1
AT CHENNAI**

IA(IBC)/892(CHE)/2025

in

CP(IB)/73(CHE)2022

*(filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 R/w rule 11 of the
National Company Law Tribunal Rules, 2016)*

In the matter of Amar Prakaash Developers Private Limited

- 1. TruPro Insolvency Services LLP,**
Resolution Professional of Amar Prakaash Developers
Private Limited,
No. 581, Third Floor (Top Floor),
Sector 27, Gurugram – 122001.
Email ID: rohit.sehgal@truproinsolvency.com

... Applicant

Vs

- 1. Mr. Aadarsh Surana,**
F201, Taisha Housing Society, Natesan Nagar,
2nd Main Road, Kalimmankoil Street,
Virugambakkam, Chennai – 600 091

... Respondent No.1

- 2. Mr. Aashish Surana**
2, Rajendra Prasad Road
Nehru Nagar
Chromepet
Chennai-600044
E-mail ID: kuideeplaw@gmail.com

... Respondent No.2

- 3. Mr. Sudhir Surana**
F201, Taisha Housing Society
Natesan Nagar 2nd Main Road



Kalimmankoil Street
Virugambakkam
Chennai – 600091
E-mail ID: aadarsh@amarprakash.in

... Respondent No.3

4. **Mrs. Sunitha Surana**
F201, Taisha Housing Society
Natesan Nagar 2nd Main Road
Kalimmankoil Street, Virugambakkam
Chennai – 600091

... Respondent No.4

5. **Mr. Kuldeep Surana**
F201, Taisha Housing Society
Natesan Nagar 2nd Main Road
Kalimmankoil Street, Virugambakkam
Chennai – 600091

... Respondent No.5

For Applicant :Raghav Menon, Advocate

For Respondent : Pawan Jhabakh, Advocate for Promoter Director

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 30th June, 2026



ORDER

(Heard Through Hybrid Mode)

This application under Section 66 of IBC r/w Rule 11 of NCLT Rules 2016, has been filed by the RP of the Corporate Debtor Amar Prakaash Developers Private Limited seeking the following reliefs.

- i. To declare that the purported cancellation of units by the Respondents was fraudulent within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016 and direct the Respondents:*
 - a. To personally bear the liability towards the repayment of the loans availed from LICHFL and SBI, thereby relieving the Corporate Debtor from such obligations; or*
 - b. To make contributions to the assets of the Corporate Debtor aggregating to the total loan amount of Rs.12.35 Crores availed by them.*
2. The facts relevant for the disposal of the application are that the Corporate Debtor was engaged in the real estate business. On a petition filed under Section 7 of IBC by KV Capital, the Financial Creditor, CIRP against the Corporate Debtor was initiated vide an order dated 18.04.2023. The Respondents were the part of the management of the Corporate Debtor and responsible for the control and management of the affairs of the Corporate Debtor.



3. It is stated that the Respondents had applied for the housing loans from LICHFL and State Bank of India for purchase of specific flats / units in the projects developed by the Corporate Debtor as tabulated below.

Name of Director(suspended / past)	Flat/Unit	Lender	Loan Sanctioned (INR in Crores)
Aadharsh Kumar Surana	CB-31	LICHFL	3.27
Sudhir Kumar Surana	FE-31	LICHFL	2.50
Aashish Kumar Surana	GF-31	LICHFL	2.36
Kuldeep Surana	BA-31	LICHFL	2.34
Aashish Kumar Surana	M-711	SBI	0.94
Kuldeep Surana	A-312	SBI	0.94

4. The loans were sanctioned by LICHFL and SBI in 2018. Thereafter, Respondents executed the loan documents. To secure the repayment of loans, Respondents created security interest in favour of LICHFL and SBI over the purchased flats / units by equitable mortgage and deposit of title deeds as Annexure B2. Tri-partite loan agreements were entered into among them (flat buyers, Corporate Debtor and LICHFL / SBI) at the time of disbursal of loans. The Respondents did not make any payments towards the loan amounts from the inception of loans. On 01.09.2021 and 03.05.2021, they submitted cancellation requests to the Corporate Debtor expressing their intent to withdraw from the project



and cancel the bookings of their respective flats / units as Annexure B4 collectively.

5. It is stated that the Corporate Debtor being under the control and management of the Respondents accepted the cancellation requests vide letters dated 15.12.2021 subject to the condition that the Respondents and the Bankers would jointly participate in the cancellation process involving cancellation of UDS sale deed and agreement of project promotion and construction (APPAC) as Annexure B5 collectively. It is stated that Respondents failed to obtain consent from them in the cancellation process and circumvented a crucial condition precedent for the cancellation of allotment of flats.
6. It is stated that due to non-payment of loan amounts, LICHFL / SBI classified the accounts of the Respondents as NPA and issued recall notices demanding repayment of outstanding loan amounts. On 19.05.2022, the Respondents informed LICHFL / SBI about their withdrawal from the project and requested the Corporate Debtor to initiate cancellation and refund. LICHFL vide letters dated 02.06.2022 and 06.11.2023 clarified that such cancellation is not acceptable as the



cancellation of MoDT could only be facilitated after the complete closure of the sanctioned loans as Annexure B6 collectively.

