



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) - 596 (PB)/2021 & IA-5384/2022**

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016.

IN THE MATTER OF:

PANKAJ MEHTA & ORS.

.....APPLICANTS/FINANCIAL CREDITORS

VERSUS

M/S ANSAL HI TECH TOWNSHIP LTD.

HAVING ITS REGISTERED OFFICE AT:

115, ANSAL BHAWAN 16, KASTURBA GANDHI MARG, NEW DELHI, DELHI- 110001.

CIN: U45200DL2006PLC155229

.....RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 06.01.2023

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Financial Creditor : Mr. Sahil Sethi, Mr. Samriddh Bindal
and Ms. Ramya Aggarwal, Advocates.

For the Corporate Debtor : None



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ORDER

PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

Brief Facts of CP (IB) - 596 (PB)/2021:

1. This is an Application filed by the **PANKAJ MEHTA & 152 ORS.**, the Financial Creditors (FC)/Applicants on 12.05.2021, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC,2016") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against the Corporate Debtor (CD)/Respondent viz., **M/S ANSAL HI TECH TOWNSHIP LTD.**, on the ground that the Corporate Debtor has defaulted in handing over of possession of the flats/plots/units to the Applicants and for default in repayment of *Rs. 41,81,90,116 (Rupees Forty One Crores, Eighty One Lakhs, Ninety Thousand and One Hundred and Sixteen Rupees)* along with interest @ 18% per annum as on 15.03.2021. A copy of the Ledger/Payment receipts issued by the Corporate Debtor to the Financial Creditors is at **ANNEXURE A-2 (Ref: Page 485- 1387 of the Application)**.

2. **IA-5384/2022**

The present Application is being filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of National Company Law Tribunal Rules, 2016 by the Applicant seeking to amend the captioned Application filed under Section 7 of the Code, bearing **CP (IB) - 596 (PB)/2021**, only to the extent of proposing another name of an insolvency

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professional to act as an Interim Resolution Professional. That at the time of filing the captioned application under Section 7 of the Code, the Applicant had proposed the name of Mr. Chandra Prakash (IBBI/IPA-002/1P-N0660/2018-2019/12023) to act as the Interim Resolution Professional. However, Mr. Chandra Prakash has been suspended by the Insolvency and Bankruptcy Board of India (IBBI) *vide* its order dated 11.10.2022 In view of the suspension order passed by the IBBI the Applicants herein are proposing Mr. R. Devendra Singh as the Interim Resolution Professional (IBBI/IPA-002/IP-N00001/2016-2017/10001).

3. The Corporate Debtor was incorporated on 06.11.2006, as a Company Limited by Share (Non- govt. Company) having CIN: U45200DL2006PLC155229, under the Companies Act, 1956. The Authorised Share Capital of the Corporate Debtor is INR 100,00,00,000 (*Rupees Hundred Crores only*) and the Paid-up Share Capital of the Corporate is INR 60,00,00,000 (*Rupees Sixty Crores only*). On the date of application, the Corporate Debtor is engaged in the building of complete constructions or parts thereof, in the category of Civil Engineering. The Registered Office Address of the Corporate Debtor is 115, ANSAL BHAWAN 16, KASTURBA GANDHI MARG, NEW DELHI, DELHI- 110001. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the Corporate Debtor is at **ANNEXURE A-1 (Ref: Page 484, Volume 3 of the Application)**.

4. **Submission of learned Counsel appearing for the Financial Creditors:**
- I. The Applicants are Financial Creditors/homebuyers/allottees, who have purchased residential units/apartments/parcel of



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lands in the project 'Sushant Megapolis' situated at Gautam Budh Nagar (Dadri) being developed by the Corporate Debtor.

