



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB) No. 239(PB)/2023

In the matter of:

Vipul Jain and Ors.

...Applicants/Financial Creditor

Versus

**M/s Raheja Developers
Limited**

...Corporate Debtor

Having Registered Office at:

W4D, 204/5, Keshav Kunj Cariapa Marg,
Western Avenue, Sainik Farms, New Delhi
South Delhi-110062

Order pronounced on: 19.11.2024

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

CORAM:

**CHIEF JUSTICE (RETD.) SHRI RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances :

For the Financial : Mr. Manu Chaturvedi & Mrs. Devika
Creditor/Applicants Singh Ray Chowdhary, Advs.

For the Corporate : Mr. P Nagesh, Sr. Adv. along with Ms.
Debtor Manmeet Kaur, Ms. Suditi, Mr. Abhishek
Rana and Mr. Akshay Sharma, Advs.



ORDER

1. This is an Application filed on 12.04.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicants/Financial Creditors (hereinafter referred as 'Applicants') who are allottees of **Raheja Shilas situated at Sector 109, Gurugram, Haryana** seeking to initiate Corporate Insolvency Resolution PrOCess ("CIRP") against **M/s Raheja Developers Private Limited** ("Corporate Debtor" hereinafter referred to as 'CD').
2. The CD was incorporated under the Companies Act, 1956 on **27.11.1990** having CIN: **U45400DL1990PLC042200**. Its registered office is at W4D, 2O4/ 5, Keshav Kunj, Cariappa Marg, Western Avenue, Sainik Farms, New Delhi, South Delhi DL 110062. The CD is a Company in the business of development of Real estate Project. Its Corporate Office is at Raheja Mall, Sohna Road, Gurugram. The Authorized Share capital of CD is Rs. 100,00,00,000/- and its paid-up share capital is Rs. 46,08,40,000/.
3. **BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE APPLICANTS ARE AS FOLLOWS:**
 - i. Details of Applicants (43 in number) have been given on page no 119 to 136 of the paper book. They submitted that CD through their representative had approached them and represented that the residential Project name "Raheja Shilas" situated at Sector-109, Gurugram, Haryana (hereinafter referred to as "impugned project") will effectively serve the purpose of the respective applicants having best of the amenities. They further submitted that CD had claimed that it has seized and possessed of



impugned project land and accordingly, obtained License from Director General, Town & County Planning (DTCP), Haryana for development of Residential Group Housing Colony on the said land vide License No. 257 of 2007 dated 07.11.2007. After coming in force of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act"), the Corporate Debtor obtained RERA registration from Haryana Real Estate Regulatory Authority vide Registration no. 90 of 2017 (project id-RERA-GRG-656-2020). The Corporate Debtor further represented that they have obtained marketable, construction and development rights with regard to the impugned project from the land owners of the land on which the impugned project is being constructed.

- ii. Applicants have shown their willingness to book units in the impugned project on the basis of huge announcement of the CD along with the aforesaid representation made by the CD. Applicants filed the application form and started making payments on subsequent dates to the CD before the issue of allotment letter. Accordingly, allotment letters were issued by CD to Applicants for allotment of various units on a later date. Applicants further submitted that based on the allotment letter, they also entered into the Agreement to Sell/Flat Buyers Agreement for their respective units. Copy of the Allotment letter, Agreement to Sell executed are annexed as **Annexure 2** of the paper book.
- iii. Applicants submitted in the written submissions filed on **05.08.2024** that the total amount of default is Rs. 112,90,63,124/- (Rupees One hundred and Twelve Crore Ninety Lakhs Sixty Three Thousand One Hundred and Sixty Four only).



Copy of the statement of account with regard to amount paid by Applicants and computation of default are annexed as **Annexure 3 and 4** of the paper book respectively.