7. It is stated that following the initiation of CIRP, LICHFL filed the claims on 05.05.2023 as secured financial creditor as Annexure B7, however, SBI did not file any claim with the RP. It is stated that the Respondents also filed claims in Form C on 02.05.2023 as Financial Creditors for the cancelled units despite having taken the refunds and committed defaults in payment of their personal loan obligations shifting liability on the Corporate Debtor as Annexure B8. It is stated that the Respondents are still insisting to be treated as Financial Creditors for the units, that have been cancelled, in a stark contrast to their stand in IA/1418/2024 filed by the Respondents seeking declaration that SBI and LICHFL be treated as Financial Creditors for the said units since in the tri-partite agreement, the Corporate Debtor was a party. In that application, they claimed that their claims be classified as that of Home Buyers treating the cancelled units as the unsold inventories recognizing the claims of LICHFL and SBI as secured Financial Creditors for the cancelled units in disregard to their contractual obligations. It is stated that this Tribunal vide an order dated 19.02.2025



disposed of the application holding LICHFL and SBI as the secured Financial Creditors of the Corporate Debtor for the amounts disbursed to the Corporate Debtor to the extent of the loan amounts remaining unpaid.

8. It is stated that the Respondents in their individual capacity had availed the housing loans for purchase of specific flats / units and were identified as Borrowers in terms of the tri-partite agreements. They never made any payments towards the loan amount and made a calculated attempt to evade their financial obligations by submitting cancellation requests which were accepted by the Corporate Debtor without the involvement / consultation of LICHFL / SBI. It is stated that it was done with a view to shift their financial liabilities on to the Corporate Debtor defeating the lawful claims of LICHFL and SBI. It is stated that LICHFL had explicitly clarified that cancellation is not acceptable vide mail dated 02.01.2025 stating that cancellation could only be acknowledged once the outstanding loan amount is fully repaid. It is stated that this Tribunal vide an order dated 19.02.2025 also determined that the Respondents and the Corporate Debtor are jointly and severally liable to service the loans of LICHFL and SBI irrespective



of purported cancellation of flats / units. It is stated that this deliberate attempt by the Respondents clearly establish their fraudulent intent within the meaning of Section 66 of IBC. It is stated that as per RERA Act, Promoter shall maintain a separate account for each project wherein 70% of the money received from the allottees are deposited for exclusively using for the construction of the project.

9. It is alleged that the diversion of funds not only violated the terms of the loan agreements but also undermined the financial interest of the Creditors who have a rightful claim over such funds as a part of the Corporate Debtor. Further, this Tribunal in the order dated 19.02.2025 has observed that the Corporate Debtor has failed to explain why 70% of the received amount was not deposited in the escrow account as required under the RERA Act. It is stated that whilst ordinary allottees continued to face uncertainty and hardship, the Respondents acted in bad faith by orchestrating the cancellation of their own units. It is stated that the other Home Buyers whose flats were cancelled were neither offered similar treatment nor refund. This discriminatory and preferential treatment demonstrates the fraudulent intent of the Respondents which was aimed for benefitting themselves and



defrauding the Creditors. It is alleged that this action of the Respondents constitute a clear breach of their statutory obligation under Section 66(2) of IBC which mandates that Directors must avoid actions that worsen the financial position of the company once insolvency is imminent and must take reasonable steps to minimize the potential losses.

10. **The Respondents No. 1, 2, 4 and 5 contested the application and filed their reply** stating that Respondent No. 4 is the spouse of late Shri. Sudhir Kumar Surana (Respondent No. 3) and is no way involved or a beneficiary to any of the transactions referred to in the application. It is stated that the Applicant has admitted that the claim form dated 05.05.2023 submitted by the LICHFL was accepted by the Applicant rendering the allegations of fraud untenable and unsustainable. It is stated that if there was no obligation on behalf of the Corporate Debtor to make payments to LICHFL, the Applicant ought to have rejected the claim form filed by LICHFL on 05.05.2023. Thus, by virtue of accepting the claim form, the Applicant is estopped from filing the present application.