- II.** The government of the State of Uttar Pradesh, selected M/s Uttam Steel & Associates (Consortium) for the development of Hi-Tech Township at the location ANSAL PLAZA, UG 56, Pari Chowk, Greater Noida, Uttar Pradesh- 201310 near the town Dadri adjoining Greater Noida, Uttar Pradesh in accordance of the Hi-Tech Townships Policy dated 22.11.2003. As per the scheduled development activities, the project was stated to comprise of various Row Houses/ Flats/ Floors, Villas/ Bungalows/ Plots, High- Rise Apartments and common/ community infrastructure like School/ Educational Institutions/ Hospitals/ Health Centers, Corporate Parks, Commercial and Retail Centers, etc.
- III.** On 13.12.2006 a detailed project report was submitted by the aforesaid consortium for the development of the Hi-Tech Township to the Bulandshahar Development Authority, comprising of the 2504 Acres of Land, i.e., 'scheduled property'. The aforesaid consortium formed a special purpose vehicle company (SPV) namely, the corporate debtor, M/s Ansal Hitech Townships Ltd. for executing, marketing and sale of the project.
- IV.** That the Corporate Debtor invited applications *inter-alia* for allotment of residential units in the project 'Sushant Megapolis' also known as 'Megapolis' comprising of Plots/Row Houses/Flats/Floors, High-rise apartments under various allocated sites within the same real estate project. The Applicants being impressed by the marketing material of the



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Corporate Debtor, opted for respective residential units/ plots/ apartments in the project. That the Applicants and the Corporate Debtor entered into Allotment Agreements in the years 2011, 2012, etc. annexed at **ANNEXURE A-3 (Ref.: Page 1388-1502)** which state that the Corporate Debtor is the one responsible to allot and construct the units of different specifications and sizes and handover possession to the allottees in accordance with the terms of the allotment agreements. That in terms of the agreement, the time for handing over the possession of the allotted unit is from 36 months to 42 months from the date of sanction of the layout plan of the allotted unit and other contingent dependent aspects, varying from the type of allotted residential unit. That the real-estate project 'Megapolis' has been specifically denoted and termed as 'the project' by the Corporate Debtor in the allotment agreements.

- V. The Corporate Debtor *vide* letter dated 22.07.2011 addressed to the allottees, including the Applicants, claimed that the 'Sushant Megapolis' Project is progressing well and construction work in the project is in good shape. Further, the Corporate Debtor indicated that the possession of certain houses & plots is expected to be handed over in the year 2011 itself. The Corporate Debtor also assured the allottees that there is no dispute regarding land in the project and the project 'Sushant Megapolis' is not affected by any rulings passed by the Hon'ble High Court of Allahabad as well as the Hon'ble Supreme Court of India. However, the possession of the said units was not handed over to the allottees, including the Applicants, within the timeline provided in the respective

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allotment agreements and in fact possession has not been handed over to any of the Applicants till date.

- VI.** That despite inordinate delay by the Corporate Debtor in completing development works within the project and handing over possession, the Applicants made all possible efforts to reach a mutually acceptable amicable resolution however, to no avail. That the Applicant No.1 herein, through his Counsel even issued a legal notice dated 17.10.2019 calling upon the Corporate Debtor *inter-alia* to refund the amount paid by the said Financial Creditor along with the interest. However, the Corporate Debtor failed to refund the said amount as paid by the said Applicant and did not even respond to the notice.
- VII.** The Applicants till date have not received possession of their said units and the construction of the said project is still far from completion. It is submitted that a representative group of allottees of the project 'Sushant Megapolis' even approached the Hon'ble National Consumer Disputes Redressal Commission ("**NCDRC**") under the provisions of Section 12(1)(c) of the Consumer Protection Act, 1986 (that provides class action by consumers) on behalf of all such allottees of the project who wanted a refund of the amount paid to the Corporate Debtor. That the Hon'ble NCDRC noted that in the case of the project 'Sushant Megapolis', development works are not complete even in 12 years and therefore allowed the consumer complaint *vide* order dated 16.10.2020 with directions to the Corporate Debtor to refund the entire principal amount received from the allottees along with compensation in the form of simple interest @8% per annum, to the allottees of plots in the project 'Sushant Megapolis' who

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do not wish to wait anymore for possession. It is submitted that the Corporate Debtor even failed to honor the order of the Hon'ble NCDRC and execution proceedings (**Execution Application No.77 of 2021**) under the provisions of the Consumer Protection Act, 1986 are going on.

