

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1.C.P. (IB)/284(MB)2024

IN THE MATTER OF

Avenue 54 Welfare Association
VS
Sumer Buildcorp Private Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 15.05.2026

CORAM:
SH. NILESH SHARMA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent: Adv. Nausher Kohli a/w Adv. Ishika Lodha i/b Parinam Law
Associates (R2)

ORDER

C.P. (IB)/284(MB)2024: The above CP is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
//Rahul//

Sd/-
NILESH SHARMA
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

C.P.(IB)/284/MB/2024

Avenue 54 Welfare Association

A Society registered under the provisions of Societies Registration Act, 1860 and having its registered office at Ultra Mile, 1, Golden Bungalow, Juhu Road, Santacruz (W), Mumbai 400054.

... Financial Creditor/Petitioner

Versus

1. Sumer Buildcorp Private Limited

CIN: U45209MH2012PTC238926

203, Peninsula Corporate Park, Tower No.1, 2nd Floor, G .K. Marg, Lower Parel, Mumbai City, Mumbai, Maharashtra, India, 400013.

2. Sumer Radius Realty Private Limited

CIN:U45400MH2015PTC266590

220 Commerce House, 140 NM Road Fort, Mumbai City, Mumbai – 400023.

... Corporate Debtors/Respondents

Order Delivered on: 15.05.2026

Coram:

Hon'ble Sh. Nilesh Sharma, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For Petitioner: Sr. Adv. Mustafa Doctor, Adv. Vyom Shah, Adv. Nitya Shah, Kinnar Shah, Adv. Bhargava i/b Adv. Divya Shah Associates

For Respondent: Sr. Adv. Gaurav Joshi a/w Adv. Feroze Patel i/b Shnay Bafna (R-1), Adv. Nausher Kohli a/w Ms. Tanisha Desai and Ms. Ishika Lodha i/b Parinam Law Associates (R-2)

ORDER

1. This Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Avenue 54 Welfare Association (“**Petitioner/Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Sumer Buildcorp Private Limited (“**Corporate Debtor No.1/ Respondent No.1**”) and Sumer Radius Realty Private Limited (“**Corporate Debtor No.2/ Respondent No.2**”) for a Financial Debt of **Rs.203,27,66,369/-** (Rupees Two Hundred Three Crores, Twenty-Seven Lakhs, Sixty-Six Thousand, Three Hundred Sixty-Nine Only) (“**the said debt**”).

2. **Facts as per the Petition, in brief :**

2.1 The Respondent No.1 is the owner of an undivided 50% share in the plots of land bearing CTS Nos. H/401 and 402 and H/415 to 438 (“**Plot A**”) situated at S.V. Road, Santacruz (West), Mumbai – 400054, and the remaining undivided 50% share in Plot A is owned by Radius Estate

Projects Pvt. Ltd. (“**REPPL**”). Sumer Radius Realty Private Limited (Respondent No.2) is a joint venture company specifically incorporated by the Respondent No.1 and REPPL for the purpose of constructing and developing the Avenue 54 project (“**the said Project**”). The Respondent No.2 is the sole owner of the adjoining plots bearing CTS Nos. 397 and 398, known as the Ghia Compound Plot (“**Plot B**”), situated at S.V. Road, near Aristo Sapphire Building, Santacruz (West), Mumbai – 400054. Plot A and Plot B are contiguous parcels of land (“**said Plots**”). Pursuant to a Development Agreement dated 29.06.2017 (“**the said Development Agreement**”), the Respondent No.1 and REPPL granted development rights in respect of Plot A to the Respondent No.2, with the development of Plot A and Plot B to be undertaken jointly as a single project. The Respondent No.1, Respondent No.2 and REPPL are the promoters of the said Project (“**the Promoters**”).

- 2.2 Several flats were allotted by the Promoters to members of the Financial Creditor prior to the enactment of the Real Estate (Regulation and Development) Act, 2016. Thereafter, the Promoters jointly registered the project with MahaRERA under Registration No. P51800007149 as a single project comprising eight buildings in five towers, together with a clubhouse, common areas and other amenities. The allotments were made by the Promoters themselves, without any request by the homebuyers to allot through any particular promoter. The Promoters, being co-promoters, are jointly and severally liable to the homebuyers.
- 2.3 Between 2016 and 2018, the Promoters allotted flats to the members of the Financial Creditor, received payments in accordance with the prescribed schedules and issued allotment letters. All other homebuyers were issued identical allotment letters. Possession was assured within 24 months from the respective allotment letters, and in certain pre-RERA allotments, by 31

January 2020. After the coming into force of RERA, although possession was orally assured within 24 months, the allotment letters issued by Respondent No. 2 did not specify any possession date. At the time of registration with MahaRERA, the Promoters unilaterally revised the possession date to December 2023, without the consent of the homebuyers who were already allotted flats. The Promoters have failed to complete the project and hand over possession.

2.4 The Promoters availed various financial facilities from banks and financial institutions, and the project account was classified as a non-performing asset YES Bank, one of the financial creditors, took possession of the project under section 13(4) of the SARFAESI Act by notice dated 18.10.2019. The project has remained completely stalled since October 2019, and possession continues to vest with YES Bank.

2.5 The project is being developed under Regulation 33(11) of the Development Control Regulations, 2034 and comprises eight buildings of over twenty floors each. As on date, four interconnected basements for all eight buildings have been constructed, seven out of twenty floors in Tower 2 and construction up to plinth level in Tower 3 have been completed, while no construction has commenced in the remaining towers. Owing to the failure of the Promoters to complete the project and hand over possession, the Petitioner filed Commercial Suit No. 101 of 2023 before the High Court of Judicature at Bombay, which, by order dated 23.02.2023, restrained the Respondents from dealing with or creating any third-party rights in respect of the flats allotted to the homebuyers.

2.6 In the meantime, the corporate insolvency resolution process of REPPL was initiated by order dated 06.09.2021 passed by the National Company Law Tribunal, Mumbai Bench in Company Petition No. 380/IBC/NCLT/MB/MAH/2021. Several homebuyers, being members of

the Petitioner, filed claims before the Resolution Professional (RP) of REPPL. However, the claims of those homebuyers who were allotted flats by Corporate Debtors were rejected. Consequently, Interlocutory Application No. 2596 of 2023 has been filed challenging such rejection and seeking a consolidated, project-wise CIRP of all the Promoters, which is pending adjudication before this Tribunal.

- 2.7 In parallel, Piramal Capital & Housing Finance Limited has filed Company Petition No. 136/IBC/NCLT/MB/MAH/2022 and Company Petition No. 155/IBC/NCLT/MB/MAH/2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Respondents, which are pending adjudication before this Tribunal.
- 2.8 The Ld. Senior Counsel Mr. Mustafa Doctor for the Petitioner has submitted that the Promoters have failed to complete the Project and hand over possession within 24 months from allotment. While most allotment letters do not specify a possession date, certain pre-RERA allotments stipulated 20.01.2020. The continuing non-completion and non-delivery of possession constitutes a continuing breach, giving rise to a recurring cause of action and a continuing period of limitation.
- 2.9 The Ld. Senior Counsel submits that the Project is presently not even 25–30% complete and, even upon recommencement, would require at least three years for completion. Sanjay Chhabaria, promoter of REPPL and Corporate Debtor No.2, has been detained by the Enforcement Directorate in connection with the YES Bank- Dewan Housing Finance Corporation Limited fraud. By press release dated 31.08.2022, the Enforcement Directorate confirmed attachment of assets aggregating approximately Rs. 251 crores, including the subject plot to the extent of Rs. 116.5 crores. In view of the complete stagnation since October 2019, the Promoters

demonstrably lack the financial capacity and ability to complete the Project, including Towers 2 and 3.

