IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

COURT - IV

I.A. (IB) NO. 3688 OF 2025

IN

C.P. (IB) NO. 389/MB/2022

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

In the matter of:

1. Vivek Talwar
2. Aditi Talwar
3. Vishal Joshi
4. Anjana Joshi

…Applicants

V/s.

1. Rajesh Jhunjhunwala, Resolution Professional
2. JM Financial Asset Reconstruction Company Limited
3. IDBI Trusteeship Services Limited, Trustee of India Realty Excellence Fund III

4. Nemi Landmarks Private Limited
5. Class-I Allottees under Real Estate Project represented by AR

…Respondents

<u>In the matter of</u>

Aurum Commercials LLP

…Financial Creditor

V/s.

Spenta Enclave Private Limited

…Corporate Debtor

Pronounced: 09.09.2026

CORAM:

SHRI ANIL RAJ CHELLAN	**SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**

Appearances:	***Hybrid***
For Applicant:	Adv. Prathamesh Nirkhe i/b Asahi Legal
For Respondent No. 1:	Mr. Rajesh Jhunjhunwala (RP in person)/ Adv. Amir Arsiwala a/w Adv. Manoj Kumar Mishra.

For Respondent No. 2: Adv. Mayank Samuel a/w Adv. Drumi Nishar i/b Sirius Legal

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (J)]

1. BACKGROUND

1.1. This Interlocutory Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking, *inter alia*, dismissal of IA (IBC) (PLAN) No. 73/MB/2025, filed for approval of the Resolution Plan; direction to the Committee of Creditors (CoC) to reconsider the Resolution Plan of the Prospective Resolution Applicants, which is allegedly not compliant with the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA); and in the alternative, direction to the Resolution Applicant to modify/amend the Resolution Plan demonstrating full compliance with the RERA.

1.2. The Applicants are homebuyers who had booked Flat Nos. F-1606 and F-1005 respectively in the project ‘Altavista’, which was being developed by Spenta Enclave Private Limited, the Corporate Debtor (CD). It is submitted that substantial amounts aggregating approximately Rs.89.23 Lakh and Rs.86.71 Lakh, respectively, were paid towards the purchase consideration of the Flats between 2017-2021, by the Applicants but the CD failed to hand over possession of the Flats as agreed.

1.3. The Applicants submit that despite assurances regarding completion of the project by 31.12.2019, it was subsequently revised to 31.12.2020, and the CD failed to complete the project. Consequently, the Applicants sought refund of the amounts paid and initiated proceedings before the State Consumer Disputes Redressal Commission in July,2022, prior to the commencement of the CIRP.

1.4. The CIRP in respect of the CD was initiated *vide* order dated 24.03.2023 passed by this Tribunal. Pursuant thereto, the Applicants submitted their claims as homebuyers, which were admitted by Respondent No. 1, the Resolution Professional (RP). However, the RP, by email dated 01.08.2023, asked the Applicants to pay the balance consideration towards the Flats on account of the project being taken up for completion. The Applicants, however, informed the RP that they are not inclined to pay the balance consideration and thus informed him, by email, of their refusal to sign consent letter for payment of the balance consideration.

1.5. During the CIRP, a Resolution Plan submitted by a Consortium of Successful Resolution Applicant (SRA), which was approved by the CoC. The present Applicants challenge the said Resolution Plan, primarily on the ground that the Plan does not provide an exit option or refund mechanism to homebuyers who desire to withdraw from the project, despite the rights already available to them under Section 18 of RERA.

2. SUBMISSIONS OF THE APPLICANTS

2.1. The Applicants submit that the CD failed to deliver possession of the Flats within the timelines stipulated under the Agreements for Sale dated 19.8.2017 & 16.10.2017, executed by the Applicants with the CD. The Agreement for Sale provided, in Clause 18, that the CD shall give possession of the Flats on or before 30.12.2020, and if they failed to do so, the promoters would be liable to refund to the Applicants the amounts already received with interest. Since the CD failed to deliver the Flats within the agreed timeframe, they are entitled to seek refund of the amounts paid under Section 18 of RERA, which provides for return of amount and compensation in respect of the Flats. The Applicants sought refund of the amounts paid and initiated proceedings before the State Consumer Disputes Redressal Commission in July, 2022, even prior to the commencement of the CIRP. Now that the CD is in CIRP and that a Plan of the SRA has been approved by the CoC, the SRA would step into the shoes of the promoter/developer, and would therefore be bound by all the obligations of the promoter arising under RERA as well as the Agreements for Sale executed with the homebuyers. The Applicants submit that, to their disappointment, the approved Resolution Plan expressly stipulates that cancellation of units by homebuyers would not be entertained. Such a stipulation amounts to unilateral modification of the contractual and statutory rights available to the homebuyers under RERA.

2.2. It is further submitted that the RP himself had raised concerns before the CoC regarding requests made by certain homebuyers for refund and exit from the project. However, the CoC disregarded such concerns solely on the ground that permitting refunds would adversely affect project cash flows.

