

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1691 of 2023

[Arising out of Order dated 05.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court III) in IA No.3356 of 2020]

In the matter of:

**Nilesh Sharma Resolution Professional - Today Homes
and Infrastructure Pvt. Ltd.Appellant
Vs.**

Mordhwaj Singh & Ors. ...Respondents

**For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr.
Kanishk Khetan, Mr. Ashu Kansal, Mr. Shivam
Jaiswal, Advocates.**

**For Respondents: Mr. Nilesh Sharma, RP in person.
Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr.
Dinesh Sharma, Ms. Liki, Kushagra Nilesh Sahay,
Advocates.**

**Mr. Sumesh Dhawan, Mr. Raghav Dembla,
Advocates for Intervenor in NIDC
Mr. Nipun Gautam, Advocate for SRA**

**Company Appeal (AT) (Insolvency) No. 331 of 2024
& I.A. No. 1127 of 2024**

[Arising out of Order dated 05.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court III) in IA No.5001 of 2021]

In the matter of:

**Mordhwaj Singh & Ors.Appellants
Vs.**

Nilesh Sharma ...Respondent

**For Appellants: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr.
Dinesh Sharma, Ms. Liki, Kushagra Nilesh Sahay,
Advocates.**

For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kanishk Khetan, Mr. Ashu Kansal, Mr. Shivam Jaiswal, Advocates for RP
Mr. Nilesh Sharma, RP in person
Mr. Sumesh Dhawan, Ms. Priya Singh, Mr. Raghav Dembla, Advocates for NIDC in IA.
Mr. Nipun Gautam, Advocate for SRA

Company Appeal (AT) (Insolvency) No. 336 of 2024

[Arising out of Order dated 22.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IA No. 4876 of 2020]

In the matter of:

**Nilesh Sharma RP, Today Homes & Infrastructure Pvt.Appellant
Ltd.
Vs.**

Atul Kumar & Ors. ...Respondents

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kanishk Khetan, Mr. Ashu Kansal, Mr. Shivam Jaiswal, Advocates.
Mr. Nilesh Sharma, RP in person
For Respondents: Mr. Sandeep Bajaj and Naman Tandon, Advocates for R-1 to 3.
Mr. Abhinav Vashisth, Sr. Advocate with Ms. Vatsala Kak, Advocates for R-5.
Mr. Nipun Gautam, Advocate for SRA

Company Appeal (AT) (Insolvency) No. 337 of 2024

[Arising out of Order dated 22.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IA No.987/2021]

In the matter of:

**Nilesh Sharma RP, Today Homes & Infrastructure Pvt.Appellant
Ltd.
Vs.**

Atul Kumar & Ors. ...Respondents

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kanishk Khetan, Mr. Ashu Kansal, Mr. Shivam Jaiswal, Advocates.
Mr. Nilesh Sharma, RP in person

**For Respondents: Mr. Sandeep Bajaj and Naman Tandon, Advocates for R-1 to 3.
Mr. Abhinav Vashisth, Sr. Advocate with Ms. Vatsala Kak, Advocates for R-5.
Mr. Nipun Gautam, Advocate for SRA**

JUDGMENT
(25th October, 2024)

Ashok Bhushan, J.

These four Appeals arises out of the order passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi, Court III in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor- 'M/s. Today Homes and Infrastructure Pvt. Ltd.'. Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024 have been filed against the common order dated 05.12.2023 passed in IA No.3356 of 2020 and IA No.5001 of 2021. Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024 have been filed against the order dated 22.12.2023 passed in IA No. 4876 of 2020 and IA No.987/2021.

2. Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024 arise out of the same facts and events which need to be noted separately whereas facts giving rise to Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024 are common and shall be noted separately.

Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No. 331 of 2024

3. It shall be sufficient to refer facts and pleadings in Company Appeal (AT) (Insolvency) No. 1691 of 2023 for deciding both the Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024. The Respondents- Mordhwaj Singh, Vikramjit Singh, Ram Narayan Singh and Bhim Singh are owners of agricultural land admeasuring 35.2062 acres situated in village Behrampur, Gurugram, Haryana. The Respondents shall hereinafter referred to as owners. The owners entered into a Development Agreement on 03.03.2007 with New India City Developers Private Limited (hereinafter referred to as 'Developer') to develop a group housing project and an Information Technology Park on the said land after obtaining the license/ approval/ sanctions from the appropriate authorities. It was agreed between the parties that 45% of the Group Housing FAR and IT Park FAR was to belong to the owners and 55% to Developer. The Developer was provided full exclusive and unfettered right and control over the development and to sell and transfer its share allocation. A License No.03 of 2009 was issued by Directorate of Town and Country Planning, Haryana on 12.02.2009 in favour of the owners and New India being collaborator granting permission for setting up a Group Housing Colony on 21.637 acres of the said land. Certain disputes arose between the owners and New India, the developer. An application under Section 11 of the Arbitration and Conciliation Act 1996 was preferred by New India before the High Court of Punjab and Haryana. High Court vide its order dated 29.05.2008 appointed a sole