11. It is stated that the LICHFL, allegedly an affected party till date has not issued any communication of fraud to any of the Respondents. The tripartite agreement provides that the Corporate Debtor alone has the liability towards the loan granted to the Respondents in the event of any cancellation which agreement was acted upon by LICHFL by filing the claim form dated 05.05.2023 before the Applicant. It is stated that Applicant has not produced any act of evidence to sustain the said allegations of diversion of funds. It is stated that in the present case, the entire money towards loan was disbursed to the Corporate Debtor which is also admitted by the Applicant through the acceptance of claim dated 05.05.2023. It is stated that by virtue of Section 18(1)(b) of RERA, in the event of any cancellation, it is the Builder who is bound to refund to the lender. It is stated that the Applicant has treated the cancelled flats as the part of the inventory of the Corporate Debtor in the information memorandum released to the PRAs. It is stated that the flats which have been cancelled by the Respondents continued to remain as security with the financial institutions. It is stated that the order of the Tribunal dated 09.02.2025 directs the Applicant to proceed in terms of the Claim Form C filed by LICHFL categorizing it as



financial creditor. The Applicant instead complying the above order has chosen to file this application. Since no appeal has been filed, the order has attained finality. It is stated that in the event of cancellation as per the tri-partite agreement, the Corporate Debtor is liable to refund the monies to the financial institutions.

12. It is stated that the Applicant has failed to constitute and satisfy any of the thresholds laid down under Section 66 of IBC.
13. **The Applicant filed the Rejoinder** stating that after filing of this application, the Applicant has come to know that State Bank of India, the Home loan provider to Respondent No. 2 and Respondent No. 5 vide order dated 19.04.2025 classified the home loan account of Respondent No. 2 and Respondent No. 5 as fraud as Annexure A and B. The Applicant denied the averments made in the reply and stated that this application has been filed after thorough examination of record. It is stated that the Respondents increased the liability of the Corporate Debtor which was already under financial distress. This conduct led to the initiation of CIRP and undermining the interest of the Creditors as well as the Corporate Debtor. It is stated that Section 18(1)(b) of RERA provides the scenarios where the Promoter fails to complete and hand



over the possession of apartment within the time stipulated under the agreement. In the present case, the Respondents were responsible to complete the construction in time and hand over the allotted units. It is stated that it was mandatory for the Respondents to obtain NOC from the lenders prior to initiating any cancellation which the Respondents admittedly failed to do. The Respondents had also filed the claims for treating them as Home Buyers which is a clear attempt to defraud the system by first availing the funds in their individual capacity and then offloading the repayment liability on to the Corporate Debtor and subsequently claiming recovery from the same entity causing a double blow to its financial opposition.

14. It is stated that this Tribunal in the order dated 19.02.2025 never held that the entire liability rests solely on the Corporate Debtor. The Tribunal has held that the Respondents and the Corporate Debtor are jointly and severally liable for the outstanding loan amounts. The Tribunal also took note of the fraudulent intent of the Respondents as reflected in their unilateral actions thereby reinforcing their accountability in the matter. It is stated that the conduct of the



Respondents amounts to fraud and they are liable under Section 66 of IBC.

Analysis / Findings

15. We have heard Ld. Counsels for the parties and perused the written synopsis as well as the affidavit filed by Respondent No. 1 vide SR. No. 4835 dated 14.11.2025.
16. In the affidavit, the Respondent No.1 has stated that as per the resolution plan that has been submitted and approved by the CoC, it has been expressly stated that the resolution plan seeks for the “cancellation, waiver and discharge of all avoidance applications (filed with respect to Sections 43, 45, 47, 49, 50 and 66 of IBC, 2016) from the date of Approval by the Tribunal as part of the reliefs and concessions contained in the resolution plan”.
17. It is stated that in terms of the resolution plan, the Applicant cannot maintain the proceedings in IA/892/2025 upon the approval of the plan submitted by the Resolution Applicant.
18. Before venturing into the allegations and the reply, it is relevant to refer Section 29A(g) of IBC. It provides that a person shall not be eligible to



submit a resolution plan, if such person or any other person acting jointly or in concert with such person has been a promoter or in the management or control of a Corporate Debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been passed by the Adjudicating Authority under the Code. Provided that this clause shall not apply if the transaction has taken place prior to the acquisition of the Corporate Debtor by the Resolution Applicant pursuant to a resolution plan approved under the Code and such Resolution Applicant has not otherwise contributed to such transaction.

19. In the present case, Respondent No. 1 is no doubt a Resolution Applicant being the Promoter Director of the MSME Corporate Debtor and was in the management and control of the affairs of the Corporate Debtor when the alleged transaction had taken place. Though the Applicant while submitting the plan has expressly stated that the plan seeks for cancellation, waiver and discharge of all avoidance applications from the date of approval by this Tribunal as part of reliefs and concessions contained in the resolution plan which the CoC has



approved but the plan has not been finally approved by this Tribunal nor the Tribunal is bound to grant the reliefs and concessions as sought for in the plan unless otherwise fit to be granted. The powers qua granting reliefs and concessions have been given to the Tribunal under Section 32A of IBC on the principle of clean slate. The CoC in its commercial wisdom cannot take such a decision as the transactions involving the provisions of Section 66 clearly bar the Resolution Applicant from submitting the resolution plan if involved in such fraudulent transactions. However, since in the present case, the application has not been adjudicated yet, so till the adjudication by the Tribunal, the Resolution Applicant could file the plan.