2.3. The Applicants submit that the Resolution Plan is contrary to Section 18 of RERA, and therefore, cannot be approved under Section 31 of the Code by this Adjudicating Authority. They seek directions for reconsideration of the Resolution Plan or modification thereof to ensure compliance with RERA and to provide refund rights to the homebuyer Applicants, who no longer wish to remain associated with the project.

3. SUBMISSIONS OF RESPONDENT NO. 1

3.1. The Respondent No. 1/RP opposed the Application and submitted that the present Application is barred by the principles analogous to *res judicata* and amounts to re-agitation of issues already adjudicated by this Tribunal. It is submitted that Applicant Nos.1 & 2 had earlier filed IA No. 2136/MB/2024 seeking refund of the amounts invested in the project, which came to be dismissed by this Tribunal *vide* order dated 18.06.2024. Similarly, Applicant Nos.3 & 4 had filed IA No. 2074/MB/2024 seeking refund, which was also dismissed by order dated 08.08.2024. It is therefore contended that the present Application, though couched in different language, substantially seeks the same relief of refund and therefore amounts to abuse of the process of law.

3.2. The RP further submitted that the homebuyers as a class constitute approximately 22.66% voting share in the CoC and through their Authorised

Representative had voted in favour of the Resolution Plan. The individual Applicants hold only about 0.22% voting share and are bound by the collective decision of the class under Section 25A(3A) of the Code.

3.3. The RP further submitted that the Resolution Plan has been approved by a majority of the CoC and the commercial wisdom of the CoC cannot be subjected to judicial review except within the limited parameters prescribed under Section 30(2) of the Code. The Plan is presently awaiting approval of this Tribunal.

3.4. It is further submitted that by virtue of Section 238 of the Code, the provisions of the IBC override any inconsistent provisions contained in other statutes including RERA. Hence, the Application deserves to be dismissed.

4. SUBMISSIONS OF RESPONDENT NO. 2

4.1. Respondent No. 2, a secured financial creditor and member of the CoC holding 53.36% voting share, supported the stand taken by the RP/Respondent No.1. It was submitted that the Applicants have repeatedly approached this Tribunal on identical issues and are seeking to obstruct and delay the CIRP by filing successive applications.

4.2. Further, on an earlier occasion, a Resolution Plan was remanded by this Tribunal to the CoC, on account of certain issues relating to funding arrangements. The CoC has now reconsidered every aspect, and thereafter, approved the present Plan with 92.87% voting share after due consideration of the interests of all the stakeholders. Any further delay would seriously prejudice the revival of the CD and would adversely affect more than 300 homebuyers.

4.3. The Code envisages a time-bound resolution process, and entertaining individual refund claims at this stage of the Plan awaiting approval of the Adjudicating Authority would undermine the collective insolvency resolution framework under the law. Hence, according to them, this IA does not deserve any consideration and is liable to be dismissed.

5. ANALYSIS AND FINDINGS

5.1. We have heard the Ld. Counsel for the parties and perused the materials available on record.

5.2. The principal grievance of the Applicants is that the Resolution Plan does not provide a mechanism for refund of amounts invested by the Applicants, who are homebuyers seeking withdrawal from the project. According to them, the Plan approved by the CoC is inconsistent with the Agreement for Sale and Section 18 of RERA. It is contended that the Plan submitted by the SRA exhibits significant deficiencies in addressing the implications of termination of the Agreement for Sale. The Agreement for Sale entered into between the respective Applicants and the CD, in Clause 18, contains termination provisions, with an option of refund of the amounts paid by them with interest, on 30 days' notice in writing. The Applicants had already given notice of termination to the CD before commencement of the CIRP. However, the approved Resolution Plan in Paragraph 8.6 states that *"no cancellation of the Units by the Homebuyers will be entertained by the*

Resolution Applicant." Hence, according to the Applicants, any deviation from the Agreement for Sale by the SRA, disregarding the financial capabilities of the Applicants, their right to exit, and without their consent, is improper. It is further contended that upon approval of the Resolution Plan, the SRA would step into the shoes of the promoter/developer, and would therefore, be bound by all the obligations arising under RERA and the Agreements for Sale executed by the erstwhile promoters with the Applicants. Hence, the SRA is duty-bound to refund the amounts already received by the CD, honouring Clause 18 of the Agreement for Sale. In view of the above contentions, it is relevant to consider Section 18 of RERA:

> *"18. Return of amount and compensation. - (1) If the* ***promoter*** *fails to complete or is unable to give possession of an apartment, plot or building, —*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> *he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed*

in this behalf including compensation in the manner as provided under this Act:

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the **promoter**, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The **promoter** shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the **promoter** fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, **he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act**."* (emphasis added).