arbitrator. In arbitration proceeding, the parties entered into Settlement Agreement and Consent Award dated 05.09.2009 was passed. As per Consent Award, the owner would execute a Power of Attorney in favour of the developer conferring rights for obtaining license in respect of the said entire land parcel. The parties further agreed that the possession of the entire land would vest with the joint receivers till license is obtained with regard to Cyber Park on 12.55 acres of land. On 19.01.2010, the owners executed irrevocable Special Power of Attorney in favour of the developer in order to enable it to approach different authorities for obtaining licences, clearances, approvals etc. On 19.01.2010, the owners executed another irrevocable Special Power of Attorney in favour of the Corporate Debtor with respect to the land which is to be developed for the Group Housing Project and the Cyper Park which Power of Attorney was registered on 20.01.2010. On 30.07.2010, developer entered into an agreement with the corporate debtor whereby for consideration of Rs.40,00,00,000/-, developer assigned all the rights, obligations, responsibilities and interest in the entire Floor Space Index (FSI) totalling to 8,00,000 sq. ft. to the Corporate Debtor. The rights and obligations in favour of the developer was transferred to the Corporate Debtor as per Development Agreement dated 03.03.2007. The DTCP issued a License No.77 of 2010 to the owners with New India as collaborator for development of the IT Park on area admeasuring 12.55 acres. The Sole Arbitrator as per Consent Award dated 05.09.2009 after obtaining the license on 11.10.2010 by order dated 12.10.2010 directed the joint receivers to handover the possession of the said land to the developer. The Sole Arbitrator- Ms. Usha Mehra recused herself on 08.09.2014 and thereafter under the order of the High Court,

Justice R.M. Lodha was appointed as Arbitrator vide order dated 27.11.2015. Further dispute between the developer and owners arose. Sole Arbitrator Justice R.M. Lodha held his first sitting on 11.01.2016. Supplementary statement of claims and claims by the owners were filed before the Arbitrator. Sole Arbitrator heard the parties. An award was delivered by sole arbitrator on 09.12.2017 directing the developer to pay certain compensation to the owners with interest. There were certain directions for payment to the claimant also by the owners with regard to enhance EDC for the owners' portion of group housing. The Arbitrator also directed the developer to carry on the development on the owners allocated portion of the land. Arbitrator in his award has noted the statements made by both the parties that possession was handed over to the developer on 12.10.2010.

3.1. On 30.08.2019, owners issued a notice to the corporate debtor stating that the Power of Attorney dated 19.01.2010 was revoked on 30.08.2019. A deed for revocation of PoA was also executed. The Corporate Debtor had filed a Civil Suit being C.S. No.3694 of 2019 before the Court of Civil Judge, Senior Division, Gurugram seeking a decree for declaration in favour of the Corporate Debtor and against the Respondents declaring that the POA dated 19.01.2010 to be valid and subsisting and binding upon the Respondents with full force and effect. On an order passed by the Adjudicating Authority dated 31.10.2019 on a petition under Section 9 of the IBC, CIRP was initiated against the Corporate Debtor. The Corporate Debtor who was assigned the rights and obligation of the developer had carried on a project namely— 'Canary Greens' on developer shares of 10.81 acres. The IRP of the Corporate

Debtor had taken possession of the project. Thereafter, the Appellant who was appointed as Resolution Professional took physical possession of the project and installed security guards at the project site. On 11.08.2020, owners installed a sign board on the project site and took possession. Resolution Professional filed a complaint on 11.08.2020 to the SHO, Badshahpur Police Station requesting to register a FIR against such miscreants. The Resolution Professional sought direction against the owners to restore the peaceful, vacant and physical possession of the “Canary Greens” and an interim order was issued on 24.08.2020 by the Adjudicating Authority in IA No.3356 of 2020. After the interim order, the Resolution Professional was again put back in possession on 02.09.2020. An IA No.3629 of 2020 was filed by the owners seeking direction from the Adjudicating Authority to modify the ad-interim Ex-parte order dated 24.08.2020 passed in IA No.3356 of 2020. The owners filed IA No.5001 of 2021 by which application owners sought a direction to the Resolution Professional to exclude the project land ad-measuring 10.81 acres situated in Village Behrampur from the proposed Resolution Plan.

3.2. All the aforesaid three IAs were heard by the Adjudicating Authority and by order dated 05.12.2023, Adjudicating Authority disposed all the three applications. The Adjudicating Authority in the impugned order after noticing three applications framed five issues. The first issue framed was “who has the actual physical possession of the land in dispute as on date and from which date, supporting documents in this regard shall be filed”. The Adjudicating Authority held that the Resolution Professional could not place on record any evidence to show that the physical possession of the land in question was

handed over to him and the Resolution Professional is in possession of the land. It was further observed that the issue of possession has to be decided by a Civil Court having jurisdiction on the basis of oral and documentary evidence and the Adjudicating Authority is not competent to decide the same. The Adjudicating Authority held that it cannot grant any relief as prayed for by the Counsel for the Resolution Professional in the application. Adjudicating Authority did not proceed to decide any other question in respect of rights of the corporate debtor under the terms of the agreement. Consequently, IA No.3356 of 2020 was disposed of. In view of the order passed in IA No.3356 of 2020, IA No.3629 of 2020 and IA No.5001 of 2021 were also disposed of. Aggrieved by the aforesaid order, Company Appeal (AT) (Insolvency) No. 1691 of 2023 has been filed by the Resolution Professional whereas Company Appeal (AT) (Insolvency) No. 331 of 2024 has been filed by the owners challenging the orders passed in IA No.5001 of 2021.

Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024:-

4. Company Appeal (AT) (Insolvency) No.336 of 2024 has been filed by the Resolution Professional challenging the order dated 22.12.2023 passed by the Adjudicating Authority in IA No.4876 of 2020. Respondent Nos.1 to 3 to the Company Appeal (AT) (Insolvency) No.336 of 2024 owned land measuring 33 acres in village Behrampur, Tehsil and District Gurugram. Respondent Nos.1 to 3, Realtech Realtors Pvt. Ltd. (Respondent No.4) and Jai Mata Realtors Pvt. Ltd. (Respondent No.5) entered into a Joint Collaboration Agreement dated 06.08.2010 where it was mutually agreed between the parties that the entire

area will be divided 50:50, marking land holding A admeasuring 11.794 acre and land holding B admeasuring 11.794 acre. The land holding B remained with Respondent Nos.1 to 3 and the Respondent No.4 which was exclusively to be developed by them collectively, whereas, the right to develop over the land holding A were transferred to Respondent No.5. An agreement dated 06.08.2010 was executed between Respondent No.5- Jai Mata Realtors Pvt. Ltd. and the Corporate Debtor- 'M/s. Today Homes and Infrastructure Pvt. Ltd.' wherein Corporate Debtor agreed to purchase the Floor Space Index of the said project from Respondent No.5 on consideration of Rs. 110 Crores out of which Rs.105 Crores was paid immediately. All rights, title, interest in the subject land in favour of Respondent No.5 pursuant to the Joint Collaboration Agreement was also transferred to the Corporate Debtor. Respondent No.1 to 3 has executed a General Power of Attorney dated 06.08.2010 in favour of the Corporate Debtor for the purposes of development and construction. On 06.01.2011, the Directorate of Town and Country Planning Department, Haryana issued a License dated 06.01.2011 in favour of the Respondent Nos.1 to 4 for setting up of a group housing colony. A supplementary Joint Collaboration Agreement dated 06.11.2015 was entered between the parties where parties entered into certain agreements. IA No.4876 of 2020 was filed by the Resolution Professional seeking direction against Respondent Nos.1 to 3 to handover the peaceful, vacant and peaceful physical possession area admeasuring 2.14 acres. It is also relevant to notice that in the CIRP of the Corporate Debtor, a Resolution Plan was submitted by the SRA- Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegancia Apartment Buyers Association which was

approved by the CoC in its 12th meeting dated 16.08.2021 with 96.93% voting share and the application IA No.4876 of 2020 was filed by the Resolution Professional for approval of the plan is pending before the Adjudicating Authority. The Adjudicating Authority relying on its order dated 05.12.2023 passed in IA No.3356 of 2020, IA No.3629 of 2020 and IA No.5001 of 2021 took the view that the disputed questions with regard to possession of the land cannot be decided by the Adjudicating Authority and such issues need to be decided by a Competent Civil Court having jurisdiction and disposed of application. Aggrieved by the order dated 22.12.2023, this Appeal has been filed by the Resolution Professional.

4.1. IA No.987 of 2021 was filed by the Respondent No.1 to Respondent No.4 before the Adjudicating Authority seeking a direction against the Resolution professional to handover the peaceful, vacant and physical possession of portion of land measuring 9.675 acres and exclude the said land from the assets of the Corporate Debtor. In the application IA No.987 of 2021, Adjudicating Authority relying its order dated 05.12.2023 passed in IA No. 3356 of 2020, IA No.3629 of 2020 and IA No.5001 of 2021 disposed of the application observing that the question of possession in the present case has to be decided by Competent Civil Court having jurisdiction. Aggrieved by the order dated 22.12.2023, the Resolution Professional has filed Company Appeal (AT) (Insolvency) No. 337 of 2024.

5. We have heard Shri Ramji Srinivasan, Learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) Nos.1691 of 2023, 336 of 2024 and 337 of 2024, Shri Rajesh Kumar Gautam, Learned

Counsel appeared for the Appellant- Mordhwaj Singh & Ors. in Company Appeal (AT) (Insolvency) No.331 of 2024, Shri Sandeep Bajaj, Learned Counsel appeared for Respondent Nos.1 to 3 in Company Appeal (AT) (Insolvency) No.336 and 337 of 2024, Shri Nipun Gautam, Learned Counsel appeared for the SRA in all the above Appeals, Shri Abhinav Vashisth, Learned Senior Counsel has appeared for Respondent No.5 in Company Appeal (AT) (Insolvency) No.336 and 337 of 2024 and Shri Sumesh Dhawan, Learned Counsel for the Intervenor- New India in Company Appeal (AT) (Insolvency) No.1691 of 2023 and 331 of 2024.

6. Shri Ramji Srinivasan, Learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No. 331 of 2024 submits that the Corporate Debtor has development rights in respect of subject land in all the appeals. It is contended that by virtue of Development Agreement dated 03.03.2007, the owners have granted development rights of the entire land which was divided into residential zone and industrial zone. The developer obtained license from Directorate of Town and Country Planning, Haryana for the development of Residential as well as IT Park Land, in developer shares area of 10.81 acres, the developer has assigned its rights and obligations under the Development Agreement to the Corporate Debtor for consideration. The owners have also executed a Power of Attorney in favour of the corporate debtor and the corporate debtor on the land which is in the developer' shares has already constructed the project namely- 'Canary Greens' where several towers have already been constructed and allotments have been made to the homebuyers.