20. Now coming to the averments, it is not in dispute that the Respondents had booked the flats with the Corporate Debtor as detailed above and availed the loans from LICHFL and SBI for a total amount of Rs. 12.35 Crores. Aadarsh Kumar Surana, the Resolution Applicant had not taken loan from the State Bank of India which had declared the home loan account of Respondent No. 2 and Respondent No. 5 'fraud'. It is pertinent to mention that both the Respondents have challenged the action of State Bank of India before Hon'ble High Court by filing the



writ petitions where the orders of State Bank of India dated 19.04.2025 have been stayed. It is also to be noted that till date State Bank of India has not filed any claim before the RP in respect of the loan disbursed to the above Respondents after executing the tri-partite agreements with the Corporate Debtor and the Respondents. It is pertinent to mention that the loans so advanced by the State Bank of India by virtue of the tri-partite agreements were directly transferred to the Corporate Debtor. This Tribunal in its order dated 19.02.2025 on the application IA/1418/2024 after hearing the parties at length and on considering the loan documents and the tri-partite agreements held as under:

17. It is not in dispute that the Applicants had booked the flats as detailed above in the Corporate Debtor's project namely Palm Rivera. They had availed the loans from the Financial Creditors / Respondent No. 2 and 3 and entered into the tri-partite agreements with the Corporate Debtor and the Financial Creditors. They also made the initial payment / paid the margin money for the flats to the Corporate Debtor. The Applicants were to be delivered possession of the flats within a period of 90 days from the date of the booking which the Corporate Debtor failed to do. The Applicants then requested for cancellation of the flats vide letters and the reminders as above. The Corporate Debtor thereafter accepted their request and cancelled the booking on different dates as detailed above. All this happened before the initiation of CIRP against the Corporate Debtor.

19. Perusal of the agreement reveals that the Respondent No. 3 / LICHFL had sanctioned the housing loan to the Borrower for the purchase of the flat on his executing the loan documents. It disbursed the loan directly to the Builder on behalf of the Borrower. The flat



became the part of the security for the housing loan granted by LICHFL in the hands of the Builder and after completion of property, the Builder shall execute the necessary sale deed and get it registered in favour of the Borrower and hand over the registered sale deed directly to LICHFL. If the Borrower desires to withdraw the application for allotment, or in case the agreement for sale of the property is cancelled, the entire amount advanced to LICHFL to the Builder will be refunded forthwith by the Builder to LICHFL along with interest and thereafter the Builder shall refund the balance to the Borrower. It provided that in case of cancellation, the Builder shall not be entitled to transfer or sell the property to another person till such time, the entire amount advanced by LICHFL is refunded to LICHFL. Until such time the property shall remain charged in favour of LICHFL. It was agreed upon that the Borrower and the Builder jointly and severally agree to indemnify the LICHFL against all monetary loss.

20. The Tri-partite Agreement nowhere provides that in the event of cancellation of booking of flat by the Purchaser / Flat Buyer, it will be sole responsibility / liability of the Corporate Debtor to pay the loan amount to the Financial Creditor. The liability is joint and several.

21. In the instant case, the Builder / Corporate Debtor had informed to LICHFL vide letter dated 11.04.2018 about the booking of flat by Mr. Aadarsh Surana noting the lien of LICHFL on the property being acquired by the Borrower. The Builder in response to the cancellation letter, vide letter dated 15.12.2021 accepted the cancellation subject to the condition that since the project has been financed by the Banker and an encumbrance has been created over the UDS & sale deed, both Aadarsh Surana and the Banker have to necessarily come forward for the cancellation of UDS sale deed and agreement of project promotion and construction and discharge of memorandum of deposit of title deeds simultaneously. It is relevant to reproduce the letter dated 15.12.2021 accepting the cancellation request of the Applicant No. 1.



15TH DECEMBER, 2021

TO
Mr. AADARSH SURANA,
Son of Mr. Sudhir Kumar Surana
Flat No. F201, Taisha Housing Society,
Natesan Nagar 2nd Main Road, Kaliyammann Koil Street,
Virugambakkam, Chennai - 600092

Dear Sir,

SUBJECT: ACCEPTANCE ON YOUR CANCELATION OF ALLOTMENT LETTER DATED 03.05.2021 FLAT NO. CB-31 (LINK FLAT) , 3RD FLOOR, AT THE PROJECT " PALM RIVIERA".