2.10 The Ld. Senior Counsel further submits that the homebuyers are bona fide purchasers who have invested their life savings and continue to service housing loans without possession. In subvention cases, lenders are initiating coercive recovery against flat purchasers despite non-disbursement and non-possession. In this regard, Writ Petition Nos. 3345 of 2022, 2885 of 2023 and 2888 of 2023 are pending, and the Financial Creditor craves leave to rely upon the records thereof.

2.11 The Corporate Debtors and REPPL are co-promoters and have jointly registered the Project as a single housing project with MahaRERA. The Project is a consolidated and indivisible development, involving undivided and inter-linked plots, a common sanctioned layout under Regulation 33(11) of DCPR, 2034, structurally interconnected buildings and basements, common rehabilitation obligations under the SRA scheme, cross-tower allotments by all promoters and undivided attachment of land by the Enforcement Directorate to the extent of Rs. 116.5 crores. Any standalone or parallel CIRP would impair approvals, FSI, amenities and allotments, materially erode project value and duplicate costs. Accordingly, the Project can be revived only through a consolidated, project-wise CIRP and the Petitioner prays that the CIRP of REPPL be consolidated with that of Corporate Debtors in respect of the Project.

2.12 Furthermore, the Ld. Senior Counsel submits that the Petitioner is a society registered under the Societies Act, 1860, comprising purchasers of 98 flats in the Project "Avenue 54". Out of 152 flats sold, it represents more than 60% of the homebuyers and therefore satisfies the eligibility requirements under Section 7 of the Code.

2.13 The debt and default have been submitted to the Information Utility, National E-Governance Services Limited, and Form C has been issued.

2.14 Pursuant to the order dated 30.04.2024, the Petitioner has filed an Additional Affidavit dated 06.06.2024 curing the defects noted by this Tribunal, namely: (i) authentication of Part-D of record of default, (ii) annexure of the society registration certificate, and (iii) specification of the date of default. In compliance, Form-D (record of default) is annexed as Exhibit-B and the society registration certificate as Exhibit-C. As allotments were issued to different homebuyers on different dates between 2016–2018, the date of default necessarily varies for each of the allottees. It is settled that a joint Section 7 application by homebuyers is maintainable if even one applicant satisfies the threshold and limitation requirements. In the present case, the allotment letter issued by Respondent No. 2 to Suman Sultania stipulates the possession date as 31.12.2023 and reflects consideration of Rs. 1,51,37,615/-, thereby satisfying the statutory threshold and default requirement.

2.15 Similarly, in the case of SBPL, the allotment letter issued to Manohar Sawlani and Rajni Sawlani (members of the Financial Creditor) records payment of Rs. 1,43,64,000/- and stipulates the RERA possession date as 31 December 2023. Accordingly, they also satisfy the requisite threshold.

2.16 Further and in the alternative, the Promoters themselves have declared 31 December 2023 as the date of completion of the Project, as reflected on the MahaRERA website. Admittedly, the Project has not been completed and possession has not been handed over to the members of the Financial Creditor till date. In law, in the case of homebuyers, default arises upon expiry of the promised date of possession and constitutes a continuing cause of action. Accordingly, 31.12.2023 is liable to be treated as the date of default and, in any event, the present Petition is not barred by limitation.

3. **Affidavit in Reply of Respondent no.1:**

- 3.1. The Respondent No.1 denies any debt or liability to the Petitioner and specifically disputes the alleged amount of Rs. 203,27,66,369/-.
- 3.2. The Ld. Senior Counsel Mr. Gaurav Joshi for the Respondent no.1 submits that prior to 2014, the Respondent No.1 owned the Santacruz property. In 2014–2015, Sanjay Chhabaria of the Radius Group approached the Respondent for development, pursuant to which Respondent No. 2 was incorporated with 50% shareholding each of Respondent No. 1 and the Radius Group (through Sanjay Chhabaria and Ritu Chhabria).
- 3.3. The Ld. Senior Counsel submits that under deeds executed between 2015 and 2017, the Santacruz property came to be jointly owned in equal shares by Respondent No. 1 and REPPL, while the adjoining Ghia Compound was vested in Respondent No. 2. By a Development Agreement dated 29.06.2017, exclusive development rights were granted to Respondent No. 2, and Respondent No. 1 and Radius Estate Projects Pvt. Ltd. were entitled only to consideration and area share. The project was therefore not a joint development and Respondent No. 1 was not responsible for completion.
- 3.4. Separate allotment letters were issued by each entity for its respective area share. Of the 98 members of the Petitioner Society, only 25 were allotted flats by the Respondent No.1
- 3.5. The Ld. Senior Counsel for the Respondent No.1, alleges that it was defrauded by the Radius Group, YES Bank, Sanjay Chhabaria and Ritu Chhabria. Sanjay Chhabaria was thereafter arrested by the Enforcement Directorate in connection with the Yes Bank–DHFL matter.
- 3.6. Although, in Commercial Suit No. 101 of 2023 filed in January 2023, the Petitioner pleaded that construction was stalled since 2019 and that allotments were made during 2012–2018, in the present Petition it is

asserted that the first flat was purchased in January 2016 and that allotments were made between 2016–2018, reflecting inconsistent stands. Owing to Respondent No. 2's failure to perform and complete the project, Respondent No. 1 terminated the unregistered Development Agreement by advocate's notice dated 27.04.2023. The present Petition was thereafter filed on 24.03.2024.

3.7. Respondent No.1 has filed IA No. 6034 of 2024 raising preliminary objections to the maintainability of the Petition, inter alia, on the following grounds:

a) **Composite petition against multiple corporate debtors is impermissible:**

(i) Section 7 of the Code and Rule 4(1) read with Form-I contemplate initiation of CIRP only against a single corporate debtor.

(ii) The Petition proceeds on an erroneous premise of joint development by Respondent No.1, Respondent No.2 and REPPL, whereas the Development Agreement stood terminated on 27.04.2023.

(iii) The MahaRERA registration stands solely in favour of Respondent No.2; Respondent No.1 is only an area-share holder. There was no joint development and no basis for a consolidated CIRP.

(iv) The parties are not intrinsically interlinked, as evident from separate allotment letters.

b) **No default by Respondent No.1 :**

There is no financial debt owed by Respondent No.1 and, in any event, Respondent No.1 has never refused to refund the booking amounts.