- iv.** Applicant submitted that the CD committed under Agreement to Sell to hand over the possession of units within 2 years from the date of execution of Agreement to Sell with a grace period of 6 months. The relevant **clause 4.2** of the Agreement to Sell is reproduced below:

"That the seller endeavors to give possession of the unit to the purchaser within twenty-four (24) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure in the sector by the Government but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the construction is not completed within the time period mentioned above... "

- v.** Applicants submitted that they have paid over 95% of the total sale price and 100% of all the demand made till date as per demand letter issued by CD in majority of cases. However, CD completely failed to deliver the possession of impugned units even within the extended time schedule.
- vi.** Applicants submitted that the act of non-handing of possession on the part of the CD till date resulted in default on the part of CD and since the possession of the units in the impugned project have not been handed over till date it results in continuing default/recurring cause of action in terms of section 22 of the Limitation Act. Applicants further submitted that as per the affidavit dated 17.09 2019 filed by the CD in Company Appeal



(AT) (Insolvency) No. 864 of 2019, **Navin Raheja vs Shilpa Jain and Ors.**, the CD targeted to obtain Occupancy Certificate (OC) of the impugned project by October 2019 which may be treated as acknowledgement of the debt and is further extended beyond October 2022 in terms of order dated 10.01.2022 in *suo moto* Writ Petition no. 3 of 2020 wherein the period from 15.03.2020 till 28.02.2022 was excluded for the purpose of limitation. The relevant pages of Affidavit dated 17/9/2019 filed by CD is attached as Annexure 5 to the Main Petition.

vii. Applicants in the synopsis to the Application under section 7 submitted that as per affidavit filed by CD before Hon'ble NCLAT as per para **vi** above, the total number of units in the impugned project is 94 and the same figure has been provided in the FORM REP-I filed with RERA authority in compliance with RERA Act on **28 February 2020**. Therefore, the instant application has been filed by more than 10% of the allottees of the project.

viii. Applicants submitted in the synopsis of the Application filed on **12.04.2023** that they have in their individual capacity approached the concerned authority under RTI Act with regard to reason for further delay in grant of OC with regard to impugned project. Applicants further submitted that perusal of the reply by concerned authority made startling revelations regarding the impugned project. It is further submitted that the impugned project is located on a land of 0.8 acre which has been separately carved out by seeking extension of '**RAHEJA ATHARVA**' project developed by CD in the same vicinity and for the impugned project no environmental clearance has been taken by the CD. Applicant further submitted that CD malafidely submitted FORM



REP-I before Haryana Real Estate Regulatory Authority(HRERA) that they have received the environment clearance with regard to impugned project on 14.03.2016. However, the impugned project has been constructed in violation of (Environmental Impact Assessment) EIA notification 2006. It is the contention of the Applicants that the delay in the impugned project is solely attributable to illegal and malafide conduct of CD. Applicants further submitted that CD vide its letter dated 18.5.2018 applied for Environmental Clearance before the competent authority under violation notification dated **14.03.2017** issued by Ministry of Environment, Forest and Climate Change, Government of India. which was brought to consider the merits of Environmental Clearance of an impugned project independent of necessary action against violators for breaching applicable environmental laws. The competent authority vide letter dated 7/8/2018 clearly brought out illegality conducted by CD while not seeking the environmental clearance and accordingly directed the State Government to take action against CD under section 19 of (Environment Protection) EP Act and also further restrained the concerned authority from issuing consent to operate/occupation certificate till the time environment clearance is granted to the impugned project.

- ix.** Applicants in their Rejoinder dated **11.10.2023** have submitted that number of units in the impugned project is 94 and the same figure has been represented by the CD in numerous documents. As per the Affidavit the CD itself has categorized “Raheja Shilas low rise” as independent project. Further Applicants stated in their rejoinder that CD has also indicated “Raheja Shilas low rise” as an independent project with 94 units with project area



spanning 14844.46 square metres in a FORM REP I filed by CD with HRERA while applying for registration. Copy of the RERA Registration by HRERA has been annexed as **Annexure-6 (page 2131-2134, Volume 11 of the Main Petition)**.

- x. Applicants relied upon the NCLT judgement dated **20.04.2023** in the matter of **Uttam Singhal Versus Anushree Home Developers Private Limited CP 762 of 2020** and stated that “**the Honorable Tribunal took note of the mismatch between the area of project mentioned in the BBAs (which was also as per DTCP license for development of entire parcel of land) and the details provided to the concerned Real Estate Authority (which concerned the specific reality project), and concluded that details submitted with RERA will prevail over information mentioned in BBAs, in order to define what constituted ‘real estate project’.**
- xi. Applicant lastly stated that they have successfully established the two factors that is debt which is due and default against such debt. No exception has been carved out by the court in this regard for the purpose of admission of an application under section 7 of Code. The Applicants have relied upon the judgement of **Pioneer Urban Land and Infrastructure Limited vs UOI (2019) 8 SCC 416**. Wherein CD has taken the defence of *force majeure* to contend that delay in handing over the possession of the units was unintentional and the same was not attributable to the actions of CD. However, the Hon’ble Supreme Court while allowing a limited scope of defence to the CD, refused to entertain the defence of *force majeure* even though it was specifically pleaded.