It is submitted that the development rights which were given to the developers and assigned to the corporate debtor are right to property and the Resolution Professional was clearly entitled to take possession of the land on which development rights were granted. The Adjudicating Authority committed error in returning a finding that no document could be filed by the Resolution Professional to prove that the Resolution Professional is in possession of the area. It is submitted that there are sufficient documents on record to prove that it was Resolution Professional who was in possession. Counsel for the Appellant has referred to Development Agreement dated 03.03.2007 itself has mentioned that possession has been handed over to the Developer. It is submitted that in pursuance of the Arbitration Award dated 05.09.2009, the possession was handed over by the receiver appointed by arbitrator on 12.10.2010 to the developer and corporate debtor was put in possession of area which falls in the share of developer and has constructed project 'Canary Greens' where several towers have already been constructed. Counsel for the Appellant has also referred to Arbitration Award dated 09.12.2007 which award also accept that the possession was handed over to the developer of 12.10.2010. It is submitted that the possession was handed over to the Corporate Debtor by the developer and the possession continued with the corporate debtor till commencement of the CIRP i.e. on 31.10.2019 and thereafter it was taken over by the IRP. Resolution Professional has also placed security guards when owners illegally and forcibly entered into the project site and installed sign board that the land belonged to them. IA No.3356 of 2020 was filed in which interim order was passed on 24.08.2020 and possession was restored back to the Appellant. Adjudicating Authority

committed error in observing that the Resolution Professional has not been able to prove that it is in Resolution Professional who is in possession. It is submitted that when the corporate debtor has development rights in the land, Resolution Professional is fully entitled in law to take possession. Reference has been made to Sections 18, 20 & 25 of the IBC. It is further submitted that the Power of Attorney dated 19.01.2010 given in favour of the corporate debtor could not have been revoked on 30.08.2019. On the Insolvency Commencement Date, the development rights of the project vested with the corporate debtor and the Resolution Plan has already been submitted in the CIRP of the corporate debtor by the consortium of homebuyers which has also been approved by the CoC. It is submitted that the owners have no right to claim that the area 10.81 acres be excluded from the CIRP of the Corporate Debtor. Area 10.81 acres is the area which fell in the 50% share of the developer it was assigned to the corporate debtor. On the developer share towers have already been constructed in which homebuyers have rights. It is not open for the land owners who have given development rights over the entire land to claim that area 10.81 acres be excluded. It is submitted that the owners are in possession of their share of 10.81 acres. Arbitration award obtained by the owners on 09.12.2007 has already been put into execution by the owners which they are free to prosecute.

7. Adjudicating Authority committed error in observing that it had no jurisdiction to decide the possession. It is submitted that there being development rights in favour of the developer which has assigned to corporate debtor, it is the corporate debtor who has rights and obligations in the subject

land which requires determination by the Adjudicating Authority and issue of development rights in the land cannot be decided *dehorse* the IBC proceedings and the Adjudicating Authority committed error in holding that it has no jurisdiction.

8. Shri Rajesh Kumar Gautam, Learned Counsel appearing for the owners in Company Appeal (AT) (Insolvency) No.331 of 2024 submits that the land is owned by the Appellant and is in their possession. The Corporate Debtor has failed to prove that it was in possession on the day of commencement of Moratorium i.e. on 31.10.2019. The case of the Resolution Professional is that the physical possession of the land was prior to 31.10.2019 with the corporate debtor is irrelevant. The physical possession of the land prior to 31.10.2019 is irrelevant. It is submitted that Section 14(1)(d) prohibits the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. Hence, the possession of the land on the date of Moratorium assumes significance. There was no pleading with regard to handing over possession by the developer to the corporate debtor. Counsel relying on Section 18(f) of the IBC contends that the IRP can take control and custody of any assets over which corporate debtor has ownership right. It is submitted that it is undisputed that ownership rights on the land vest with Mordhwaj Singh & Ors., hence, the possession of the said land cannot be taken by the IRP or Resolution Professional. The subject land which is admittedly owned by Mordhwaj has to be excluded from the provisions of the IBC due to which reason the owners have filed IA No.5001 of 2021. It is submitted that the Special Power of Attorney dated 19.01.2010 given in favour

of the corporate debtor was revoked by the owners, on 30.08.2019, the corporate debtor had already challenged revocation of registered deed by filing C.S. No.3694 of 2019 before the Civil Judge Senior Division which is pending consideration. The POA having been revoked corporate debtor cannot claim any right, the agreement dated 30.07.2010 read with addendum was entered between the developer and the corporate debtor in which owners are not party, hence, they are not binding on the owners. The developer has failed to fulfil its commitment under the development agreement dated 03.03.2007. Counsel for the owners have referred to Arbitration Award dated 09.12.2017. It is contended that the developer has not even complied with the directions of the arbitrator dated 09.12.2017 even within 18 months' time granted by the Arbitrator which expired on 09.06.2019. The Developer did not fulfil its obligation under the Development Agreement dated 03.03.2007 due to which the owners have revoked the Special Power of Attorney dated 19.01.2010. The Developer and the Corporate Debtor are in connivance with each other and they belong to same group. It is submitted that the authorised capital of the corporate debtor is Rs.60 Cr. and paid up capital is Rs.56.29 Cr., hence, how the corporate debtor can agree to issue equity shares of Rs.120 Cr. to developer in consideration of the developer selling the entire FSI of 8,00,000 sq. ft. of Group Housing Project to the Corporate Debtor.

9. Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024 submits that the orders impugned in these two appeals are based on the order dated 05.12.2023 passed by the Adjudicating Authority in IA No.1691 of 2023 and

IA No.331 of 2024. It is submitted that the order dated 05.12.2023 being not sustainable the orders which are subject matter challenge in this Appeal also deserves to be set aside. It is submitted that the land which is subject matter of these two Appeals being Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024 was also subject to Joint Collaboration Agreement dated 06.08.2010 between Respondent No.1 to Respondent No.3, Realtech Realtors Pvt. Ltd. and Jai Mata Realtors Pvt. Ltd. On 06.08.2010, an agreement was entered between Jai Mata Realtors Pvt. Ltd. and the Corporate Debtor under which Corporate Debtor agreed to purchase the Floor Space Index of the said project from Jai Mata Realtors Pvt. Ltd. On consideration of Rs.110 Crore out of which Rs.105 Crore was paid, the Corporate Debtor has right in the subject matter of the land. In the subject matter of the land, license was obtained in favour of the Respondent Nos.1 to 4 and Corporate Debtor has constructed projects namely Callidora and Royal Elegancia projects with eight towers having more than 650 flats. The IRP and Resolution Professional were in the possession of the project. The fact that the Respondent Nos.1 to 4 themselves filed IA No.987 of 2021 to seek possession itself indicate that it was the Corporate Debtor who was in possession. Adjudicating Authority committed error in observing that it was not competent to decide the issue of possession and wrongly opined that the said issue can only be decided by a Civil Court whereas Corporate Debtor has development rights the issue has to be decided in the IBC proceedings.

10. Shri Sandeep Bajaj, Learned Counsel for the Respondent Nos.1 to 3 submits that the order impugned having been passed relying on the order

dated 05.12.2023, the fate of these Appeals being Company Appeal (AT) (Insolvency) No.336 of 2024 and Company Appeal (AT) (Insolvency) No. 337 of 2024 will depend on the decision of Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024.

11. We have noticed the facts giving rise to these Appeals as well as the submissions advanced by the Learned Counsel in the above Appeals. We first proceed to consider Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024.

12. From the submissions of the Counsel for the parties and materials brought on the record in Company Appeal (AT) (Insolvency) No. 1691 of 2023 and Company Appeal (AT) (Insolvency) No.331 of 2024, following issues arise for consideration: -

(i) Whether the observations of the Adjudicating Authority in order dated 05.12.2023 that the Resolution Professional could not place on record the evidence to show that physical possession of the land in question was handed over to him is sustainable?

(ii) Whether there are sufficient materials on record to come to the conclusion that the Resolution Professional/ Corporate Debtor is in possession of area admeasuring 10.81 acres i.e. land in question?

(iii) Whether Adjudicating Authority was not competent to decide the question of possession of subject land in which development rights was claimed by the corporate debtor and the question was required to be adjudicated only by a Civil Court?

(iv) Whether subject land i.e. 10.81 acres was required to be excluded from the CIRP of the Corporate Debtor as prayed by owners in their IA No.5001 of 2021?

(v) Reliefs, if any, to which the Appellants are entitled in these Appeals?

13. Before we enter into submissions of the Appellants and the issues as noted above, we need to notice the relevant Development Agreement, Special Power of Attorney, Consent Arbitration Award and other relevant materials which falls for consideration in the present Appeals. The first document which need to be noticed is the Development Agreement dated 03.03.2007 which was entered between the owners and M/s. New India City Developers Pvt. Ltd. (hereinafter referred to as Developer). M/s. New India City Developers Pvt. Ltd. has been referred to in the Agreement in following:-

“M/S New India City Developers Pvt. Ltd. a Company registered under the Companies Act having its registered office at B-44, 2nd Floor, Jangpura -B, New Delhi-110014 through its Director/ authorized signatory Mr. Jagtar Singh duly authorised vide a Board Resolution dated 03-03-07 hereinafter referred to as the DEVELOPER which expression unless excluded by or repugnant to the context or meaning thereof be deemed to include the DEVELOPER and its successors, administrators, Liquidators, representatives, executors and assigns etc of the OTHER PART.”

14. The above description of Developer clearly indicates that the expression unless excluded by or repugnant to the context or meaning thereof be deemed to include the DEVELOPER and its successors, administrators, Liquidators, representatives, executors and assigns etc. Sub-para (a) and (b) refers to details of the land. Sub-paras (a) and (b) are as follows:-

“(a) The different constituents of the owners are absolute owners of the land admeasuring approx. 35.2062 acres situated in village Behrampur, Gurgaon in the State of Haryana as per the details of the land holding, area etc. and given in details and jamabandi copies of which are annexed hereto and collectively marked as Annexure-A and the said lands hereinafter referred as the 'Scheduled Property'.”

“(b) That as per Notification No. CCP(NCR) /FDP (G)/2007/359 dated 05th February 2007 issued by Town and Country Planning Department, Government of Haryana, out of the said land, area of 22.04225 Acres approx has fallen into "Residential Zone", and 12.55 Acres approx. has fallen into "Industrial Zone as per map enclosed as Annexure- 'C'.”