We have carefully considered your request for cancellation of booking of your **FLAT NO. CB-31 (LINK FLAT) , 3rd Floor**, at the project " PALM RIVIERA", and we do accept the same in terms of conditions stipulated under agreement of project promotion and construction dated 20.09.2013 and subject to the following conditions enumerated hereunder:

1. As a project has been financed your banker and a encumbrance has been created over the UDS sale deed, both yourself and the banker has to necessarily come forward for cancellation of UDS sale deed and Agreement of Project Promotion and Construction, Discharge of Memorandum of Deposit of Title Deeds simultaneously.
2. Process of Refund of the amount paid towards the apartment will be initiated immediately after the resale or we will buyback of the said Apartment.

This is for your kind information.
For Amar Prakash Developers Pvt. Ltd.

Authorised Signatory / Director

☎ 844 4090 5000 ✉ contact@amarprakash.in 🌐 www.amarprakash.in

AMAR PRAKASH DEVELOPERS PRIVATE LIMITED
CIN : U20307TN2009PT006406

Regional Office & Corporate Office Plot No. 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Since, Aadarsh Surana did not take no objection from the LICHFL / Respondent No. 3 qua the cancellation and there was lien in favour of LICHFL, no cancellation of UDS sale deed and other documents was made.

22. The loan documents provide that it shall be the liability of the Borrower / Flat Buyer to pay the debt of the Financial Creditor, as seen from the conditions forming part of the sanction letter, page 16 -19, agreed terms and conditions of housing loan page 35-39, loan agreement page 71-82, memorandum of deposit of title deeds pg 108-114, CERSAI report page 128- 130 of Annexure A filed by the Respondent No. 3 in its reply / counter. There is no document to indicate that the said loan was taken for evergreening the Corporate Debtor's project loan account. It



may be true that the said loan was used to service the interest payments / repayments and DSRA of the project construction loan of the Corporate Debtor for saving the account of the Corporate Debtor becoming NPA and the amount was disbursed in the AXIS escrow account of the Corporate Debtor but the documents available on record show that it were the home loans taken by the Applicants / Borrowers in respect of the above flats bought from the Corporate Debtor. It is important to note that the Flat Buyers were also the Promoter Directors of the Corporate Debtor.

23. It is manifest from the record that when the Corporate Debtor was unable to hand over the possession of the flats and when the project got stuck up, the Applicants requested for the cancellation of the flats which cancellation was accepted by the Corporate Debtor which was being managed and controlled by the Applicants & Ors. The Applicants or the Corporate Debtor before cancellation did not obtain 'no objection' or 'no dues certificate' from the Financial Creditors, though, it was incumbent upon them in view of the terms and conditions of the loan documents.

24. As regards the contention that the Applicants were under obligation to route all the home loans disbursement to the Corporate Debtor's DSRA account and interest payments of the project loan, we find that no such plea was taken in the application. It may be true that the loan amount given was partially utilized for repayment / interest and partially towards construction funding and the same may be in violation of Section 4(2) (1) (D) of the RERA Act, but it for the Corporate Debtor to explain why 70% of the amount received was not deposited in the escrow account to be used for construction. From this, it cannot be made out that the transaction was only the funding transaction for evergreening the Corporate Debtor's project loan account to service interest payments.

25. The CIRP in the present case was initiated on 18.04.2023. The cancellation was accepted on 15.12.2021. There is a letter from LICHFL dated 02.06.2022 at page 139 of the reply filed by the Respondent No. 3, addressed to Applicant No. 1 / Aadarsh Surana in response to his letter dated 19.05.2022 that the property is mortgaged to it through the document dated 07.05.2018 and the same can be released only on closure



of loan for an amount of Rs. 3,28,06,019.42 and only after the closure of the loan, MODT can be cancelled and thereafter he can proceed with the UDS cancellation. It is seen from the letter dated 19.05.2022 at page 134 addressed to LICHFL that the cancellation of the flat was communicated to LICHFL only on 19.05.2022 and not before.

26. The letter dated 02.06.2022 at page 139 by LICHFL is followed by another letter dated 05.07.2022 at page 140. There is a letter dated 06.11.2023 at page 146 where it was clarified that the loan amount was disbursed to the bank account of the Corporate Debtor on the request of the Applicant for which they had entered into a tri-partite agreement with the Builder and LICHFL. MODT was also executed agreeing to repay the loan amount along with interest. The LICHFL in clear terms had informed that it cannot accept the cancellation of the booked flat until the entire loan is closed. The LICHFL has also initiated the SARFAESI proceedings against the Applicants vide notice dated 04.02.2023.