xii. Applicant also relied upon the judgement of **Leena Batra versus Ferrous Infrastructure Private Limited** dated **02.02.2023** in **IB (20) (ND)/2022** which was Admitted by Hon'ble Tribunal on account of the fact that there was no confirmation forthcoming on behalf of CD about the status of their application for Occupation Certificate and that even the RERA registration of the project had been refused. Relevant part of the Judgement is extracted below:

"This application was listed for clarification on 09.12.2022 to receive confirmation from the Corporate Debtor about the status of their application for Occupation Certificate. However, there was no such confirmation forthcoming on behalf of the Corporate Debtor. It transpired during the hearing that even the RERA registration of the Project has been refused vide order dated 29.07.2022 of HREERA and which clearly adduces that RERA registration to the project has been refused and further specifically mentions that the Promoter of the Corporate Debtor has made a statement on record that they do not have any money to satisfy the decrees/orders passed in the favour of the allottees directing refund of the money paid by such allottees along with interest. Furthermore, the Ld. HREERA Authority has directed attachment of the bank accounts as well as unencumbered assets of the Corporate Debtor to satisfy the decrees/orders. Further, there is no clarity as to whether the Corporate Debtor has taken any further steps for obtaining the occupation certificate."

4. REPLY ON BEHALF OF THE CD IS AS FOLLOWS:

- i.** CD in its reply dated 23.08.2023 submitted that the financial creditors/Applicants (43) are allottees of the project developed under license no. 257 of 2007 dated 7 November 2007 and license number 14 of 2011 dated 13 February 2011 for the group housing colony which consists of total of 822 number of units built under the project, therefor the Applicants do not meet the statutory threshold of 10% or hundred in number



whichever is less under the IBC.

- ii.** CD submitted that the present application is inadmissible as the claim of the Applicants is time barred. The default occurred between 2012 to 2014 because as per clause 4.2 of the Agreement to Sell, the buyers were liable to be given possession within 2 years and additional 6 months as grace period. The application under section 7 is filed in 2023 and it is clearly beyond the limitation period.
- iii.** CD submitted that that it has applied for Occupation certificate (OC) in a phased manner. Moreover, the development in the project shared all the common amenities and formed part of one project under one composite license. The OCs were granted for Raheja Atharva and Raheja Shilas High Rise on 20 May 2014 and 19 November 2014 respectively. The said OC dated 19.11.2014 categorically mentions building block Nos. I, II, and III which are otherwise identified as Raheja Shilas High Rise development. At this time, the OC remained for only 94 apartments (which formed part of Raheja Shilas Low Rise development) in the project.
- iv.** It stressed in its reply that no default can be attributable to the real estate developer if possession is delayed due to reasons beyond control. In this regard, it submitted that clause 4.4 of individual Flat- Buyers Agreements provides for 'Force Majeure'. The said clause categorically envisions delay on account of non availability of electric power, necessary infrastructure facilities being provided by the Government and delay in grant of Occupation certificate by the government/Authorities. The said clause 4.4 is reproduced below:



4.4 Force Majeure

The Allottee(s) agrees that the sale of the Apartment is subjected to Force Majeure Conditions which inter- alia include delay on account of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down, strike, lock out or due to any dispute with the construction agency employed by the Company, non-availability of necessary infrastructure facilities being provided by the government for carrying development activities, pollution clearances, court injunction, civil commotion or by reason of war, enemy or terrorist action, earthquake, any act of God and delay in grant of completion/ occupation certificate by the Government and/or any other public or competent authority or if non delivery of possession is beyond the control of the Company and in any of the aforesaid events, the Company shall be entitled to a reasonable extension of time for delivery of possession of the said Apartment, depending upon the contingency /prevailing circumstances at that time. The Company as a result of such a contingency arising thereto reserves, its right to alter or vary the terms and conditions of allotment or if the circumstances beyond the control of the Company so warrant the Company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever may be claimed by the Allotte(s) for the period of suspension of scheme.”