- VIII.** The Applicants placed the following documents on record:
- a) Ledger/ Payment receipts issued by the Corporate Debtor to the Financial Creditors. **ANNEXURE A-2 (Ref: Page 485-1387 of the Application).**
 - b) Three kinds of agreements entered between the Corporate Debtor and the Applicants, which are as follows:
 - i. Plot Allottee agreement
 - ii. Built-up Unit Allottee agreement
 - iii. Apartment Allottee agreement**ANNEXURE A-3 (Ref: Page 1388, 1412, 1443 of the Application).**
 - c) Letter dated 22.07.2011 sent by the Corporate Debtor to the Applicants herein. **ANNEXURE A-4 (Ref: Page 1503 of the Application).**
 - d) Chart and details of each applicant reflecting payments made by the Financial Creditors of the Corporate Debtor. **ANNEXURE A-6 (Ref: Page 1511 of the Application).**
 - e) Sanctioned plan of 'Sushant Megapolis' as available on the website of UP RERA. **ANNEXURE B (Ref: Page 71 of I.A. 1935/2022 IN CP (IB) 596 (PB)/2021).**
 - f) Environmental Clearance dated 09.10.2009 with respect to the project 'Sushant Megapolis'. **ANNEXURE A (Ref: Page 42 of I.A. 1935/2022 IN CP (IB) 596 (PB)/2021).**

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g) Brochure of the project 'Sushant Megapolis'. **ANNEXURE C**
(Ref: Page 81 of I.A. 1935/2022 IN CP (IB) 596
(PB)/2021).

5. **Submission of learned Counsel appearing for the Corporate Debtor:**

The Corporate Debtor filed its reply on 23.12.2021 and submitted that:

- i. The license to develop the 'Sushant Megapolis' Township was awarded to the Corporate Debtor on 26.11.2006 by the Uttar Pradesh Government under the Uttar Pradesh Hi-Tech Townships Policy. Under the UP Hi-Tech Policy, private investments were invited for the development of Hi-Tech townships with world class infrastructure including facilities for living, working as well as recreation centres. Accordingly, the Corporate Debtor started developing 'Sushant Megapolis' as a township comprising of various projects in form of group housing projects, plotted developments, commercial projects, recreation centres as well as other built-ups.
- ii. The Corporate Debtor submits that the present Application under Section 7 is not maintainable for lack of jurisdiction as the threshold criteria as per Section 7 of the Code is not satisfied, i.e., the Application has not been filed by at least 100 allottees or 10% of the total allottees of the same real estate project. The Corporate Debtor submits that the allottees of the present Application are of different housing and commercial projects of the township, and the Applicants have filed the Application together to simply meet the threshold of 100 allottees. The 'Sushant Megapolis' Township consists of multiple residential and commercial real estate projects and all

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the sub-projects are separately registered under RERA with separate RERA registration numbers. The Applicants in the instant case belong to separate projects of the Township who fail to qualify the threshold of 100 allottees or 10% of the total allottees of the same real estate project as mandated by the Code. It is further submitted that the threshold of 100 allottees is not met even for a single real estate project from the entire township. Approximately 50 applicants are co-applicants or third applicants of the same unit who have been represented as different allottees to simply meet the requisite number of 100 allottees.

- iii. The Corporate Debtor has raised an argument without prejudice, submitting that the number of Applicants who duly meet the criteria laid down by the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. vs. Union of India (2019) 8 SCC 416*** for admission of an application by the Ld. NCLT is much less than 100. Out of the actual eligible Applicants, 79 Applicants have defaulted in the payment of their dues. Thus, since 79 Applicants have failed to satisfy the criteria of the *bonafide* homebuyers test and another 50 Applicants are co-applicants, the number of actual eligible applicants is less than even 30. Further, such eligible Applicants are allottees of separate real estate projects within the township.
- iv. The Corporate Debtor has further submitted that the construction of the project has been delayed for reasons beyond the control of the Corporate Debtor. The reasons cited by the Corporate Debtor include the development of the township being faced by violent resistance from farmers of the

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area (Order dated 18.06.2014 of the Allahabad High Court in a writ petition filed by the Corporate Debtor, wherein the authorities were directed to ensure a peaceful atmosphere for construction work is as **ANNEXURE-R3 of the Reply**), resistance from landowners who refused to sell their land, stay order passed by the Hon'ble National Green Tribunal in **OA 121/2013** which was vacated after 4 years in 2017 (Order dated 12.09.2017 passed by the Ld. NGT in **MA No. 1221/2016** in **OA No. 121/2013** is filed as **ANNEXURE-R4 of the Reply**), illegal mining and excavations and inaction of police & local authorities despite complaints made by the Corporate Debtor, non-renewal of the license for developing the township till 2020 which expired in 2016. Further, the onslaught of COVID-19 has led to a devastating impact on the real estate sector.