27. As per the tri-partite agreement, the Applicant / Borrower and the Corporate Debtor have jointly and severally agreed to indemnify and keep indemnified against all monetary harm / loss etc., meaning thereby that in case the Borrower fails to pay the EMIs or the loan amount, LICHFL could recover the amount from the Corporate Debtor. The Applicant / Borrower with the permission of the Corporate Debtor had also mortgaged the flat with LICHFL as a security for the repayment of loan. LICHFL in terms of the loan documents invoked the SARFAESI proceedings in respect of the mortgaged flat.

28. Having gone through the loan documents and the agreements including the correspondences, the logical conclusion which can be drawn in the present case, is that the loans were taken by the Applicants in their individual capacity for the flats being constructed by the Corporate Debtor. It was the liability of the Borrowers jointly and severally with the Corporate Debtor to service the loan of the Respondent No. 2 and 3. Even though, they cancelled the flats but by cancellation, they would not be absolved of their liabilities unless the whole loan is serviced.



29. It is true that during CIRP, the LICHFL filed the claims in Form-C in respect of the loans advanced to the Applicants which the RP admitted in full as seen from the synopsis filed by the RP in IA/2152/2024 vide Sr. No. 167 dated 08.01.2025, but from this it cannot be inferred that they had accepted that the borrowers would not be liable to pay the balance loan amount and the Corporate Debtor would be liable to pay the balance loan amount. By virtue of tri-partite agreement and the loan documents, the liability of the Borrower / Applicant is joint and several and the LICHFL could enforce recovery in respect of the amount from them jointly and severally subject to realization. It is pertinent to mention that Mr. Aashish Surana and Mr. Kuldeep Surana, the Promoter Directors had also filed the claims in Form-C on 02.05.2023 in respect of the four flats, M-711, GF-31, A-312 and BA-31 stating that they had paid the amount towards the flats but cancelled later. (Annexure R1 colly., Page 13 to 18 of Reply of Respondent No. 1 vide Sr. No. 3696 dated 22.07.2024).

33. In the present case, the Applicants had paid the initial sums towards purchase of flats to the Corporate Debtor and obtained loans, to make balance payment from the Respondent No. 2 and Respondent No. 3, so in that eventuality and in terms of the loan documents and the tri-partite agreements executed by them, they along with the Corporate Debtor are jointly and severally liable to repay the debt to Respondent No. 2 and 3 irrespective of the fact whether they had cancelled the flats or their flats became the inventory / assets of the Corporate Debtor, till the whole loan amount is serviced. Section 18(1)(b) of RERA Act and Tri-Partite agreement clauses 4 and 5 nowhere provide that in respect of the flats once cancelled, the Corporate Debtor shall be solely liable to the lender i.e. Respondent No. 2 and 3.

34. Considering the loan documents, tri-partite agreements, cases referred supra and that after the cancellation of flats, the flats became the inventory / assets of the Corporate Debtor and the fact that the loans given by Respondent No. 2 and 3 to the Applicant have not been completely serviced and that the Applicants and the Corporate Debtor are jointly and severally liable to repay the loan and the Respondents No. 2 and 3 have charge on the flats and the UDS and MoDT have not been cancelled by the Respondent No. 2 and 3, we are of the view that



Respondent No. 2 and 3 are the Secured Financial Creditors to the Corporate Debtor in respect of the amount disbursed to the Corporate Debtor and not paid in respect of the above flats.

35. We are in agreement with the contention of the Applicants that the RP of his own cannot revise the claims, in terms of the CIRP Regulations. In case any revised claims are filed / accepted, it requires the approval of the Tribunal.

36. Since in the present case, the Respondent No. 2 and 3 have filed the claims in Form-C vide dated 05.05.2023 as Secured Financial Creditors, the RP is directed to proceed in terms of the claims filed by the Respondent No. 2 and 3 in Form-C vide dated 05.05.2023 in respect of the above flats categorizing their claims as the Secured Financial Creditors.

21. Perusal of the order and the proceedings would reveal that LICHFL already filed the claim in respect of the cancelled flats by the allottees (Respondent No. 1, 2, 3 and 5) which claims have also been admitted by the IRP / RP as evident from the claim form dated 05.05.2023. These allottees / Respondents had claimed refund of the initial payment / payment of margin money for the flats but except to Sudhir Surana, no refund was made. Refund to Sudhir Surana was made owing to his health condition since suffering from renal failure for which he was undergoing treatment. The Applicant has also filed separate application under Section 66(2) of IBC vide application No. 2209 of 2024



in relation to the refund made to Sudhir Surana which has been dismissed by this Tribunal. Admittedly, other Respondents had filed the claims before the RP but their claims were rejected. We also agree with the contention of the Respondents that filing and admission of claim form dated 05.05.2023 by LICHFL would render the allegations of fraud untenable and unsustainable. Further, neither the Applicant nor LICHFL preferred any appeal against the order of this Tribunal on the application IA/2209/2024. LICHFL also did not issue any communication of fraud to any of the above Respondents.