15. The Terms and Conditions as agreed between the parties have been captured in various clauses of the Agreement running from 1 to 22. Clause 1 deals with 'Development' which is as follows:-

“1. Development

The Owners hereby entrust to the Developer exclusive and irrevocable rights for development of the scheduled property for group housing and/or

industrial IT Park / Cyber Park and or and as may be permissible under law along with any other land.”

16. The above clause indicates that the **Owners have entrusted to the Developer exclusive and irrevocable rights for development of the scheduled property.** Clause 2 deals with ‘Deposit’. Clause 2.1 deals with the consideration of the owners granting to the Developer the absolute right to develop the said property. Clause 2.1 is as follows:-

“2. Deposit

2.1 In consideration of the owners granting to the Developer the absolute right to develop the said property the Developer agrees to pay to the Owners @ Rs. 10,00,000/- (Rupees Ten Lacs only) per acre total amounting to Rs. 3,52,05,000/- (Rupees Three Crore Fifty Two Lacs Five Thousand Only). payable to the respective constituent Owners as non-refundable amount and out of the said amount a sum of Rs. 1,97,40,000/- (Rupees One Crore Ninety Seven Lacs Forty Thousand Only) has already been received by the Owners from Jaimata Realtors Pvt. Ltd. at the time of signing of the erstwhile Development Agreement with M/s. Jaimata Realtors Pvt. Ltd., which the Developer herein has taken over the responsibility to refund to the said M/s Jaimata Realtors Pvt. Ltd. and a sum of Rs. 1,54,65,000/- (Rupees One Crore Fifty Four Lacs Sixty Five Thousand Only) is being paid at the time of execution of this agreement, and as fully described in annexure-D'annexed hereto the receipt whereof the constituent Owners and each of them do hereby admit and acknowledge

Alongwith the above said non-refundable amount, the developer also agrees to pay the Owners @Rs.15,00,000/- (Rupees Fifteen Lacs only) per acre total amounting to Rs.5,28,09,000/-(Rupees Five Crores Twenty Eight Lac Nine Thousand Only) as refundable amount and the same is being paid at the time of execution of this agreement and as fully described in annexure-D annexed hereto the receipt whereof the constituent owners and each of them do hereby admit and acknowledge. The Owners shall not be able to market, sell, lease, mortgage, enter into Joint Venture with third party etc. for the Owner's allocation pursuant to this agreement till the entire said refundable amount is refunded.”

17. Clause 3 deals with ‘Allocation of Parties’. In case of Group Housing 45% share of duly sanctioned FAR will be for owners and 55% share of FAR for Developer. Sub-Clauses 3.7 and 3.8 refers to area which was to be exclusively dealt with and constructed and sold by owners and developer. Sub-clauses 3.7 and 3.8 are as follows:-

“3.7 That it is agreed in principle that the area marked in ANNEXURE 'F' with 45% share of the duly sanctioned FAR shall be exclusively dealt with and/or constructed and/or sold by the OWNERS only.

3.8 That it is agreed in principle that the area marked in ANNEXURE 'F' with 55% share of the duly sanctioned FAR shall be exclusively dealt with and/or constructed and/or sold by the DEVELOPER only.”

18. As per Agreement, cost of development was to be borne by developer.

Clause 5.1 is as follows:-

“5. Cost of Development

5.1 Cost of Development shall mean and include cost of construction of roads, sewerage line, provisions for electrification as per layout and/or zoning plan to be approved by the concerned authorities However, it shall not include cost of construction of dwelling units, apartments, houses, commercial complexes, which the respective parties shall bear from their own sources.”

19. Clause 7 deals with ‘right to sub-contract’ which clearly mentioned that the **developer shall be bound to promote and develop the project as a Today Group Project**. Clause 7 is as follows:-

“7. Right to Sub-Contract

The Developer shall be entitled to carry on the development on the scheduled property either independently or by appointing partner/s contractors, sub- contractors or other agencies. The Developer shall alone be responsible for the payment of the cost of Development or labour and other charges payable to such contractors, sub-contractors and the owners shall in no way be responsible for any failure or default of the developer. The owners shall only be entitled to sub-contract, development / construction in favour of contractors/sub-contractors as it deems fit with regard to the Owner's allocation. However any dispute or liability arising out of or in connection with the said

development of the owner's allocation, the owner shall be exclusively liable for the same and shall indemnify and keep harmless the developer. The developer shall be bound to promote and develop the project as a Today Group Project.”

20. Clause 9.3 deals with ‘possession of scheduled land’. Clause 9.3 is as follows:-

“9.3 Possession of Scheduled Land:

That upon execution of this agreement, the Owner has handed over possession of the scheduled property to the Developer to enable the Developer to do various acts as may be required from time to time for commencing, development, marketing and completing the project and also to set up the site office.”

21. The license being License No. 3 of 2009 was obtained by Town and Country Planning Department, Haryana Government for group housing which reads as follows:-

**“FORM LC-V
(See Rule-12)
Haryana Government
Town and Country Planning Department**

Licence No. 3 of 2009

1. This licence has been granted under The Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made there under to Sh. Ram Narayan Singh, Sh. Vikram Singh, Sh. Mordhawaj Singh, Sh. Bhim Singh Ss/o Sh. Chaturbhuj Singh Collaborator of M/s New India City Developer Pvt. Ltd. B-44, 2nd Floor, Jangpura -B. New Delhi-110014 for

setting up of a group Housing colony at Village Behrampur in Sector-73 Gurgaon.