- v. The Corporate Debtor submits that it is a financially sound entity which faced slight bump due to the pandemic. All the projects of the township are at advance stage of construction and possession has been handed over in various group housing projects. The Corporate Debtor further submits that it is working towards a comprehensive resolution plan which will make the entire township projects viable. The Corporate Debtor undertook to file proposal for settlement duly authorised by the CEO of the Corporate Debtor on 29.03.2022, however, no such proposal was placed on record.
- vi. It is pertinent to note that on 13.03.2020, the Government of India passed the Insolvency and Bankruptcy (Amendment) Act, 2020 (No.1 of 2018) wherein by virtue of Section 3 of Amending

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Act, 2020 the following proviso was added to Section (7) of Code:

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

It is pertinent to note that the constitutional validity of Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 has been duly upheld by the Hon'ble Supreme Court in **Manish Kumar v. Union of India, Writ Petition(C) No. 26 of 2020**, decided on 19.01.2021.

6. **Rejoinder to Reply to the Corporate Debtor**

- I. The Applicants in their Rejoinder to the reply filed by the Corporate Debtor (Para No. 15, Page No. 09 of Rejoinder to Reply dated 18.02.2022) have clarified the payment status of all the homebuyers/allottees, in respect of whom the Corporate Debtor has wrongly claimed a default in payment of sale consideration. Further, in support of the Application, ledgers/payment receipts pertaining to each of the Applicants have been filed, which adduce that the Applicants have made timely payments of the sale consideration due from them in accordance with the payment plan agreed at the time of allotment. It is submitted that the Corporate Debtor has not produced any evidence in support of its claim of default by some of the allottee applicants. Further, the chart placed by the Corporate Debtor as ANNEXURE R-2 of its reply indicates that the claimed default/due from allottees is insubstantial

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and cannot be ground enough to disregard the default of the Corporate Debtor running into crores of rupees.

- II.** It is further submitted that the Hon'ble Supreme Court in *Innoventive Industries Limited vs. ICICI Bank & Ors.* [(2018) 1 SCC 407], while interpreting Section 7 of the Code held that while adjudicating an application under Section 7 of the Code, the Hon'ble Adjudicating Authority only has to see the evidence produced by the Financial Creditor(s) ("FCs") to satisfy itself that a default has occurred and it is of no matter that the debt is disputed so long as the debt is "due" i.e., payable.
- III.** It is submitted that indisputably the Corporate Debtor has committed default of financial debt owed to hundreds of allottees. In terms of the Allotment Agreement(s) executed with the respective allottees, including the Applicants, the Corporate Debtor was required to handover the possession of the allotted units to the Applicants within 30 months to 42 months from the date of the sanction of the layout plan. However, the Corporate Debtor has failed to handover the possession of the said units and even today there are no signs of possession in near future. Pertinently, during the course of the arguments on 29.03.2022, the Corporate Debtor undertook to file a settlement proposal before the Hon'ble Adjudicating Authority, however, the Corporate Debtor failed to bring on record any settlement proposal as is recorded from the Order dated 05.04.2022, which makes it evident that the present management of the Corporate Debtor is unable to revive the Corporate Debtor from its present insolvent situation.

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- IV. It is further submitted that the Hon'ble Delhi High Court in the case of *M/s Halliburton Offshore Services Inc. vs. Vedanta Limited & Anr. [OMP (I) (Comm.) No. 88/2020]* laid down that every breach or non- performance cannot be justified or excused merely on the invocation of the COVID-19 as a *force majeure* condition. The Hon'ble High Court observed that the particular Court would have to assess the conduct of the parties prior to the outbreak and whether, genuinely, a party was prevented or is able to justify its non- performance due to the epidemic/pandemic.
- V. It is submitted that in the instant case, the present management has been found to be inept of bringing the Project to its conclusion and hence in the interest of its hundreds of allottees, the Corporate Debtor company should be given an opportunity to be revived by new management as per the provisions of the Code.

7. **Written Submissions on behalf of the Applicants**

The units have been allotted to the Applicants under one single real-estate Project 'Sushant Megapolis'

- I. It is submitted that Corporate Debtor has incorrectly relied on separate registrations under the provisions of RERA of sub-projects within the real estate project 'Sushant Megapolis'/'Megapolis', to allege that the threshold of 100 allottees has to be met within each of these sub-projects. It is submitted that the provisions of RERA which provide for registration for each phase of a real estate project (Explanation to Section 3 of Real Estate Regulatory Act, 2016) and which came into force on 01.05.2016, much after the creation of allotment in favour of the Applicants, cannot be allowed to be

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misused by the Corporate Debtor to give a self-serving interpretation to the term 'same real estate project' used in second proviso to Section 7(1) of the Code.