3.8. Without prejudice, the Petition is otherwise not maintainable on the following grounds:

a) **Bar of limitation** :

- (i) The alleged default is failure to hand over possession within 24 months from the respective allotment letters. Most allotments were issued in 2016 and 2017 and the alleged default would, at the latest, arise in 2018–2019.
- (ii) The present Petition filed in March 2024 is ex facie barred by limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963, even after giving effect to the exclusion granted by the Hon'ble Supreme Court in Suo Motu Writ Petition No. 3 of 2020.

b) **Petitioner is not a bona fide homebuyer:**

A substantial number of allottees are speculative investors holding multiple units and do not qualify as financial creditors under Section 5(8)(f). The Petition is a misuse of the insolvency process.

c) **Forum shopping:**

The Petitioner has already instituted proceedings before the Hon'ble Bombay High Court under RERA, MOFA and the Specific Relief Act seeking substantially the same reliefs. Invocation of Section 7 on the same cause of action amounts to impermissible forum shopping and abuse of process.

d) **Mandatory requirements of Section 7 not satisfied:**

The Petitioner has failed to establish the existence of a financial debt or any default. Respondent No.1 has always been willing to refund the amounts received. The Petition is an attempt to use the Code as a recovery mechanism and, if admitted, would seriously prejudice Respondent No.1's other ongoing projects and employees.

e) **Respondent No.1 not liable:**

The Petition proceeds on an erroneous assumption of joint and several liability. Respondent No.1 is merely a co-owner/area-share holder and is not responsible for development or execution of the project. Without prejudice, Respondent No.1 reiterates its willingness to refund the amounts received and grant exit to the allottees.

3.9. Additionally, the Respondent, in the arguments, has also raised following issues:

- a) **Maintainability:** The Section 7 petition filed through an association is not maintainable in view of *Elegna Coop. Housing & Commercial Society Ltd. v. Edelweiss ARC Ltd (2026 SCC OnLine SC 82)*. It is further contended that there is non-compliance with the Hon'ble NCLAT order dated 26.11.2025, as only 14 consolidated affidavits have been filed instead of individual affidavits, and no independent authorisations have been produced; hence, the defect in authorisation remains uncured. Since Section 7 requirements must be satisfied at the time of filing, the petition is liable to be dismissed.
- b) **Discretionary Non-Admission:** The project stalled due to factors beyond Respondent No. 1's control, including the incarceration of Mr. Sanjay Chabbaria and attachment proceedings. Relying on *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.,(2022) 8 SCC 352* and *Suresh Kumar Reddy v. Canara Bank*, it is contended that the petition ought not to be admitted in the exercise of discretion.

4. **Reply by Respondent no.2:**

4.1 The Ld. Counsel for the Respondent No.2, Mr. Nausher Kohli submits that the Petitioner has served Respondent No. 2 only a copy of the Additional Affidavit dated 04.06.2024, without the annexures.

- 4.2 Respondent No. 2 has filed IA No. 5195 of 2024 challenging the maintainability of the present Petition, which is *ex facie* contrary to law and filed with mala fide intent.
- 4.3 The Ld. Counsel submits that by letter dated 11.09.2024, Respondent No. 2 made a without-prejudice offer to repay Rs. 93,01,12,375/- (being the amounts purportedly disbursed by allottees at Sr. Nos. 26–75 of Exhibit-F), which was acknowledged by the Petitioner’s advocates but elicited no response. Further, a majority of the Petitioner’s members have already lodged and had their claims admitted in the CIRP of Radius Estate Projects Pvt. Ltd. (“REPPL”). The Petitioner therefore lacks locus, and its silence evidences mala fides.
- 4.4 The Ld. Counsel further submits that the present joint Petition against two corporate debtors is not maintainable, as neither Section 7(1) of the Insolvency and Bankruptcy Code, 2016 nor Rule 4(1) of the 2016 Rules permits initiation of CIRP against more than one corporate debtor in a single application. The Petition is liable to be dismissed *in limine*.
- 4.5 The Petition is further barred by Section 14 of the Code, as REPPL is already under CIRP pursuant to the order dated 06.09.2021 and the land forming part of the Avenue-54 project constitutes its principal asset. The present proceedings, despite the Petitioner’s admitted participation in REPPL’s CIRP, impermissibly affect such assets and are hit by the statutory moratorium. Any reliance on CoC minutes permitting a proposed consolidated CIRP cannot override Section 14.
- 4.6 The project land was acquired by Respondent No. 1 on 07.12.2009 and one-half thereof was transferred to REPPL. Respondent No. 2 was incorporated on 13.07.2015 as a joint-venture SPV of Respondent No. 1 and REPPL. Under the Development Agreement of April 2017, exclusive development rights were granted to Respondent No. 2, while Respondent

No. 1 and REPPL retained substantial area and economic interests, Respondent No. 2 being entitled only to a limited “Developer’s Allocation”.

4.7 Respondent No. 2 commenced construction on behalf of Respondent No. 1 and REPPL and each entity accepted bookings for its respective allocation. The project was registered under RERA on 17.07.2017 and the registration was modified on 08.09.2021, reflecting a revised completion date of 31.12.2024.

4.8 **Additional submissions:**

4.8.1 The captioned Petition is instituted against Respondent No.2 with malafide intent:

Despite, the members of the Petitioner undertaking an obligation to pay the entire consideration amount for the flats allotted to them, they have failed to deposit the same. On the contrary they have instituted the captioned petition claiming the consideration amount as the ‘amount in default’. The Respondent No.2 further submits that the Petitioner consists of speculative investors, who are not willing to take possession of the flats allotted to them, but are merely adopting coercive measures.

4.8.2 Respondent is neither a necessary nor a proper party to the captioned petition:

Respondent No. 2 submits that Respondent No. 1 and REPPL are the owners of the project land, and Respondent No. 2 was only entrusted with construction under the Development Agreement, which was terminated by Respondent No. 1 by notice dated 27.04.2023. Notwithstanding Clause 18 of the Development Agreement prohibiting termination, Respondent No. 1 has purportedly terminated the agreement, though, even in case of any alleged default by Respondent

No. 2, the only remedy available to Respondent No. 1 was to seek specific performance. Upon such termination, all development rights have reverted to Respondent No. 1 and REPPL, and Respondent No. 2 is no longer concerned with the construction or completion of the Avenue-54 project.

Respondent No. 2 further submits that it has committed no default towards the Petitioner and had not promised delivery of any flats prior to 31.12.2024. In any event, the concept of “project-wise insolvency” is alien to the provisions of the Insolvency and Bankruptcy Code, 2016.

4.9 In addition to the above, the Respondent no.2, has contended that the present Petition is barred by Section 14 of the Insolvency and Bankruptcy Code, as Radius Estate Projects Pvt. Ltd. has been undergoing CIRP since 06.09.2021 and the project land constitutes its sole asset, and reliance on CoC minutes dated 26.12.2023 cannot override the statutory moratorium. It is further submitted that, under the Development Agreement, Respondent No. 2 was entitled only to a limited developer’s allocation, while Respondent No. 1 and REPPL retained the substantial constructed area, evidencing that Respondent No. 2 acted merely as a developer. Additionally, the arrest of Sanjay Chhabaria, who was managing day-to-day operations, disrupted the project; despite efforts by Respondent Nos. 1 and 2 to arrange funding and engage with allottees, the Petition came to be filed, following which Respondent No. 1 terminated the Development Agreement on 27.04.2023 citing delay.

5. Rejoinder by the Petitioner to the Affidavit in Reply of the Respondent No.1:

5.1. The Ld. Senior Counsel for the Petitioner submits that the Respondent No. 1 had filed an IA No.6034 of 2024 and Respondent No. 2 had filed IA No.

5195 of 2024 (collectively as “**Maintainability Applications**”) challenging the maintainability of the Company Petition. The Petitioner had filed its affidavits in reply to both the Maintainability Applications. This Tribunal had vide a common order dated 12.09.2025 dismissed these maintainability Applications thereby rejecting contentions of Respondents on maintainability of Company Petition.