- v.** The CD stated in its reply that the default is caused by the actions beyond the control of the CD and accordingly they cannot be penalized by an action under the IBC. Further CD submitted that it is on the verge of completion of the project and keeping in mind the interest of other allottees, the present application deserves to be dismissed.
- vi.** It further submitted that Occupancy certificate has been not been granted by the authorities due to technical and illegitimate claims and it is not a case where construction has been delayed due to conduct of real estate developer.



- vii.** It further submitted that it has been regularly following up with the concerned authorities for the grant of Occupancy Certificate (OC). However, the grant of OC has been delayed due to technical objections and illegitimate demand from the authorities without any default attributable to the CD. It has given the details of the efforts made by it to procure the OC and it specifically highlights the difficulties it has to deal with while dealing with government authorities namely Haryana Vidyut Prasaran Limited (HVPL), Dakshin Haryana Bijli Vitran Nigam (DHBVN) and Directorate of Town and Country Planning (DTCP) on page number 9 to 13 of its reply.
- viii.** Relying upon the judgement dated **22 January 2020** in the matter of **Naveen Raheja versus Shilpa Jain & Ors. in Company Appeal (AT) (Insolvency) no. 864 of 2019** which held that:
- “if the delay is not due to the ‘Corporate Debtor’ but Force Majeure as noticed above, it cannot be alleged that the corporate debtor defaulted in delivering the possession,”*
- CD contended that the default resulted due to the fault on the part of a third party not under the control of CD. It further submitted the efforts made by it to ensure that occupancy certificate be obtained at the earliest. It is the contention of the CD that the applicants are seeking to use IBC as a recovery mechanism and this will have a great effect on the interest of other legitimate homebuyers.
- ix.** CD mentioned in its reply that it has invested approximately INR 435 crores in the Group Housing Project. In addition to the hindrance faced by CD, payments are still due and payable from



the Applicants in term of respective agreements executed by them. CD attached a table of outstanding dues on page number 17 and 18 of the reply dated 23.08.2023.

- x.** CD also contended that it has been regularly following up with the Applicants and seeking their co-operation and it has sent emails to the Applicants updating them about the progress and steps taken by CD in obtaining the OC and asking them to start their interior works. The copies of the letters are annexed as Annexure X of their reply dated **23.08.2023**.

5. ANALYSIS AND FINDINGS

- i.** We have heard the learned Counsels appearing for the Applicants and CD and perused the petition, its reply, rejoinder and affidavits filed by the CD and written submissions filed by the parties. It is an admitted fact in the present application that Applicants (43 in number) are the allottees in the project named 'RAHEJA SHILAS LOW RISE'. On the basis of the facts and circumstances of this application, the issues which required our consideration are given below:

- a. Whether the Project 'Raheja Shilas Low Rise' constitutes an independent project or it is a part of Group Housing Colony Project as contended by CD?
- b. Whether there is a default on the part of the CD in not handing over the possession of units of



impugned project is `attributable to the CD or is hit by the clause of *force majeure*?

c. Whether the essential ingredients of ‘debt’ and ‘default’ have been established in the facts and circumstances of the case?

- ii.** Coming to the first issue, on perusal of the records, it is evident that CD in its submissions itself admitted that it undertook development of Group housing project in a phased manner consisting namely, “Raheja Atharva”, “Raheja Shilas high-rise” and “Raheja Shilas Low rise” which have been developed on land admeasuring 14.812 acres and 0.8 acre under the composite license. While on the other hand, Applicants have relied upon a sworn affidavit dated **17.09.2019** before Hon’ble NCLAT in the matter of **Naveen Raheja versus Shilpa Jain and Ors.** in Company Appeal (AT) (Ins) **864 of 2019** and stated that CD had contended in various documents that Raheja Shilas Low Rise is an independent project. For clearing the doubts, we would like to extract a relevant page of the affidavit:

STATUS OF THE CURRENT PROJECTS WITH THE
COMPLETE ROADMAP TILL OCCUPATION/POSSESSION

10. That Appellant would like to bring in kind notice of the Hon'ble Court that the Respondent No. 3 Company is having multiple ongoing projects and same are at the advance stages of completion as per annexure herein these projects will be delivered to the Allottees as per schedules committed in the flat buyer agreement as different projects and allottees have different timelines as per phases more broadly elaborated in the annexure. There are approximately over 6200 home seekers who are awaiting delivery of their homes and fully dependent upon Respondent No. 3 Company. It is pertinent to mention here that all the under construction projects of the Respondent No. 3 Company are RERA Registered / Complied. The said projects are at different stages of construction, some are nearing completions, some at mid stage and even for some they have applied for Occupation Certificates (OC's). The chart detailing the financial working and RERA details for each project is annexed herewith and marked as ANNEXURE- C. The Photographs of the each project with the current status of completion are annexed herewith and marked as ANNEXURE- D (COLLY)

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(IB) No. 239(PB)/2023
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Raheja Developers Limited
Project Details: Units, Sales, Cost & Debt etc.
(Figures in Rs. Crores)

ANNEXURE - C

S.No	Project Name	Total Units	Units booked/ Sold	Sales Value of booked area	Amount Collected	Committed Cash flow	Cost to Handover	Estimated Value of Unsold Inventory	Surplus Amt	Target Date of Completion/ OC/ RERA	available un-disbursed Amt	Principal loan O/s Amt
A	Project Nearing Completion/ Part OC											
1	Raheja Revanta - Low Rise	214	177	280.21	216.01	64.20	55.00	75.27	84.47	Jul-22		
2	Raheja Revanta - High Rise	618	473	782.68	657.64	125.04	166.94	307.00	265.10	Jul-22	17.26	182.74
3	Raheja OMA - Low Rise	108	64	48.49	40.10	8.39	23.00	43.70	29.09	Oct-20	-	33.00
4	Raheja Shilas - Ind Floors	94	94	50.65	76.95	13.70	2.00	-	11.70	Oct-19	-	-
5	Akshra 6.82- DDJAY 1	188	187	32.63	17.66	14.97	3.00	2.00	13.97	CC obtained	-	-
6	Akshra 6.82- DDJAY 2	180	53	13.19	7.43	5.76	6.50	28.00	27.26	CC obtained	-	-
7	Krishna Affordable Housing	1,750	1,542	259.66	176.14	83.52	91.00	35.60	28.12	Mar-20	22.00	9.00
8	Raheja Aranya- Ph-II	313	172	307.61	284.40	23.21	34.55	81.00	69.66	Aug-22	-	60.72
9	SCO - Sector H3 & 4	New License		(- 3300 Sq. Yards)			20.00	57.75	37.75	Aug-24	-	-
10	SCO - Sector 114	Com. License					30.00	84.88	54.88	Mar-20	-	-
		3,505	2,762			338.79	431.99	715.19	621.99			285.46

Another relevant document which is significant to answer the first issue is Registration Certificate of the Project Area 14844.46 sq mtrs Residential Group Housing Colony (Raheja Shilas Low rise in Raheja Atharva) dated **28.08.2017**. **Relevant part of the certificate is extracted below:**

Annexure-6

(2132)

HARYANA REAL ESTATE REGULATORY AUTHORITY,
HUDA COMPLEX, SECTOR- 6, PANCHKULA-134109

(See rule 5(1))

REGISTRATION CERTIFICATE OF PROJECT
[Regd. No. 90 of 2017 dated 28.08.2017]

To

Raheja Developers Limited,
W4D, 204/5, Keshav Kunj, Western Avenue,
Cariappa Marg, Sainik Farms,
New Delhi-110062.

Memo No. HRERA-252(a)/2017/710 Dated 28.08.2017

Subject: Registration of Real Estate Project Area 14844.46 Sq. Mtrs Residential Group Housing Colony ("Raheja Shilas Low-rise in Raheja Atharva") situated in Sector-109, Gurugram under RERA Act, 2016 and HRERA Rules, 2017

Ref: Your application dated 31.07.2017.