- II. It is submitted that the Hon'ble Apex Court in ***Manish Kumar Vs. Union of India [W.P.(C.) No. 26 of 2020]*** has observed that a 'real estate project' can be a composite one for plots and apartments or for plots and buildings. The Hon'ble Apex Court further observed that the definition of "allottee" is split into three categories broadly- plot, apartment and building and purchasers of any of these are covered under the term "allottee". The Hon'ble Apex court has also laid down in cases where a real estate project is a hybrid project consisting of development of land into plots and also development of buildings, then even a transferee of a plot will be an 'allottee'. It is submitted that the Hon'ble Apex court in answer to what would constitute a real estate project in Para 158, held as follows:

"as to what would constitute a real estate project, it must depend on the terms and conditions and scope of a particular real estate project in which allottees are a part of. These are factual matters to be considered in the facts of each case".

- III. It is submitted that the facts enumerated herein below demonstrate without a doubt that the real estate project in question in the instant application, is the hybrid project 'Megapolis'/'Sushant Megapolis' as a whole:

- (a) **The allotment agreements entered into between the Corporate Debtor and the allottees clearly refer to 'Megapolis' as the project.**

The term 'project' has been defined under the recital clause b to the allotment agreement as follows:

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“Hi-Tech Township located adjoining Greater Noida by the name of “Megapolis” comprising of various Plots, Row Houses/Flats, Bungalows, High-Rise Apartments, Schools/Educational Institutions, Hospitals/Health Centres, Corporate Parks, Commercial and Retail Centres, hotels/Clubs and Leisure Areas etc. apart from all such areas that would be required for development of a modern township on the Scheduled Property”.

That recital clause (e) of the allotment agreements further adduces that a common detailed project report and layout plan for the entire Hi-Tech Township ‘Megapolis’ was approved by the Competent Authority.

(b) Single Layout Plan for the Hybrid Project “Sushant Megapolis/Megapolis reflecting group housing, plots and EWS Units as part of one project”:

(ANNEXURE B, Ref: Page No. 71 of Application to file Additional Documents filed by the Corporate Debtor in IA 1935/2022)

It is submitted that it is indicated in the recital clause (e) of the Allotment agreements, that a single layout plan was submitted by the Corporate Debtor for sanction by the Competent Authority. Further, a perusal of the supplementary development plan submitted by the Corporate Debtor to the Competent Authority as on November, 2016, as uploaded by the Corporate Debtor itself on the web portal of UP RERA and which is available on <https://uprera.azurewebsites.net/ViewDocument?Param=PRJ104751556%20acres.pdf>, reveals that the entire Hi-Tech City/Township ‘Megapolis’ even in the year 2016 was shown as one “Project”. The layout plan reflects plots, group housing as well as EWS units as being part of one single project.

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(c) A single and composite application for environmental clearance filed by the Corporate Debtor for the entire Hi-Tech Township 'Sushant Megapolis'

It is submitted that the letter dated 07.10.2009 issued by Environment Impact Assessment Authority, Uttar Pradesh, reveals that environmental clearance was granted to the entire Hi Tech Township 'Sushant Megapolis' as a single project. The Corporate Debtor itself sought environmental clearance of the entire township as a whole.

(d) The Corporate Debtor vide letter dated 22.07.2011, itself considers the 'Sushant Megapolis' as the project and addressed a common correspondence to all the allottees of the Megapolis Township project, claiming that the project, 'Sushant Megapolis' is progressing well and construction work in the project is in good shape.