- 5.2. Both Respondents preferred appeals before the Hon’ble NCLAT, being Company Appeal (AT) (INS) Nos. 1573 and 1572 of 2025. The Hon’ble NCLAT, by a common judgment and order dated 26.11.2025, disposed of the said appeals, inter alia, by declining to interfere with the order dated 12.09.2025 and permitting the Respondent Association to file individual affidavits of homebuyers, within seven days, confirming their identity and authorisation in favour of the applicants, upon receipt of which the Adjudicating Authority was directed to proceed with the Section 7 application in accordance with law.
- 5.3. In compliance with the aforesaid order, the affidavits of the homebuyers were filed before this Tribunal on 01.12.2025. The Respondents thereafter preferred Civil Appeal No. 15026 of 2025 and Civil Appeal No. 15088 of 2025 before the Hon'ble Supreme Court of India. Vide an order dated 06.01.2026, the Hon'ble Supreme Court of India refused to interfere with the order of the NCLAT dated 26.11.2025.
- 5.4. In response to the Affidavit in Reply of the Respondent No.1, the Petitioner submits that:
 - a) That the Petition is maintainable in so far as threshold prescribed under Section 7 of the IBC Code is concerned;
 - b) That various Members of the Petitioner Association have paid more than Rs.1 crore, thus resulting in the existence of a financial debt;

c) That there exists a financial debt and default of the Respondents;

5.5. The contention of Respondent No. 1 that it is neither responsible for the delay nor a co-promoter is denied and is contrary to its own conduct, including termination of development rights, which itself impeded completion. Respondent Nos. 1 and 2 and REPPL are joint co-promoters and are jointly and severally liable to complete the Project. Inter se disputes between promoter groups are irrelevant to homebuyers.

5.6. The objection that the requirements of Section 7 are not satisfied is untenable. The eligibility of the Petitioners, existence of financial debt and occurrence of default already stand concluded by orders of this Tribunal, affirmed in appeal and thereafter not interfered with. The present Petition therefore merits admission.

5.7. The alleged willingness of Respondent No. 1 to refund amounts is misconceived. These proceedings are not for recovery. The homebuyers seek possession of their flats, and the continuing default is the failure to complete the Project and hand over possession. A refund offer neither cures the default nor can it be forced upon the allottees, who have expressly rejected it and affirmed their intent to take possession by filing affidavits pursuant to the order of the National Company Law Appellate Tribunal.

5.8. In addition to the above submissions, the Petitioner through its Written submission has argued as under :

The reliance on *Elegna Co-op Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*, 2026 SCC OnLine SC 82, is misplaced, as the said decision pertained to an intervention by a society without proof of authorisation and does not apply to the present case where the financial creditors themselves have authorised the Petition.

6. **Rejoinder by the Petitioner to the Affidavit in Reply of the Respondent No.2:**

6.1. As the defences of Respondent No. 2 are identical to those of Respondent No. 1, the Petitioner reiterates and adopts its Rejoinder dated 17.01.2026. Without prejudice, and even on Respondent No. 2's own case:

- a) The Petition satisfies the Section 7 threshold. Several members have paid more than Rs. 1 crore. Respondent No. 2 has admitted the debt and default in handing over possession. Despite service of the Additional Affidavit on 04.07.2024 and again on 07.01.2025, no reply has been filed and the contents stand deemed admitted.
- b) Payments were linked to construction milestones. Since the Project has been completely stalled since October 2019 and no demand notices were raised, there is no default by the members of the Petitioner Association.
- c) The alleged termination of the Development Agreement and the plea that Respondent No. 2 is no longer concerned with the Project are denied as sham and mala fide. Respondent No. 2 continues to be reflected as a promoter with MahaRERA, continues to incur project expenses and remains liable for project borrowings.

7. **Analysis and Findings:**

7.1. We have carefully considered the matter.

7.2. The present Petition has been filed under Section 7 of the Code seeking initiation of CIRP in respect of the project 'Avenue-54' undertaken by the Corporate Debtors. Opposing the present Petition, the Corporate DebtorNo.1 has raised the following issues:

- i. The Petitioner being an Association is not eligible to file petition under section 7 of IBC.

- ii. The threshold under Section 7 of IBC related to the number of allottees not met.
- iii. There is no default on the part of the Corporate Debtors.
- iv. The Petition is barred by limitation.
- v. The Petition cannot be filed against multiple Corporate Debtors.
- vi. The Petitioner consists of Speculative Investors and not genuine Homebuyers.
- vii. The present Petition has been filed for Insolvency Resolution of the Project and not against the Corporate Debtors.
- viii. The filing of this Petition is mere attempt of Forum shopping.
- ix. A part of the said plots, forms part of the assets of REPPL which is under CIRP and hence hit by moratorium.
- x. No obligation/ default on part of the Corporate Debtors since Development Agreement stood terminated on 27.04.2023.
- xi. Non-compliance regarding filing of Individual Affidavits as directed by the Hon'ble NCLAT.

7.3. Additionally, the Corporate Debtor No.2 has raised following issue:

- i. The 'Individual affidavits' filed are not in accordance with the filing requirement as mandated under Part XVI of the NCLT Rules, 2016 and that affidavits filed are factually and technically defective rendering the present petition not maintainable.

7.4. It is pertinent to note that the Corporate Debtors had filed two separate Interlocutory Applications ('IAs') bearing IA No. 6034 of 2024 and IA No. 5195 of 2024, challenging the maintainability of this Company Petition. Both the IAs were dismissed and disposed of by this Tribunal vide combined order dated 12.09.2025. In these IAs the Applicants (Corporate Debtors in the present Petition) had raised following issues:

- a) The Petitioner being an Association is not eligible to file Petition under section 7 of IBC.
- b) The threshold under Section 7 of IBC related to the number of allottees not met.
- c) There is no default on the part of the Corporate Debtors.
- d) The threshold under Section 4 of IBC is not met.
- e) The Petition is barred by limitation
- f) The Petition cannot be filed against multiple Corporate Debtors.

7.5. Further, the common order dated 12.09.2025, passed in these two IAs was challenged by the Corporate Debtors in separate Company Appeals (AT) (INS) No. 1573 of 2025 and 1572 of 2025 ('said Appeals'), before the Hon'ble NCLAT, wherein, the only issue agitated was regarding the eligibility of an Association to file the petition under section 7 of IBC and the other issues were not agitated before the Hon'ble Appellate Tribunal.

7.6. Also, the Hon'ble NCLAT vide order dated 26.11.2025, have disposed of the said Appeals, observing/directing as under:

"24. In view of the foregoing discussions, we dispose of the appeal in following manner:

*i. The **order dated 12.09.2025 passed in I.A.5195/2024 and I.A.6034/2024 is not interfered with for the reasons as indicated above.***

ii. The respondent Avenue 54 Welfare Association is permitted to file "individual affidavits of the homebuyers stating their identity as also the fact that they individually have authorized the applicants in the present company petition" within a period of 7 days from today. The adjudicating authority, after receipt of the above affidavits may proceed to hear the Section 7 application in accordance with law."