Your request for registration of Project Area 14844.46 Sq. Mtrs. Group Housing Project situated in located in Sector-109, Gurugram (License no. 257 of 2007 & 14 of 2011) issued by the Director, Town and Country Planning Department, Haryana, has been examined vis-a-vis the provisions of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017 and accordingly a registration certificate is herewith issued with following terms and conditions:-



Additionally, Applicants relied upon the judgement dated 20.04.2023 in the case of **Uttam Singhal versus Anushree Home Developers Private Limited in CP (IB) 762 of 2020** wherein this Hon'ble Tribunal concluded that the details submitted with RERA will prevail over the information mentioned in BBAs to establish what constitutes real estate project. Perusing both the documents, it seems that CD undertook a big Group Housing project and divided the whole project into various phases out of which the impugned project is the subject matter here in which the applicants are the allottees. CD itself admitted that due to unforeseeable circumstances, OC for the impugned phase of project cannot be obtained, otherwise the construction of the said phase of project is complete. Also, there is one REP-I form submitted before RERA which matches with the description with regard to no. of units, area of the project and name of the project as submitted by Applicants. The separate RERA Registration has also been admitted by CD. In the Affidavit before Hon'ble NCLAT, CD stated that there are approximately 6200 home seekers who are awaiting delivery of their homes. It also stated that CD is having multiple ongoing projects and same are at the advance stages of completion. These facts clearly establish that the CD is developing the multiple projects at one time and one such Project is "Raheja Atharva" and 'Raheja Shilas Low Rise' is a part of former one for which separate RERA Registration has been obtained as per



the provisions of the RERA Act. At this juncture, it is pertinent to cite relevant provision of the statute i.e. Explanation to Section 3 which is reproduced below:

Section 3: Prior registration of real estate project with Real Estate Regulatory Authority

3. (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:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of 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 stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

This answers the first question i.e. CD/developer got the separate registration under the RERA act as the Raheja Atharva (Group Housing Project) was being developed in a phased manner and each such phase shall be considered as a standalone real estate project. Therefore, applicants, 43 in number out of 94 (total



units in the impugned project) fulfill the threshold of 10% or 100 in number whichever is less.

- iii.** Coming to the second issue of default, whether it is attributable solely to CD or defence of *force majeure* is applicable in the instant case. Applicants in their written submissions and rejoinder contended that non-handing over of the possession was completely attributable to the actions of the CD and not to *force majeure* conditions, which is corroborated by the fact that the impugned project has been marked as 'lapsed' by HRERA. It is the contention of the applicants, not refuted by the Respondent, that it was only on 27.04.2017, after a delay of approximately 4 years that the CD's Collaborator (M/s Enkay Builders) applied for an OC regarding buildings in 'Raheja Shilas Low Rise.' While on the other hand CD contended that despite its best efforts, Occupation Certificate has not been granted by appropriate authorities. In a series of hearing which the Adjudicating Authority gave to the parties, the CD came forward with details of payments which he did in a piecemeal manner to the DHBVN to get the NOC. Specifically, the CD gave a bank guarantee of Rs. 2,33,58,000 to DHBVN. CD also made a payment of Rs. 1.62 crores for External Electrical System Development Charges (EESDC) and a payment of Rs. 2,17,42,000/- towards other outstanding dues of the authorities. CD has issued work order dated 08.06.2024 to M/s GSM Engineering Company for Supply, Erection, Installation, Testing, Commissioning



and Satisfactory Handing over of 33 kV Switching Station of Raheja Vedanata Sector-108 to Raheja Atharva Sector-109 Gurugram. CD in its written submissions dated **17.08.2024** has briefly given the efforts undertaken and compliances fulfilled by CD to obtain the Occupation Certificate in the tabular form. At this juncture, it is relevant to cite the recent development in matter of obtaining Occupancy Certificate by CD. On **06.08.2024**, DHBVN granted provisional NOC and issued letter to DTCP for grant of required Occupancy Certificate. Thereafter the following development happened in the instant case as reported by CD in its written submissions dated 17.08.2024:



07.08.2024	<p>The Counsel for DHBVN before the Hon'ble Punjab and Haryana High Court in CWP 4703 of 2024 submitted that the Corporate Debtor has deposited the outstanding charges/dues, and DHBVN has no objection to issuing of NOC to the Corporate Debtor and a letter to that effect, dated 06.08.2024, has already been sent to DTCP, Haryana, by the Superintending Engineer, 'OP' Circle-I DHBVN, Gurugram.</p> <p>In view of the aforesaid statement, the Corporate Debtor's Writ Petition bearing no. CWP 4703 of 2024 was disposed-off with liberty to raise grievance against the outstanding amount/dues paid to DHBVN in accordance with law.</p> <p>Copy of order dated 07.08.2024 passed by the Hon'ble Punjab and Haryana High Court in CWP 4703 in 2024 is enclosed herewith as <u>Enclosure – C.</u></p>
13.08.2024	<p>The Corporate Debtor vide its email dated 13.08.2024 also informed the Homebuyers in '<u>Shilas Low-Rise</u>' of the developments, including issuance of NOC by DHBVN to DTCP and once again requested the Homebuyers to carry out the relevant fit – outs in their units. Copy of email dated 13.08.2024 issued by the Corporate Debtor to the homebuyers is enclosed as <u>Enclosure – D.</u></p>
14.08.2024	<p>In furtherance of the letter dated 06.08.2024 (NOC) issued by DHBVN to DTCP, the Corporate Debtor vide its letter dated 14.08.2024 informed DTCP of the various compliances undertaken by it and requested DTCP to issue Occupation Certificate of the 94 units in '<u>Shilas Low-Rise</u>' at the earliest.</p> <p>Copy of letter dated 14.08.2024 issued by the Corporate Debtor to DTCP is enclosed herewith as <u>Enclosure – E.</u></p>