IV. It is submitted that the Code deals with proceedings *in rem* rather than *in personam*, under which allottees/homebuyers approach this Hon'ble Adjudicating Authority so that the management of the Corporate Debtor may be removed and replaced, so that the corporate debtor can be rehabilitated. The requirement placed in the *proviso* of Section 7(1) of the Code is disjunctive with Section 4 read with Section 3(12) of the Code. The Hon'ble Apex Court in ***Manish Kumar vs. Union of India [W.P.(C.) No. 26 of 2020]***, held that, the change that is brought by the amendment and insertion of second proviso to Section 7 is only that apart from establishing the factum of default and due, allottee must present the application endorsed by the requisite number of allottees mentioned in the *proviso* (i.e., 100 or 10% whichever is lower). The default can be *qua* any of the applicants, and the action is one which is understood to be *in rem*, as the procedures under the Code

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would bind the entire set of stakeholders, including the entire class of allottees. In the instant case, it is clear that the application has been endorsed by more than 100 allottees (allottees of 107 units) and hence the Application meets the threshold of Section 7 of the Code. It is submitted that the Corporate Debtor has in a summary jurisdiction has made a blanket allegation of default by allottees, without substantiating the same, merely as a dilatory and a diversionary tactic.

Construction of the project has been delayed for reasons beyond the control of the Corporate Debtor

- I. As regards the Corporate Debtor's claim that the construction of the project was delayed on account of resistance from the farmers and the landowners, reliance is placed on Corporate Debtor's own letter dated 22.07.2011 (**ANNEXURE A-4**, Ref: Page No. 1503, Volume 8 of the Application), wherein the Corporate Debtor assured the allottees that in 'Sushant Megapolis', lands were purchased on market rates with the consent of the land owners and farmers and there is no dispute on the lands in the project whatsoever. It is submitted that this correspondence/assurance sent by the Corporate Debtor itself completely negates the claim now being made by the Corporate Debtor.
- II. It is further submitted that even otherwise, it was the responsibility of the Corporate Debtor, having already entered into allotment agreements with hundreds of allottees and collected hundreds of crores, to acquire peaceful possession of the lands for the project. It is submitted that after 12 years of enjoying the money collected from the allottees, including during the time period that the Corporate Debtor now claims to

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have faced issues beyond its control, the Corporate Debtor cannot take refuge in such unsubstantiated and whimsical ground.

- III.** It is pertinent to point out that the grounds taken by the Corporate Debtor in its reply to allege delay for reasons beyond its control, have been dealt with by the Hon'ble NCDRC in Consumer Complaint No. **1951/2016** and rejected with cogent reasons. The Applicants crave leave to rely on the contents of the Rejoinder and the contents of order dated 09.05.2022 passed by the Hon'ble NCDRC. It is particularly pointed out that the alleged reasons for delay pertain to the time when the Corporate Debtor was taking bookings from the allottees and also regularly raising demands and accepting money from the allottees. It is further pertinent to point out that the Corporate Debtor cannot blame the delay on outbreak of COVID-19, which came 10 years after the Corporate Debtor accepting allotments and money from hundreds of allottees.
- IV.** It is submitted that since the Corporate Debtor has committed a default of financial debt, the application is endorsed by over 100 allottees of the same real estate project of the Corporate Debtor, and the default is in excess of Rs. 1 Crore, the present Application deserves to be admitted and the CIRP be initiated.

8. Observation:

- 1) The Corporate Debtor has submitted a chart depicting the projectwise break-up of the Applicant which is as follows:-



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S.NO.	NAME / CATEGORY OF PROJECT	TOTAL NO. OF UNITS	TOTAL NO. OF SOLD UNITS	TOTAL NO. OF APPLICANTS TO THE PRESENT PETITION
1	EWS APARTMENTS	1600	1546	1
2	LIG APARTMENTS	720	566	3
3	FAIRWAY GROUP HOUSING	932	600	30
4	AASTHA PRIDE GROUP HOUSING	784	245	5
5	AASTHA UDAY GROUP HOUSING	984	70	1
6	RESIDENTIAL PLOTS	5775	1956	38
7	BUILT-UP (INDEPENDENT FLOORS)	1133	372	10
8	SUSHANT SQUARE (COMMERCIAL)	203	100	0
9	PARADISE CRYSTAL GROUP HOUSING	940	162	11
	TOTAL	13071	5617	99

- 2) The Corporate Debtor has further submitted a table containing the list of home-buyers who are the joint-holders but represented as different allottees in the present matter and the same is as follows:-