[Bold for Emphasis]

7.7. Such order of the Hon'ble NCLAT was further challenged by the Corporate Debtor No.1 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 06.01.2026 passed in C.A. No 15088 of 2025, disposed of the appeal, observing as under:

“While we are not inclined to interfere with the judgment and order dated 26.11.2025 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) Nos.1572 and 1573 of 2025, we make it clear that the appellant will be entitled to raise all objections about the maintainability of the application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

2. With this clarification, the appeals stand disposed of.”

[Bold for Emphasis]

7.8. In view of aforesaid judgement/order of the Hon'ble NCLAT and the Hon'ble Supreme Court, it is clear that no interference has been caused in respect of the findings returned in the order dated 12.09.2025 in respect of the IAs and therefore it cannot be inferred that the issues that have not even been agitated before the Hon'ble NCLAT could be open to be re-agitated before this Tribunal again. However, the Respondents herein (the Applicants in the above IAs), have raised the issues as noted herein above (para 10.2) which substantially include issues raised in the IAs. In respect of the such issues, which have already been decided by us vide order dated 12.09.2025, it is noted and stated that since there has been no change in the facts of the case as also there is no change in the law, therefore, there is no need to reconsider/revisit those issues raised by the Corporate Debtors and the findings returned in respect of such issues remain the same. However, the findings recorded by the Tribunal

in its order dated 12.09.2025, dealing with such issues, are extracted herein below for the purposes of completeness:

(i) Issue No.1: The Petitioner being an Association is not eligible to file Petition under Section 7 of IBC:

7.9. In respect of this issue finding returned in our order dated 12.09.2025 is as under:

“48. As regards proposition of Mr. Joshi and judgements relied upon, there is no differing opinion or position being taken, however, it would be relevant to see the construct of the Petitioners and their eligibility in the totality of facts of the present case. The petitioner in this case an Association of home buyers who have come together for the purposes of resolution of the Corporate debtors, being aggrieved by the default in the homes being delivered to them. It is further an undisputed fact that the association has been formed with no other purposes and it does not include any other party but for the home buyers of Avenue-54 project. Therefore, and in view of the decision in case of Krrish Florence Estate Buyer's Welfare Association (KFEBWA) Vs Angle Infrastructure Private Limited dated 19th December, 2024 and judgement in the case of Vipul Limited Vs Vipul Greens Residents Welfare Association in Appeal No.21 of 2020, dated 08.01.2020, we hold that there is no infirmity in filing of petition under section 7 of IBC by the Welfare Association. Accordingly, issue (i) is decided against the Applicants and in favour of the Welfare Association.”

7.10. Further, the said issue being agitated in Appeal by the Applicants in IA (Corporate Debtors in the present Petition), was decided by Hon'ble NCLAT in their order dated 26.11.2025, wherein it upheld the eligibility of the Petitioner to file the present petition and stated as under:

19. When we read the application Form A, the intendment is clear that the debt and default is of 98 flat buyers who claimed to be members of the Welfare Association with

respect to whose claim proceeding under Section 7 was initiated against the corporate debtor. It is true that the financial creditor could not be said to be Avenue 54 Welfare Association rather the financial creditors were 98 flat buyers who claimed to have form the registered society.

20. *We have noticed rival submissions of both the parties regarding maintainability of Section 7 application on behalf of Avenue 54 Welfare Association. We, however, are of the view that when Section 7 applicants offered to file individual affidavit and authorisation to cure the defect, if any, adjudicating authority ought to have been given opportunity to the applicant to cure the defects. We have noticed 'Form A' as noticed above, it cannot be disputed that any person can be authorised by financial creditor to file an application which may also be a registered society, however, there has to be authorisation by financial creditor and in the present case, the resolution which is claimed to be resolution 23.01.2024, authorising the society to Avenue 54 Welfare Association to institute Section 7 application cannot be said to be authorisation by members of the society. Resolution itself claims to be resolution of core committee of the members of the Avenue 54 Welfare Association. There being defect in authorisation, opportunity ought to have been given to applicant to file individual affidavit and authorisation as was submitted before the Court on 17.06.2025, as noted above.*

21. *We, thus are of the view that ends of justice be served in granting an opportunity to the applicant Avenue 54 Welfare Association to file the individual affidavit of homebuyers stating the identity as also the fact that they individually authorised the applicant in the company petition as also has been noticed in the order dated 17.06.2025. We grant 7 days' time to the respondent Avenue 54 Welfare Association to file the individual affidavits as noticed in the order dated 17.06.2025.*

7.11. Moreover, in support of its contention regarding non-eligibility of the Petitioner Association, the Corporate Debtor has relied on the judgement passed in “*Elegna Co-Op. Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd. and Anr., Civil Appeal No. 10261 of 2025 with Civil Appeal No. 10012 of 2025*”, wherein the Hon’ble Supreme Court has dealt with the issue as to whether a society or association of homebuyers possesses *locus standi* to intervene in proceedings under Section 7 of the Code, either at the admission stage or at the appellate stage. Deciding the said issue, the Hon’ble Apex Court held that, as per *GLAS Trust Company LLC v. BYJU Raveendran and Ors., (2024) ibclaw.in 275 SC*, at pre-admission stage, Section 7 proceedings are *in personam* between applicant creditor and corporate debtor; no right of audience exists for other creditors or unrelated third parties. A financial creditor under Section 5(7) must be a person to whom a financial debt is owed. While the Explanation to Section 5(8)(f) deems individual allottees to be financial creditors, it does not extend such status to societies or associations unless the entity is itself a creditor in its own right, or is statutorily recognised as an authorised representative under the Code. Further, Section 7 proceedings are bipartite at admission; unrelated third parties have no right of audience. In this regard, it is noted that the reliance placed by the Corporate Debtors on the said judgement is misplaced since in the above said matter, the Association/ society of Homebuyers had pleaded to intervene in the proceedings of a section 7 Petition, even though there was no direct debt relationship in the said matter. However, in the present case, the Petitioner is Association of Homebuyers, brought into existence for the sole purpose of filing the present Petition as the Financial Creditor, having no independent dues/claim of its own, separate from its members and has the right to initiate insolvency resolution as a representative of

the allottees. Further, pursuant to the order of the Hon'ble NCLAT dated 26.11.2025, authorisation letters of the allottees in the favour of the Association have been bought on record.

Accordingly, the issue raised by the Corporate Debtors in respect of ineligibility of the Petitioner is not found to be acceptable.

(ii) Issue no.2: The threshold under Section 7 of IBC related to the number of allottees not met.:

7.12. In respect of this issue finding returned in our order dated 12.09.2025 is as under:

“47. In the present case, the Welfare Association is a welfare association registered as a society. The Welfare Association, vide additional affidavit, has placed on record the registration certificate issued under the Societies Registration Act 1860. During the argument on 07.06.2024, Welfare Association submitted that a total 154 flats were sold in the project Avenue 54. Welfare Association/ society consists of 98 members, which is more than 60% of the total allottees of the Project. Therefore, Welfare Association has crossed the threshold limit and is entitled to file a section 7 petition.”

Accordingly, the issue raised by the Corporate Debtors in respect of threshold under Section 7 of IBC related to the number of allottees not being met, is not found to be acceptable. It is relevant to note that 98 members of the Welfare Association/society, who constitute more than 60% of the total allottees of the said project have authorised the Welfare Association/ society to file the present Petition under section 7 on their behalf and, therefore, the threshold prescribed under Section 7 is met.