22. In the order, it was observed by the Tribunal that there were tri-partite agreements among the allottees / Respondents, Corporate Debtor and LICHFL / SBI. They disbursed the loans directly to the builder / Corporate Debtor on behalf of the Borrower. The flats became the part of the security for the housing loan granted by them and after completion of property, the builder / Corporate Debtor shall execute the necessary sale deeds and get them registered in favour of the Borrower and hand over the registered sale deeds directly to the Financial institutions. No doubt, cancellation was accepted by the Corporate Debtor on 15.12.2021, but except refund to Sudhir Surana who is no



more, no refund was made to the other allottees towards the margin money. There is a letter from the Corporate Debtor while accepting the cancellation with a convent that *as the project has been financed by the Banker and an encumbrance has been created over the UDS sale deed, they and the Bankers have to necessarily come forward for cancellation of UDS sale deed and agreement of project promotion and construction, discharge of memorandum of title deeds simultaneously. Process of refund of amount paid towards the apartment will be initiated immediately after the resale or it will buy back the said apartment.* It was expressively held that the loan were taken by the Applicants / allottees / Respondents herein in their individual capacity for the flats being constructed by the Corporate Debtor, it was the liability of the borrowers jointly and severally with the Corporate Debtor to service the loan of the financial institution. Even if they cancelled the flats but by cancellation they would not be absolved of their liabilities unless the whole loan is serviced. They can enforce recovery in respect of the amount from them jointly and severally subject to realization. In cogent terms, it was held that the tripartite agreement nowhere provides that in respect of the flat once cancelled, the Corporate Debtor shall be solely liable to the lender. It



was held that after the cancellation of flats, the flats became the inventory / assets of the Corporate Debtor. The fact that the loans given by the lenders to the Borrowers have not been completely serviced and the Borrowers and the Corporate Debtor are jointly and severally liable to repay the loan and the lenders have charge on the flats and the UDS and MoDTs have not been cancelled by the lenders, the lenders are the sole Financial Creditors in respect of the amount disbursed to the Corporate Debtor and not repaid in respect of the above flats.

23. The tri-partite agreements clearly provide that in case the loans are not serviced in full, the lenders / financial institutions i.e. LICHFL and SBI can claim the balance amount from the allottees / individual borrowers till the satisfaction of the loan amount.
24. It is recorded in the order that SBI has filed the claim in respect of the two cancelled flats though SBI has not filed the claim. But the said order was not challenged by SBI before the Appellate Authority nor the said fact was brought to the notice of the Tribunal by SBI immediately thereafter though the record shows that SBI came to know of the order within two days of passing of the order. It is true that SBI after



declaring the account of two allottees i.e. Aashish Kumar Surana and Kuldeep Surana as NPA, initiated SARFAESI proceedings and declared their accounts as 'fraud' which fraud proceedings have been challenged by them before Hon'ble High Court by filing writ petitions where Hon'ble High Court has granted stay which order is still in force.

25. Considering the above, the initiation of fraud proceedings would not disqualify the Resolution Applicant from submitting the resolution plan as MSME Corporate Debtor.
26. It is contended that the act of the Respondents was a calculated attempt to evade financial obligations. We find that except Sudhir Surana none of the Respondents has taken refund of the margin money. The flats after cancellation went to the Corporate Debtor. LICHFL has filed the claim in respect of the four cancelled flats which claim has been admitted by the IRP / RP. The resolution plan submitted by the Promoter Director as MSME Corporate Debtor has also been accepted by the CoC which comprise of LICHFL. The loan was directly transferred by the lenders to the Corporate Debtor. In the order dated



19.02.2025 in the application IA/1418/2024, this Tribunal making reference of the tri-partite agreements have not absolved the Respondents from their liabilities towards the loans taken by the Respondents from LICHFL and SBI. They have been held liable to service the balance loan to the Creditors by virtue of their liability jointly and severally. Further, they have not derived any benefit out of the cancellation of the flats nor any loss or disadvantage was caused to any of the Creditors by the said act of the Respondents. As regards pre-requisite deposit with TNRERA, it is for TNRERA to initiate appropriate proceedings. It cannot be said that it is a case of diversion of funds by the Respondents / Promoter Directors of the Corporate Debtor in violation of terms of loan agreements undermining the financial interest of the creditors.