2. The particulars of land wherein the aforesaid group housing colony is to be set up are given in the schedule annexed hereto and duly signed by the Director, Town and Country Planning, Haryana

3. The licence is granted subject to the following conditions:-

a) That the Group Housing Colony is laid out to conform to the approved layout plan and the development works are executed according to the designs and specifications shown in the approved plan.

b) That the conditions of the agreements already executed are duly fulfilled and the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 and Rules, 1976 made there-under are duly complied with.

c) That the demarcation plan of the colony area is submitted before starting the development works in the colony and for approval of the zoning plan.

4. That any portion of the licenced area that falls in the road designated in the sectoral plan shall be reserved for such road and same shall be constructed and shall transferred to Govt fee of cost.

5. That you shall derive permanent approach from the 12/24 mtr wide road designated in the sectoral plan.

6. That you will not give any advertisement for sale of flats/shops in Group Housing Colony before the approval of layout plan/building plans.

7. That the portion of licenced area that shall falls in the roads if any designated in the sectoral plan/Master plan shall be transferred free of cost to the Government in accordance with the provisions of Section 3(3)(a)(iii) of the Haryana Development and Regulation of Urban Areas Act, 1975.

8. That you shall obtain approval/NOC from the competent authority to fulfill the requirements of notification dated 14.09.2006 issued by the Ministry of Environment & Forests, Govt. of India before starting the development works in the colony.

9. That you will use only CFL fittings for internal lighting as well as for campus lighting in the complex.

10. That you shall convey "Ultimate Power Load Requirement of the project to the concerned power utility, with a copy to the Director, with in two month period from the date of grant of licence to enable provision of site in your land for Transformers/Switching Station/ Electric Sub-Station as per the norms prescribed by the power utility in the zoning plan of the project.

11. The licence is valid upto 11-2-2011.

Dated Chandigarh”

22. In the present Appeals, we are only concern with the area which is meant for group housing project of 10.81 acres which fell in the developer's portion. Application was filed by the Resolution Professional with regard to the said area and application filed by the owners being IA No.5001 of 2021 was for excluding the area 10.81 acres from the CIRP of the corporate debtor. We have noticed above that due to certain disputes between the developer and the owners, arbitration proceedings took place between the parties. Sole Arbitrator was appointed by the order of the High Court of Punjab & Haryana dated 29.05.2008. Arbitral Award with consent of the parties was passed on 05.09.2009 by Ms. Usha Mehra (Retd. Judge of the Delhi High Court).

23. Consent Award between the parties provided that the physical possession of the entire land was to be handed over by the receiver to the developer. Learned Arbitrator shall handover the Registered Power of Attorneys to the developer, immediately on obtaining the license for Cyber Park, without any recourse to the owners. The above was noted in paragraph 4 of the Award. It is useful to notice paragraphs 1 and 4 of the Award, which is as follows:-

“1. That the parties have agreed that the possession of lands is being placed with the counsel of the parties, as Joint Receivers on simultaneous signing of this document. No hoardings, boards, Fencing etc, can be placed at the land site by the Developer unless the LOI of Cyber Park is obtained for 12,55 acres of Land.

4. Notwithstanding pendency of any unresolved issues between the parties and anything contained in any document pertaining to the project/land in question, the physical possession of the entire land would be handed over by the receivers to the Developer and the Learned Arbitral Tribunal shall hand over the Registered Power of Attorneys to the Developer, immediately on obtaining the License for Cyber Park, without any recourse to the owners. However, it is agreed that if the Owners do not sign the documents required for getting the License (such as LC-IV, LC-I, Bilateral Agreement etc), within 15 days of deposit of LOI with the Arbitrator, the physical possession of the entire land would be handed over by the receivers to the Developer and the Learned Arbitral Tribunal shall hand over the Registered Power of Attorneys’ to the Developer immediately without waiting for the License.”

24. Consent Terms further also provided that developer shall develop entire land including the shares of the owners which was contained in Clause 7. After the aforesaid Consent Terms, Special Power of Attorney dated 19.01.2010 was issued in favour of the developer and on the same day another Power of Attorney was issued by the owners in favour of the corporate

debtor. The said Power of Attorney issued to the Corporate Debtor. Clauses 5, 7(a) & 7(c) provides as follows:-

“5. To commence, Carry on and complete and/or cause to be commenced, carried out and complete Construction work on the said land in accordance with the license or sanctioned building plans and specifications whether amended or otherwise and carry out the terms and conditions as mentioned in the order, sanctioned plans, Commencement Certificate, layout plans etc. as the case may be.

7(a) To sell, transfer market, lease, license, construct, mortgage, dispose off, get delicensed, surrender or make any other arrangement with any third party/ies like Joint Venture in respect to the Developers allocation with respect to the share in the land/developed land/constructed areas thereupon with all facilities and amenities as is available thereto and as fully demarcated in colour Green (50% FSI) in the plan annexed hereto for the Group Housing Project and as fully demarcated in colour Blue (50% FSI) in the plan annexed hereto for the Cyber Park project and further empowered to deal with as above, 100% of the site falling under public area (community sites) like School, Hospital, Clubs, Facilities, entire commercial areas falling in Group Housing Scheme etc. proposed to be developed on the said land. All obligations with respect to providing units for EWS, shall be discharged by the Developer and is accordingly empowered to deal with.