(iii) Issue no.3: There is no default on the part of the Corporate Debtors:

7.13. In respect of this issue finding returned in our order dated 12.09.2025 is as under:

*“55. ...In this view of the matter and under the facts and circumstances of the case and also in view of the admitted fact that the homes have not been delivered to the ‘allottes’ within the due dates and even so far, **the Corporate Debtors are in clear ‘default’ within the meaning of provisions of section 3(12) of the IBC. Further, mere, proposal to pay to the allottees of SBPL by SBPL would not make the case good of their default in not being able to deliver the homes to even such allottees. Therefore, there is the existence of financial debt and default is also established.**”*

Accordingly, the issue raised by the Corporate Debtors in respect of no default on the part of the Corporate Debtor is not found to be acceptable.

(iv) Issue no.4: The Petition is barred by limitation:

7.14. In respect of this issue finding returned in our order dated 12.09.2025 is as under:

“60. In view of the fact that the homebuyers have still not been given their flats and that the default is continuing one, the petition filed is not found to be hit by limitation. Further, it is settled law that Part-D (record of default) issued by NESL is not the only document proving date of default, the other facts, such as the other agreement of the home buyers, the state of continuing default, more specifically possession of some of the allottees being 31.12.2023 and date of filing of the Company Petition being 25.03.2024, the company petition filed is within the limitation. Accordingly, the issue (iii) is also decided in favour of the Welfare Association and against the Applicants herein.”

Accordingly, the issue raised by the Corporate Debtors in respect of the Petition being barred by Limitation is not found to be acceptable.

(v) Issue no.5: The Petition cannot be filed against multiple Corporate Debtors.

7.15. In respect of this issue finding returned in our order dated 12.09.2025 is as under:

“67. From the above it is noted that -

- a. The Petition was filed against multiple entities*
- b. The project was in the same land owned by the Corporate Debtors,*
- c. Corporate Debtors were joint venture*
- d. The corporate debtors were jointly doing project*

Also in Mrs. Mamatha V/s AMB Infrabuild Pvt. &Anr (Supra) Hon’ble NCLAT in similar facts deals with the same issues

68. The facts of the present case are similar to the facts of Mist Avenue and Mrs. Mamatha (Supra). Further, from the Judgments as noted above, it is clear that with regard to Real Estate Projects, filing of Application against two or more corporate debtors who were part of the project have been held maintainable. Accordingly, the issue (iv) is also decided against the Applicants and in favour of the Welfare Association.”

7.16. Further, the Ld. Counsel for the Corporate Debtor No.1 fairly submitted that this issue is covered against him, in view of the judgment of Hon’ble Supreme Court in the case ***Satinder Singh Bhasin vs Col. Gautam Mullick & Ors, Civil Appeal No. 13628 of 2025***, wherein the Hon’ble Supreme Court held as under:

“26. Further, in its reply dated 07.07.2022 filed before the NCLT in the company petition, we find that Grand Venezia Ltd. had stated that it was a ‘highly reputed marketer’ and had acquired exclusive marketing rights for selling the units in the commercial complex constructed by Bhasin Ltd., vide the Agreement dated 14.12.2009. This claim stands decimated by the fact that Grand Venezia Ltd. was incorporated and came into existence only in November, 2009, barely a month earlier. It, therefore, had no reputation or experience as a marketer, so to speak of, and appears to have been incorporated only for the purpose of entering into an agreement with Bhasin Ltd. in relation to the subject project. Before us, the appellants have stated

*that Grand Venezia Ltd. purchased 1,114 units in the project from Bhasin Ltd. on 31.03.2016 for ₹218 crores. There is, thus, no possibility at this stage for either company to say that they are not jointly liable to the allottees of the project. **The NCLT and the NCLAT were, therefore, justified in concluding that the corporate debtors were intrinsically linked and that it would be in their interest to have a joint insolvency process so as to maximise asset realisation.***

27. Significantly, in *Edelweiss Asset Reconstruction Company Ltd. (supra)*, the NCLAT was dealing with five companies which had jointly undertaken development of a township. The NCLAT opined that a ‘Group Corporate Insolvency Resolution Process’ proceeding was required to be initiated against all five of them in such circumstances. This order stood confirmed, when Civil Appeal (Diary) No. 1010 of 2020, challenging the same, was dismissed by this Court on 10.02.2020. **Earlier, in *Mamatha vs. AmbInfrabuild P. Ltd. and others*¹³, the NCLAT had observed that if two corporate debtors collaborate and form an independent corporate entity for developing land and allotting premises to allottees, the application under Section 7 of the Code would be maintainable against both of them jointly and not individually against one or the other. This judgment was confirmed by this Court when the Civil Appeal filed by one of the corporate debtors was dismissed, vide the order reported in *AMB Infrabuild P. Ltd. vs. Mamatha and another*. The argument that these were two completely independent and separate companies, therefore, falls to the ground. In any event, as they were jointly answerable to the allottees, the filing of a single company petition against them was justified.”**

[Emphasis supplied]

Accordingly, the objection raised by the Corporate Debtors that no petition can be filed against multiple Corporate Debtors is not found to be acceptable.

7.17. The Additional issues raised by the Corporate Debtors are being dealt with as under:

(vi) Issue no.6: The Petition consists of Speculative Investors and not genuine Homebuyers:

7.18. The Corporate Debtors have contended that a substantial number of allottees are speculative investors, allegedly holding multiple units and having remitted significant amounts in lump sum, thereby indicating an investment intent and disentitling them from being classified as financial creditors under Section 5(8)(f) of the Code. In this regard it is useful to refer judgement of Hon'ble Supreme Court in the case of *Mansi Brar Fernandes v. Shubha Sharma &Anr. (2025 SCC OnLine SC 1972)*, wherein it was held that

“18.4. “Speculation” has been defined in P. Ramanatha Iyer’s Law Lexicon (6th edition) as “a risky investment of money for the sake of and in expectation of unusually large profits”. A “speculator” is “one who practices speculation in trade or business”. Two elements emerge: (i)expectation of unusually high profits; and (ii)activity in the nature of business or trade. These elements accord with the ratio of Pioneer Urban, which described speculative investors as those seeking refund or profit without an intention to occupy.

....

21. This Court reiterates that while investors are integral to any industry and their interests warrant protection, speculative participants driven purely by profit motives cannot be permitted to misuse the Insolvency and Bankruptcy Code, which is a remedial framework conceived for revival and the protection of sick companies and, in the case of real estate, genuine homebuyers. Such investors have alternative remedies under consumer law or RERA and even recourse to Civil Courts in appropriate cases. To admit speculative claims into insolvency proceedings would

dilute the intelligible differentia underlying the legislative scheme, destabilize the residential real estate sector, and erode the social purpose embedded in housing as a fundamental right.

21.1. The present case, therefore, provides an occasion to fortify safeguards for bona fide homebuyers, who have invested their life savings, to insulate the real estate market from speculation and artificial inflation, and to secure speedy and time-bound adjudication as mandated by the Code. As in the culmination of the landmark Kesavananda Bharti case, where “Kesavananda Bharati lost but the country won”, the larger interest of the sector and genuine allottees must prevail over narrower considerations.”