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ANNEXURE R-1

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S. NO.	CUSTOMER NAME	APPLICANT DETAIL
8	PRIYA SHRIVASTAVA	CO APPLICANT
10	SMITA SHRIVASTAVA	CO APPLICANT
12	ARCHANA TIWARI	CO APPLICANT
16	ANIL KUMAR	CO APPLICANT
18	NEHA KHANNA	CO APPLICANT
20	SONKAR ANUPAM AMRITLAL	CO APPLICANT
25	RUCHI SHUKLA (RUSHI SHUKLA IN NCLT)	CO APPLICANT
30	RAMA MEHRA	CO APPLICANT
31	AVINASH MEHRA	THIRD APPLICANT
34	PUNEET JAIN	CO APPLICANT
36	GAURAV GOEL	CO APPLICANT
39	NUPUR RUDRABHATLS	CO APPLICANT
41	PREETI ARORA	CO APPLICANT
42	SANTOSH KUMARI ARORA	THIRD APPLICANT
44	SHIVANGI SINGH	CO APPLICANT
45	DR. HIMANGI SINGH	THIRD APPLICANT
47	SHRUTI GAUR	CO APPLICANT
50	PRAVINA VERMA	CO APPLICANT
53	POONAM SRIVASTAVA	CO APPLICANT
55	EMA DWIVEDI	CO APPLICANT
58	ARUNA UPADHYAY	CO APPLICANT
60	HARSHIT MITTAL	CO APPLICANT
65	MRIDU SHARMA	CO APPLICANT
69	AMITABH TRIVEDI	CO APPLICANT
71	RAKESH KUMAR	CO APPLICANT
73	SAURABH GARG	CO APPLICANT
76	MEGHA BELSARE	CO APPLICANT
80	DEEPIKA BHATIA	CO APPLICANT
83	DR. SANJEEV JAIN	CO APPLICANT
85	USHA RAWAT	CO APPLICANT
87	PRASHANT SHARMA	CO APPLICANT
89	SHAYOK BURMAN	CO APPLICANT
92	DHATRI VERMA	CO APPLICANT
94	JAYA RAMKUMAR	CO APPLICANT
96	NIVEDITA PANDEY	CO APPLICANT
102	MANISHA RAI	CO APPLICANT
107	SUMAN SAINI	CO APPLICANT
109	ASHRU KANA CHOWDHURY	CO APPLICANT
117	PARUL MAKKAR	CO APPLICANT
121	VINOD SABHARWAL	CO APPLICANT
123	VIDYAWATI TRIPATHI	CO APPLICANT
125	HARSH MALHOTRA	CO APPLICANT
127	SURUCHI KHANNA	CO APPLICANT
130	SANGEETA MITTAL	CO APPLICANT
132	PRASHANT KUMAR BAGGA	CO APPLICANT
138	ROOPAM BHATIA	CO APPLICANT
141	KULJIT SOOD	CO APPLICANT
144	AMRITA PANDEY	CO APPLICANT
149	NISHA AGARWAL	CO APPLICANT
152	ANIL AHLUWALIA	CO APPLICANT

3) Further, he has stated that the Sushant Megapolis Township consist of multiple commercial real estate projects. All the sub-projects are independent of each other

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and are being developed and sold as separate projects within the township. Further, they are separately registered under RERA with different RERA registration numbers. Each sub-project is further divided into multiple phases with different completion schedules. A table of different sub-projects along with the RERA number is as follows:-