It seems that DTCP has still not issued the Occupancy Certificate despite the provisional NOC by DHBVN. Perusing all these developments, we find it relevant to mention here that in such a large scale development of Housing/residential projects, there are manifold procedural requirements and NOCs are required for the completion of project. This Adjudicating Authority vide its order dated 05.06.2024 appointed Advocate Commissioner to report about the project's status. Relevant part of the Order dated 05.06.2024 is extracted below:



ORDER

1. An affidavit has been filed by the Ld. Sr. Counsel Mr. P. Nagesh for the Respondent/Corporate Debtor in terms of the order dated 03.06.2024, the same is taken on record.
2. Ld. Counsel Mr. Manu Chaturvedi for the petitioner pointed out that one thing still remains to be done which is to state the other requirements needed to be fulfilled for getting the Occupancy Certificate (OC) with respect to the project in question. Ld. Sr. Counsel Mr. P. Nagesh undertakes to do that also.
3. From the perusal of the order dated 03.06.2024, we find that inadvertently the IA number mentioned in the third line of the order is wrongly mentioned as **“IA-2190/2024”**, in



place of **"IA-2910/2024"**. Therefore, the order dated 03.06.2024 stands rectified to the extent that IA number mentioned in the third line of the order shall be read as **"IA-2910/2024"** in place of **"IA-2190/2024"**. **The rest of the order shall remain unchanged.**

4. In the meantime, we deem it appropriate to appoint **Mr. Raghav Sharma, Advocate**, postal address: Basement, B-5/202, Safdurjung Enclave, New Delhi - 110029, **Mob: 8527066461**, **email address: raghav@srcolegal.in** and as Advocate Commissioner in the present case.
5. The Advocate Commissioner is to visit the premises, hear the grievances of the allottees and to submit a report to us in the matter stating the progress of the construction and defects if any which will be cured by the Corporate Debtor before handing over the property to the Homebuyers along with Occupancy Certificate (OC).
6. We also record the statement made in the affidavit with regard to payments made to Dakshin Haryana Bijli Vitran Nigam ("DHBVN") pursuant to the order passed by the Hon'ble High Court of Punjab and Haryana dated 23.05.2024 and the request made by the Corporate Debtor for issuance of NOC by the said department expeditiously.
7. In order to ensure that these processes are taken in an effective manner, the above-mentioned Advocate Commissioner will take inputs from all the Homebuyers in a meeting to be conducted and file the same with the report.
8. The Corporate Debtor is directed to cooperate with the Advocate Commissioner in all aspects without any demur.

As per the report of Advocate Commissioner which was taken on record by this Adjudicating Authority on **03.07.2024**, it



was noted that individual flat unit(s) are fully constructed. Seeing the experience and reputation of the CD in the Real estate development it is not difficult to assume that CD must be aware of all these obstacles and hurdles which one may face while developing such large projects. The plea of delay being *force majeure* is taken by the CD shall not apply to the facts of the present case because the difficulty is not such which is beyond the control of the CD. In this case, CD has entered into a litigation with government Department. Therefore, it cannot be termed as *force majeure* clause. The hurdles stated by CD in its reply, affidavits and written submissions are not something which can be termed as the *force majeure* or beyond the control of CD or unforeseeable. Statutory compliances, NOC, OC etc. are the part and parcel of such real estate projects. These hurdles are practical situations for which CD has to come forward for the resolution and he cannot wipe off its liability by taking the defence of *force majeure* or the defence of illegitimate claims by government/other appropriate authorities. These are standard formalities in all real estate house development and similar projects. CD has taken the OC for the other phases of the project on time i.e. in the year 2014 but it has sent the request for registration of the impugned project only in 2017 which is much later than what has been enshrined in the agreements. The CD vide its email dated 13.08.2024 also informed the Homebuyers in 'Shilas Low-Rise' of the developments, including issuance of NOC by DHBVN to DTCP and once again requested the Homebuyers to carry out the relevant fit – outs in their units but allottees in the instant