[Emphasis supplied]

7.19. The above judgement specifies that a speculative investor is one who, viewed holistically from the terms of allotment, payment structure, and overall conduct, was never genuinely interested in taking possession and is primarily concerned with refund or profit. The Hon'ble Apex Court has in the above matter set down the criteria to identify speculative investors and two elements that are usually associated with speculative investors i.e. (i) expectation of unusually high profits and (ii) activity in the nature of the business or trade. The test, therefore, is whether the allottee intends to “jump ship” and evade possession, rather than seek completion of the project. However, in the present case, no material has been placed on record to demonstrate the existence of any buy-back arrangement or a clause providing for assured returns or repayment with interest in the allotment letters. In the absence of such indicia, the allegation of speculative intent remains unsubstantiated. Insofar as the contention that certain allottees have booked more than one unit is concerned, the same, by itself, cannot lead to the conclusion that such

allottees are speculative investors. The decision to purchase multiple units is a matter of individual choice, and mere multiplicity of allotments does not satisfy the test laid down in *Mansi Brar Fernandes* (supra) for determining speculative investment. Further, the assertion that payment of a substantial amount in a lump sum reflects a speculative investment is vague, unsupported by evidence, and fails to meet the criteria articulated in *Mansi Brar Fernandes* (supra). Accordingly, the said contention is devoid of merit.

7.20. Moreover, the Petitioner in the present case, approached this Tribunal not to seek refunds from the Corporate Debtor but with the objective to initiate CIRP in respect of the Corporate Debtors so that a new management may then carry out and complete the Avenue 54 Project and deliver the flats/units to them. Thus it cannot be said that the Petitioner consists of speculative investors.

(vii) Issue no. 7: The present Petition has been filed for Insolvency Resolution of the Project and not against the Corporate Debtors:

7.21. The Corporate Debtor no.1 has contended that CIRP can be filed against the Corporate Debtor and not against a project of the Corporate Debtor. It is observed that this issue as to whether Project-wise initiation of CIRP permitted under law, has come up for consideration before the Hon'ble NCLAT. In the case of "*Surender Singh v. IDBI Trusteeship Services Ltd. and Anr., Company Appeal (AT) (Insolvency) No. 266 of 2026*", the Hon'ble NCLAT have held that:

"29. This Tribunal in 'Gagan Tandon & Ors.' (supra) has noticed the judgement of Hon'ble Supreme Court in paragraphs 77 to 80 and in paragraph 81, this Tribunal in 'Gagan Tandon & Ors.' (supra) held as follows:

"81. What Hon'ble Supreme Court has held in the above case is that resolution of real estate insolvency

should, as a rule, proceed on a project specific basis rather than the entire CD, unless circumstances justify otherwise. This would protect solvent projects and genuine homebuyers from collateral prejudice.”

....

32. Paragraph 86 further notices the paragraph 21 of the judgement of the ‘Flat Buyers Association Winter Hills – 77, Gurgaon’ (*supra*). Paragraph 86 of the judgement is as follows:

“86. The Hon’ble Supreme Court in the above case has also noticed the concept of “reverse corporate insolvency resolution process”. This Tribunal in the above judgment, which was delivered on 04.02.2020 had observed that in the CIRP against a real estate, if allottees (Financial Creditors) or Financial Institutions are of one project initiated CIRP against the CD, it be confined to the particular project and it cannot affect other projects of the real estate company in other places.”

IV. The view of the adjudicating authority that insolvency cannot be project-wise in case of Real Estate Company and only resolution can be project-wise, is not in accordance with law laid down by this Tribunal and the Hon’ble Supreme Court.”

[Emphasis supplied]

7.22. Further, the Hon’ble NCLAT in *Navin M. Raheja v. Vipul Jain &Ors., Company Appeal (AT) (Insolvency) No. 2168 of 2024*, reiterated the principle laid down in *Flat Buyers Association Winter Hills* and reaffirmed in *Gagan Tandon’s case*, namely that where the Financial Creditor/allottees have exposure only to a specific real estate project, the CIRP must remain confined to that project alone. Applying the said principle, the Hon’ble Appellate Tribunal held that since the concerned allottees pertained only to ‘Raheja Shilas’ (Low Rise), the CIRP was

liable to be restricted to the said project only. It was further clarified that such project-specific CIRP would not preclude allottees of other projects, financial creditors in class, or other financial institutions from independently pursuing appropriate proceedings under Section 7 in respect of the remaining projects of the Corporate Debtor, which applications would be considered in accordance with law.

7.23. Thus, in view of the aforesaid judgments, it is clear that the CIRP initiated against the Corporate Debtor, limited to the insolvency resolution of the 'Avenue 54' project, is permitted under law and therefore this contention of the Corporate Debtor No.1 also fails.

(viii) Issue no.8: The filing of this Petition is mere attempt of Forum shopping:

7.24. The Corporate Debtor No.1 contends that the Petitioner has already instituted proceedings before the Hon'ble Bombay High Court under RERA, MOFA and the Specific Relief Act seeking substantially the same reliefs. Thus the invocation of Section 7 on the same cause of action amounts to impermissible forum shopping and abuse of process.

7.25. In this regard, it is noted that the Corporate Debtor cannot dictate the Applicants as to the appropriate forum to be approached for seeking redressal of their grievances. As held by the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Limited, (2019 SCC OnLine SC 1005)*, the provisions of RERA are supplemental and do not supplant or relax existing laws. The remedies available to allottees of flats or apartments under RERA are concurrent and complementary and not exclusive. In other words, the allottees of flats or apartments are free to avail of the remedies under the Code, the RERA, Consumer Protection Act, 1986, etc. and therefore, resorting to available remedies permitted under the law cannot be termed as forum shopping or abuse of process.

(ix) Issue no.9: A part of the said plots, forms part of the assets of REPPL which is under CIRP and hence hit by moratorium:

7.26. Corporate Debtor No. 2 has contended that the present Petition is hit by Section 14 of the Code, as REPPL has already been admitted into CIRP pursuant to order dated 06.09.2021 and the land forming part of the Avenue-54 Project constitutes its principal asset. In this regard, it is observed that the Development Agreement in respect of the said project was executed in June 2017, much prior to the initiation of CIRP against REPPL in September 2021, and was subsisting on the insolvency commencement date, with the parties continuing to perform their obligations thereunder. In such circumstances, the status of the land remains governed by the pre-existing rights created under the Development Agreement. Section 14 prohibits transfer, encumbrance, alienation or disposal of assets of the Corporate Debtor during moratorium to preserve and maximise the value of its assets. In the present case, continuation of the project does not create or transfer any new legal title in the land, but merely gives effect to rights already existing under the Development Agreement. In so far as the provisions of Section 14 of the Code, which prohibit the institution or continuation of suits or proceedings against the Corporate Debtor, are concerned, it is observed that the present proceedings do not in any manner create any further encumbrance upon the assets of the Corporate Debtors or REPPL. The present proceedings are in the nature of resolution and are not intended to initiate or continue any other proceedings against the Corporate Debtors. Accordingly, this contention of the Corporate Debtor also does not have any merit.

(x) Issue no.10: No obligation/ default on part of the Corporate Debtors since the Development Agreement stood terminated on 27.04.2023:

7.27. It is the contention of the Corporate Debtor No.2 that the Development Agreement dated 29.06.2017 was terminated by the Corporate Debtor No. 1 by notice dated 27.04.2023 and thus the Corporate Debtor No. 2 is no longer concerned with the construction or completion of the Avenue-54 project. In this regard, it is observed that the Corporate Debtors had collectively represented and undertook to develop the subject real estate project and deliver possession of flats to the allottees. The obligations of the Corporate Debtors, in their capacity as promoters of the said project, do not arise merely *vis-à-vis* the Development Agreement, but stem from the consideration received from the Petitioner. Upon booking of the flats, a binding legal obligation was created upon the Corporate Debtors to complete the project and hand over possession to the Petitioner. The subsequent purported termination of the Development Agreement cannot operate to absolve the Corporate Debtors of such obligations. It is well settled that, in claims arising out of a real estate project at the instance of flat purchasers, all promoters are jointly and severally liable to the allottees, irrespective of any subsequent development such as termination of agreements or disputes inter se amongst the promoters. Accordingly, the objection raised by the Corporate Debtors regarding no default/obligation on the basis of purported termination of the Development Agreement, is not found to be acceptable.