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RERA REGISTRATION DETAILS, Sushant Megapolis PROJECT				
SR.NO	NAME OF PROJECT	TOTAL NO.OF UNITS	TIME LINES	REGISTRATION NUMBER
1	FAIRWAY-C & D	153	31-Mar-18	UPRERAPRJ5677
2	FAIRWAY-F1 & F2	120	31-Dec-21	UPRERAPRJ3983
3	FAIRWAY-F & K	153	31-Dec-20	UPRERAPRJ4526
4	FAIRWAY-E & L	143	31-Dec-19	UPRERAPRJ4814
5	FAIRWAY-A,G,H,I & J	363	31-Dec-22	UPRERAPRJ4863
	TOTAL	932		
6	PARADISE CRYSTAL- N & O	404	31-Mar-21	UPRERAPRJ4884
7	PARADISE CRYSTAL- A,M,P & Q	536	31-Dec-22	UPRERAPRJ5001
	TOTAL	940		
8	LIG- L01 - L08	160	31-Jul-21	UPRERAPRJ5490
9	LIG- L09 - L20	240	31-Jul-21	UPRERAPRJ5578
10	LIG- L21- L36	320	31-Dec-22	UPRERAPRJ5491
	TOTAL	720		
11	EWS- E01 - E16	320	31-Dec-20	UPRERAPRJ5563
12	EWS- E17 - E32	320	31-Dec-21	UPRERAPRJ5561
13	EWS- E33 - E80	960	31-Dec-22	UPRERAPRJ5606
	TOTAL	1600		
14	Aastha MIG- M4 - M6	256	31-Dec-21	UPRERAPRJ9325
15	Aastha MIG- M1 - M2	252	30-Jun-22	UPRERAPRJ5670
16	Aastha MIG- M3,M7 - M9	276	31-Dec-22	UPRERAPRJ5685
	TOTAL	784		
17	(PLOTS) SEC-3B,4A,4B	2888	4-Oct-20	UPRERAPRJ10475
18	(PLOTS) SEC-3A,3C,4C	758	21-Oct-20	UPRERAPRJ11035
19	(PLOTS) SEC-2A,2B	288	29-Feb-24	UPRERAPRJ11033
20	(PLOTS) SEC-5 ,6,1A	401	29-Feb-24	UPRERAPRJ10851
21	(PLOTS) SEC-1B	1440	15-Aug-25	UPRERAPRJ10825
	TOTAL	5775		
22	Sushant SQUARE	203	31-Mar-22	UPRERAPRJ6346
		203		
23	Built ups Zone-1	65	31-Mar-20	UPRERAPRJ5771
24	Built ups Zone-2	436	31-Dec-22	UPRERAPRJ5838
	TOTAL	501		
25	Aastha Uday	984	31-Jul-23	UPRERAPRJ9841
	TOTAL	984		

For Ansal Hi-Tech Township Ltd.

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9. Analysis and Findings:-

- i. We have heard the Ld. Counsels for the parties from time to time in the hearings held on various dates. We have also perused the documents on record. Section 5(8) of IBC



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defines Financial Debt which includes Section 5(8)(f) along with its explanation and the same is extracted below:-

Section 5: Definitions

.....

“(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]”

.....

ii. Section 7 along with its proviso is extracted below:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

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

.....

The 2nd proviso to Section 7(1) states as follows:-



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

- iii. In the present case, the township contains several RERA projects with different registration numbers each of which is real estate project as per the registration granted under the RERA Act,2016, as indicated above. We may refer to the definitions of Allottee and Real Estate Project under the RERA Act,2016 and the same are extracted below:-

2. Definitions.—

“(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”



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iv. Section 3 of RERA Act reads as follows:-

3. Prior registration of real estate project with Real Estate Regulatory Authority.—

“(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Explanation.— For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

v. The Corporate Debtor has submitted RERA registration details which contain 25 projects having separate RERA registrations. He has also shown the break-up of the number of Applicants in the present petition in respect of the 9 categories of the projects. It is seen that in none of the projects/project categories, the applicants meet the threshold limit of 10% or 100 persons, whichever is less. It is however submitted by the Ld. Counsel for the Applicant that the provisions of the RERA Act, which provide for registration of each phase of a Real Estate project, came into force on 01.05.2016 which is much after the allotments were created in favour of the Applicants and the Corporate Debtor cannot be allowed to give a self-serving interpretation to the term “same real estate project” used in Section 7(1), 2nd proviso of IBC and escape liability.

vi. It is pertinent to note that the provisions of IBC under which the Applicants have filed its application for initiation

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of CIRP proceedings applies to “allottee” and “real estate project” as defined under the RERA Act, 2016. Hence the objection will have to be overruled. The impact of RERA Act, 2016 applies to the facts of the present case.

- vii. On the analysis of the legal position and in view of the several specific RERA registrations obtained by the Corporate Debtor for its various projects which have already been extracted in the earlier para, we are of the view that though it is a township yet it consists of several individual projects. The Applicants are spread over the various projects. By checking allottees of different projects, the applicants have not made out a case of creditors of class belonging to any specific project registered with RERA to achieve the threshold limit of 10% or 100 numbers whichever is less, as required by law.
- viii. In this view of the matter, we hold that the petition is not maintainable. Hence, we are inclined to dismiss this petition.

10. **Order**

- i. The present petition bearing **CP(IB)-596(PB)/2021** is dismissed.
- ii. Accordingly, in terms of the above order, **IA-5384/2022**, stands dismissed as infructuous.

No order as to costs.

(RAMALINGAM SUDHAKAR)
PRESIDENT

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)