27. Hon'ble NCLAT in the case of Regen Powertech Pvt. Ltd. –Vs- Wind Construction Pvt. Ltd. in Company Appeal (AT)(Ins) No.349 of 2022, held as under;

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'



34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the Company would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling "Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor',

36. In the instant Case 'on hand', the 'Appellant' / 'Applicant' before the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had filed IA(IBC)/489(CHE)/2021 in IBA/1099/2019 under Section 66 (1) of the Insolvency and Bankruptcy Code, 2016. In this Page 20 of 22 Company Appeal (AT)(CH)(Ins) No.349/2022 connection, this 'Tribunal' significantly points out that in respect of an 'Application' (Filed under Section 66 of the Insolvency and Bankruptcy Code, 2016) 'Fraudulent Trading' / 'Wrongful Trading', by the 'Applicant' / 'Resolution Professional' is concerned, 'Tangible Materials' / 'Relevant Facts' are to be pleaded in an 'Unambiguous and Unequivocal Terms', by supplying the necessary details / facts as the case may be.'

28. The NCLT Chennai Bench in *Renuka Devi Rangaswamy, IRP of Regen Infrastructure and Service Pvt Ltd Vs. Madhusudhan Khemka, Suspended Director of Regen Infrastructure and Service Pvt Ltd*, IA(IBC)/1143(CHE)/2021 took note of the judgments under English Law to define wrongful / fraudulent trading in the following terms:



38. A careful perusal of Section 66 of IBC, 2016 would manifest the fact that it deals with two transactions; Section 66(1) of IBC, 2016 deals with 'Fraudulent Trading' and Section 66(2) of IBC, 2016 deals with 'Wrongful Trading'. Section 66(1) of IBC, 2016 imposes liability on 'any person' who were knowingly parties to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor. Thus, essentially for a transaction to qualify under Section 66(1) of IBC, 2016, the following conditions should be satisfied;

- (a) Liability can be fixed upon 'any person';
- (b) The said person should knowingly carry on the business with the Corporate Debtor;
- (c) The said person should have a dishonest intention to defraud the creditors;

40. On analysing Section 66(2) of IBC, 2016 it is to be seen that it deals with 'Wrongful Trading' and for a transaction to qualify under Section 66(2) the following conditions must be satisfied;

- (a) Liability can be fixed upon only 'Director' or 'Partner';
- (b) They knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings;
- (c) They did not take due diligence with a view to minimising the potential loss to the company's creditors;

42. Thus, there seems to be a stark contrast in relation to Section 66(1) and 66(2) of IBC, 2016. It is needless to say that even the scope of sub-



section (1) and (2) of Section 66 of IBC, 2016 are different. As to the present case, the Applicant sought the Respondents to make contribution to the Corporate Debtor, under Section 66(2) of IBC, 2016.

29. As per the explanation to Section 66 of IBC, the Tribunal is mandated to presume that all Directors of the Corporate Debtor have exercised necessary care and proper due diligence in conducting the affairs of the Corporate Debtor. The burden of proof is on the Liquidator or the RP as the case may be to show that the conduct of the Director was not reasonable or was not in exercise of appropriate due diligence. Where the RP or the Liquidator is unable to establish the same, the statutory presumption operates in favour of the Director and the application under Section 66 against such person owed to be dismissed on account of such statutory presumption as held in the case of *Regen Powertech Private Limited Vs. Wind Construction Pvt Ltd Company Appeal (AT) (CH)(Ins) No. 349 of 2022* supra where it was observed as follows:

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the 'Company' would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent



Intent'. To put it emphatically, a more compelling 'Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'.

30. An analysis of the above discussions clearly brings forth to the light that the transactions made by the Respondents were in the ordinary course of business or the financial affairs of the Corporate Debtor and were not the fraudulent transactions. These transactions do not in any manner prejudice the interest of the creditors.
31. As regards delay in filing the application, admittedly Regulation 35A of CIRP Regulations imposes a duty on the RP to take measure within the timeline and any action taken by RP beyond the time prescribed is prohibited, but it has been held in catena of judgements i.e. in the case of *Aditya Kumar Tibrewal vs Om Prakash Pandey & Ors (Company Appeal (AT) Insolvency No. 583 of 2021)* and *Prasant Chandra Rath & Anr vs Surya Kanta & Anr (Company Appeal (AT) Insolvency No. 869 of 2022)* by Hon'ble NCLAT that the timeline prescribed in Regulation 35A of CIRP Regulations is only directory and any action taken by the RP beyond the time prescribed, cannot be held to be non-est or void on the ground that



it is beyond the prescribed period, if there are genuine and valid reasons for the RP for not filing the application for avoidance transactions within the time prescribed.

32. In the light of what has been stated above, we are of the view that the Applicant has not made a case of fraudulent transactions on the part of the Respondents except making sweeping allegations and hence Section 66 of IBC, 2016 cannot be invoked under such circumstances. The present Application being sans merit is liable to be dismissed.
33. Accordingly, the application IA(IBC)/892(CHE)/2025 is **dismissed** with no orders as to costs.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)