(xi) Issue no.11: Non-compliance regarding filing of Individual Affidavits as directed by the Hon'ble NCLAT:

7.28. The Corporate Debtor No.1 has contended that the Petitioner has failed to comply with the order dated 26.11.2025 of the Hon'ble NCLAT,

which mandated filing of individual affidavits of each homebuyer, and that the filing of 14 consolidated affidavits is in non-compliance with the said order. Thus the defect as to the authorisation still remains uncured. However, the Petitioner has submitted that pursuant to the order dated 26.11.2025 of the Hon'ble NCLAT, the Petitioner was permitted to file individual affidavits of the homebuyers, which was earlier proposed to be submitted but rejected by this Tribunal. The Petitioner states that these affidavits which are filed on 01.12.2025, duly establish the identity of the members and their express authorisation and ratification of the filing of the Section 7 petition.

7.29. In this regard, it is observed that the said contention requires examination in light of the order passed by this Tribunal dated 17.06.2025, which has also been extracted in the order of the Hon'ble NCLAT dated 26.11.2025. During the said hearing of the Maintainability applications, this Tribunal vide order dated 17.06.2025, had rejected to take on record the affidavits of the homebuyers observing as under:

“...IA 6034/2024 and IA 5195/2024: - Heard, learned counsel for the Applicant as well as the Respondent in these 2 IAs.

While re-joining, the learned counsel for the Respondent offered to tender the individual affidavits of the home buyers stating their identity, as also the fact that they individually have authorized the applicants in the present Company Petition.

Senior Counsel Mr. Joshi, appearing for the Applicants opposed it, stating that these IAs were heard by the earlier constituted Bench and, thereafter, substantial hearing has happened before the present Bench including submissions of the counsels for the Applicants as also the counsel for the

respondent. At this belated stage of re-joining tendering the affidavits across the Bar should not be accepted.

In view of the facts that, the matter has been substantially argued, we deem it appropriate that at this stage of re-joining any new material cannot be brought on record and accordingly, such affidavits tendered are rejected to be taken on record.

Parties on either side are at liberty to give their written submission, not exceeding 7 pages, within 2 weeks. List for written submission on 17.07.2025.”

However, the Hon’ble NCLAT had vide its order dated 26.11.2025, directed as under:

*21. We, thus are of the view that ends of justice be served in granting an opportunity to the applicant Avenue 54 Welfare Association to file the **individual affidavit of homebuyers** stating the identity as also the fact that they individually authorised the applicant in the company petition **as also has been noticed in the order dated 17.06.2025. We grant 7 days’ time to the respondent Avenue 54 Welfare Association to file the individual affidavits as noticed in the order dated 17.06.2025.***

*22. We having allowed the above opportunity to respondent the applicant of Section 7 application **which shall cure the defect in authorisation, which was offered by the applicant themselves before the adjudicating authority, which was denied.** We are of the view that respective submissions raised by the parties with regard to maintainability of Section 7 application at the instance of Avenue 54 Welfare Association and reliance on different precedents need no consideration. On their being valid authorisation in favour of the society to file the Section 7 application, the application has to be treated to be maintainable under Section 7 and need to be proceeded in accordance with law.”*

It is observed that the direction of the Hon'ble NCLAT pertained to the filing of such affidavits, which had already been proposed to be submitted before this Tribunal and were recorded as 'Individual Affidavits' in the order dated 17.06.2025, and did not mandate filing of separate individual affidavits by each of the 98 homebuyers.

7.30. Additionally, the Corporate Debtor no.2 has raised an issue stating that the 'Individual affidavits' filed are not in accordance with the filing requirement as mandated under Part XVI of the NCLT Rules, 2016 and that affidavits filed are factually and technically defective. In this regard, it is observed that Part XVI of the NCLT Rules, 2016 prescribes the format and contents of the affidavit to accompany an application/petition, but does not deal with the manner in which members of the Welfare Association are required to authorize the Petitioner to institute the present Petition. Without prejudice to the above, it is also observed that, as per the observations of the Hon'ble NCLAT, the defect in authorisation was to be deemed cured upon the filing of the said Individual Affidavits within seven days, as earlier proposed by the Petitioner. Accordingly, since the said Individual Affidavits have been duly filed before this Tribunal within the stipulated period, the defect in authorisation stands cured. Therefore, the Affidavits filed evidencing the authorisation granted by the allottees to the Welfare Association cannot be said to be improper.

7.31. It is noted that the Petition has been made in the prescribed form and is complete in all respects. The Petitioner/Financial Creditors have placed on record written consent of the proposed Interim Resolution Professional (IRP) in Form-2, wherein he has confirmed that there is no disciplinary proceeding pending against him. Accordingly, we are on the considered view that, the present Petition is complete in all respects

taking into account the debt and default on the part of the Corporate Debtor No.1 and No.2 is established, the threshold prescribed under section 4 is fulfilled, the Petition is filed within limitation period and the requirements under section 7 are fulfilled. Hence, it is a fit case for initiation of Insolvency resolution process in respect of the 'Avenue 54' project undertaken by the Corporate Debtors.

Order

8. Accordingly, this company petition is **admitted** by passing the following directions:
 - 8.1. The above **Company Petition (IB)284(MB)/2024** is **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered in respect of '**Avenue- 54**' Project undertaken by the Corporate Debtors i.e. Sumer Buildcorp Private Limited and Sumer Radius Realty Private Limited.
 - 8.2. This Bench appoints **Aegis Resolution Services Private Limited**, having Registration No: IBBI/IPE-0118/IPA-1/2022-22/50041, email: avil@cavil.com; Address: 1104/D Wing, 11th Floor, Dreams-II Complex, LBS Marg, Bhandup (W), Mumbai - 400078, as the Interim Resolution Professional of the Corporate Debtor, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
 - 8.3. The Petitioner shall deposit an amount of Rs. 5,00,000/- towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
 - 8.4. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:

- a) the institution of suits or continuation of pending suits or proceedings in relation to the Project ‘Avenue 54’, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority against the said project;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtors any of the assets relating to ‘Avenue 54’ project or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtors in respect of the property relating to ‘Avenue 54’ project, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor in relation to ‘Avenue 54’ project.
- 8.5. That the supply of essential goods or services to the Corporate Debtor in relation to the ‘Avenue 54’ project, as may be specified, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- 8.6. The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to the Corporate Debtors in relation to the ‘Avenue 54’ project.
- 8.7. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process of the ‘Avenue 54’ project.

- 8.8. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- 8.9. During the CIRP period, the management with respect to the Avenue 54 project will vest in the IRP/RP. With regards to 'Avenue 54' project, the directors and employees of the Corporate Debtors shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- 8.10. This order is being passed in an Application filed under Section 7 of IBC, 2016 with a view to bring about resolution of the Corporate Debtor with focus on specific real-estate Project in question and the energies of the IRP/ RP are expected to be channelized accordingly.
9. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtors.
10. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Rashmi & Omkar– LRA

Sd/-

Nilesh Sharma
Member (Judicial)