case are seeking O.C. of the project which is not happening. It is the obligation cast upon the CD to get the OC of the project from the relevant authorities based on which the home buyers carry out the fit outs. The OC is an important document based on clearance from the electricity authorities, fire department, water and sanitation department etc., which are basic utilities services. Hence, it is very much needed before the home buyers can take possession. Therefore, the default is attributable to the CD; this answers the second issue.

- iv.** Coming to the third issue of debt and default, on the basis of arguments advanced and documents on record, specifically the allotment letters, proof of payments by the Applicants, computation of the default and other various documents submitted by both the parties, we find that there is debt due and default against the due on the part of the CD. Further, possession was to be given in the year 2012-2014 with a grace period of 6 months, but the debt has been acknowledged vide various emails and the default is continuing one and therefore, the application for initiating CIRP against the CD is within the period of limitation. It is also not the case of the CD that there is any malafides on the part of the Applicants in filing this application. We find that the Petition has been filed with the Bonafide intention of getting the residential units for which the Financial Creditor/allottees has made the payments to the CD and there is a default on the part of the CD, in terms of non-payment of the debt due (delivery of the units) against the amount raised from them under the real estate project when



the debt has become due and payable. Hence, the ingredients of Section 7 are fulfilled.

- v. Further, the name of **Mr. Pramod Kumar Sharma**, IRP has been proposed by the Financial Creditor whose consent has been placed on record (**Annexure-11**) stating that no disciplinary proceedings are pending against him. The consent form is dated **20.01.2023**. However, on perusal of the office records, it is found that the above-named Insolvency Professional has been suspended by DC of IBBI vide order dated **24.09.2024**. In these circumstances, we deem it appropriate to appoint another IRP from the list of Insolvency Professionals provided by the IBBI panel. The application filed under section 7 of the Code, is otherwise complete and meets all other procedural requirements of the Code and Regulations made there under.
- vi. It has been specifically averred by the Applicants in their rejoinder that they are not seeking to initiate the CIRP against all the projects that are being undertaken by the CD which are under various stages of completion, rather they are seeking the insolvency process against the impugned project only. It is pertinent to mention that rules and regulation of the IBC do not allow this Adjudicating Authority to admit the CD into insolvency partially. At most, Clarification to Regulation 36(A)(1) of CIRP Regulations, 2016 is provided under the code which is reproduced below:

“Regulation 36A: Invitation for expression of interest.

36A. (1) *The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I at the earliest, [not later than sixtieth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*

Clarification: The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.”

(emphasis supplied)

This provision is allowing the RP to invite a resolution plan for each real estate project or group of projects of the CD as the case may be. In this background, we do not think it fit to go beyond the powers of this Adjudicating Authority. It is for the legislature to draft and come up with amendment in the existing law to cater these kind of situations.

- vii.** In this background, an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there occurred a default in repayment thereof and these conditions are satisfied in the present case.



6. ORDER

1. In light of the above facts and circumstances, it is hereby ordered as follows: -

- i. The Application bearing **(IB)-239(PB)/2023** filed by the Applicants under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against CD i.e. **M/s Raheja Developers Limited** is hereby **ADMITTED**.
- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. This Adjudicating Authority appoints **Mr. Manindra Kumar Tiwari**, Registration number IBBI/IPA-001/IP-P02612/2021-22/14015, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional is directed to give his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration within 3 days of this order.
- iv. **Mr. Manindra Kumar Tiwari**, Registration number IBBI/IPA-001/IP-P02612/2021-22/14015; Email id ip.camkt@gmail.com Contact No. 98103374801 is appointed as the Interim Resolution Professional ("IRP").



- v.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- ix.** The FC shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of



Creditors ("COC").

- x.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- 7.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 8.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

IRP/RP to report on 22.01.2025

-Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)