On a plain reading of Section 18 of the RERA, it is understood that the promoter of a project who fails to complete the project within the specified date is liable to return the amount received from the allottees and to pay compensation, etc. It cannot be inferred that the SRA who has agreed to take over the project under the corporate insolvency resolution process in pursuance of IBC has assumed the role of the builder/promoter of the CD. Since the Plan is yet to be approved, the SRA is not put in charge of developing, resuming, or completing the project, and therefore, they cannot be said to have stepped into the shoes of the CD. The responsibility of the SRA to complete the project begins in terms of the Plan and post approval of the same by this Adjudicating Authority. Thus, the SRA is under no obligation to go by the terms of the Agreement for Sale executed by the erstwhile promoters and the Applicants. In view of the above, the SRA cannot be equated as the promoter of the project at this juncture. Furthermore, the amounts paid by the Applicants have been admitted by Respondent No.1/RP as a claim; therefore, no transfer, alienation or disposal of the assets of the CD is permitted during CIRP. In the 11th CoC meeting on 8.02.2024, the CoC has already considered the Applicants' request to return the amounts with interest. The CoC observed that cancellations and refund of monies to the Applicants would have a negative impact on the cash flows of the CD. Further, under the scheme of the Code, the resolution applicant cannot be compelled to refund the amounts already received by the corporate debtor before the insolvency resolution process. Further, the SRA cannot be strictly bound by all the contractual terms entered into between the Applicants and the CD undergoing CIRP. The majority of the homebuyers have already considered the past contracts of the CD and given their consent to the Plan, by way of 22.66% voting, through the Authorised Representative appointed under the law. The four Applicants herein collectively hold only about 0.22% voting share in the CoC. Hence, there is no need to put the Applicants under any special notice for amending/varying any terms of contract entered into between them and the erstwhile promoters. The CoC has approved the

Resolution Plan with 92.87% voting share after due consideration of all aspects of implementation of the Plan. Hence, no specific consent of the Applicants is necessary for proposing a Plan by the SRA to the CoC. The SRA should be allowed to inherit the CD without past liabilities. Interestingly, the SRA in the matter is not a party to this Application. Hence, on this count also, no relief can be allowed without considering the interests of the SRA.

5.3. Further, law is settled that there is no conflict between RERA and IBC and that both the enactments operate in different spheres and must co-exist, and in the event of any clash, RERA must give way to the IBC in terms of Section 238 of the IBC. The Code deals with a proceeding in rem focussing on rehabilitation of the corporate debtor by replacing its management for the benefit of all the stakeholders, whereas RERA protects the individual investor to realise their dream of home or to be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. Hence, other remedies are available to the Applicants, including the one that they have already resorted to. The material on record shows that the class of homebuyers, through their Authorised Representative, voted in favour of the Resolution Plan. Consequently, the Applicants, being individual members of the class, cannot seek to overturn the collective commercial decision taken by the homebuyers as a class.

5.4. Additionally, we find merit in the objections raised by the Respondent No.1/RP that substantially similar refund claims of the Applicants Nos.1 & 2 and Applicant Nos.3 & 4, as agitated by them in IA No. 2136/MB/2024 and IA No. 2074/MB/2024, respectively, were duly considered and rejected by this Tribunal *vide* orders dated 18.06.2024 and 08.08.2024. The Applicants have not challenged the said orders before the Appellate Authority and the same have already attained finality.

5.5. Even if this Application is considered not hit by the principle of *res judicata,* we further note that the homebuyers constitute a class of financial creditors under the Code. Section 25A(3A) of the IBC mandates that the Authorised Representative shall cast votes in accordance with the decision taken by more than fifty per cent. of the voting share of the creditors in that class. Once such a decision is taken, individual members of the class are bound by the collective majority decision. The Hon'ble Supreme Court has consistently held that the commercial wisdom of the CoC is paramount and that judicial review by the Tribunal is confined to examining compliance with Section 30(2) of the Code. This Tribunal cannot direct modification of commercial terms of a Resolution Plan nor compel the CoC or Resolution Applicant to renegotiate the Plan.

5.6. The contention that the Resolution Plan ought to incorporate refund rights under Section 18 of RERA also cannot be accepted in the manner canvassed by the Applicants. The insolvency resolution process under the Code proceeds on the basis of collective resolution of claims and balancing of stakeholder interests. By virtue of Section 238 of the Code, the provisions of the Code prevail in case of any inconsistency with other enactments.

5.7. It is also pertinent to note that the Applicants' claims as homebuyers stand admitted in the CIRP and their rights are governed by the treatment accorded under the Resolution Plan approved by the CoC. The Applicants cannot insist upon a separate individualised remedy outside the framework of the insolvency process under the Code.

5.8. We are, therefore, of the considered view that no case is made out warranting any interference with the Resolution Plan or issuance of directions as prayed for by the Applicants. Since no ground is made out for directing reconsideration of the Resolution Plan or for staying the proceedings in IA (IBC) (PLAN) No. 73/MB/2025, this Application fails.

5.9. Accordingly, the present Application **IA (IB) No. 3688 of 2025** is **dismissed** with no order as to costs.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Siddhi, LRA