7(c) To sign and execute agreement for sale, Allotment letter, possession letter, sale deed/conveyance deed,

rectification deed, security document or any other instrument as may be permissible under law, in respect of developers allocation as elaborated in 7(a) above, receive the sale consideration In the name of M/s. Today Homes and Infrastructure Pvt. Ltd. and give receipt thereof, to execute and register sale deed/s, conveyance deed etc., present the same for registration before the registering authority and admit execution thereof.”

25. It is also on the record that after the license was obtained for the Cyber Park on 11.10.2010, an order was passed by Sole Arbitrator on 12.10.2010 directing to handover the possession to the developer. The Agreement dated 30.07.2010 between the developer and the corporate debtor is also brought on record where developer for consideration of Rs.40,00,00,000/- has agreed to sell, transfer and confer all the rights, obligations, responsibilities and interests in the entire Floor Space Index (FSI) totalling to 8,00,000 sq. ft. to the corporate debtor. The 2nd Addendum Agreements dated 16.09.2010 and 29.03.2011, the total consideration of the purchase of the said FSI was enhanced from Rs.40,00,00,000/- to Rs.120,00,00,000/-.

26. All the issues being inter-connected are being taken together.

27. The Adjudicating Authority has also raised certain queries by order dated 29.08.2023. Reply of queries were given by the Resolution Professional as well as the owners. In paragraph 20 after noticing issues first to five and reply of the Resolution Professional. In paragraph 20, the Adjudicating Authority has framed three issues for consideration which are as follows:-

“20. In the above backdrop of facts and debates, the following issues emerge for consideration by this Adjudicating Authority.

1. Whether the Development Agreement entered into between the land owners and New India gives right to the New India to develop the land without having any right title over the disputed land.

2. Whether the alleged irrevocable Power of Attorney executed by Respondent No. 1 to 4 in favour of New India & M/s. Today Homes & Infrastructure Private Limited can be acted upon and considered to be valid despite the fact that the land owners i.e. (Respondent No. 1 to 4) have revoked the said Power of Attorney vide Registered Deed No. 489 dated 30.08.2019.

3. Whether the Resolution Professional has the actual possession of the land in question.”

28. Submissions of the parties at Paragraphs 20 to 27 have been noted. In paragraph 28, prayer of the Resolution Applicant to handover possession of Canary Greens admeasuring 10.81 acres was noted and Adjudicating Authority has observed that the Resolution Professional could not place on record any evidence to show that the physical possession of the land in question was handed over to him. Adjudicating Authority further observed that the issue of possession has to be decided by a Civil Court having jurisdiction on the basis of oral and documentary evidence and the Adjudicating Authority is not competent to decide the same. Paragraph 28 of the judgment of the Adjudicating Authority reads as follows:-

“28. Be that as it may, the Resolution Applicant/Applicant, in this application has prayed for directing the Respondent No. 1 to 4 (land owners) to restore the peaceful vacant and physical possession of Canary Greens admeasuring 10.81 acres that is the land in question. The Resolution Professional has also prayed for directing the Respondent No. 5 and 6 to assist the Applicant in restoring the peaceful vacant and physical possession of the land in question. We are therefore, required to examine as to whether the Resolution Professional has the possession of the land in question. The Resolution Professional in the present application as well as in the affidavit filed by him pursuant to the order dated 29.08.2020 has submitted that he has got the possession of the land by virtue of the order dated 24.08.2020 passed in IA-3356/2020. However, the Resolution Professional could not place on record any evidence to show that the physical possession of the land in question was handed over to him. Furthermore, the Resolution Professional has filed the present application seeking a direction to Respondent No. 1 to 4 to hand over the possession of the land in question, the Respondent No. 1 to 4, the land owners have also disputed the fact that the possession of the land is with the Resolution Professional. In view of the said position, we are unable to convince ourselves that the possession of the land was handed over to the Resolution Professional and that the Resolution Professional is in possession of the land in question. Furthermore, we feel that the issue of possession has to be decided by a Civil Court having jurisdiction on the basis of oral and documentary

evidence and this Adjudicating Authority is not competent to decide the same. We, therefore, cannot grant any relief as prayed for by the Resolution Professional in this application. Since, we are deciding the issue of possession only at this stage, we do not feel it appropriate to decide the other questions with respect to rights of the Corporate Debtor under the Development Agreement, etc.”

29. The findings returned by the Adjudicating Authority thus are on two counts. Firstly, Resolution Professional could not place on record any evidence to show that the physical possession of the land in question was handed over to him and Secondly, issue of possession has to be decided by a Civil Court having jurisdiction on the basis of oral and documentary evidence and Adjudicating Authority is not competent to decide the same. We may observe that the Adjudicating Authority in framing issues in paragraph 20 has framed the issue “Whether the Resolution Professional has the actual possession of the land in question”. When the application was filed by the Resolution Professional being IA No.3356 of 2020 seeking a direction to handover the possession, the question which was required to be framed by the Adjudicating Authority was as to whether the Resolution Professional was entitled to have possession of area admeasuring 10.81 acres. The question whether the Resolution Professional is in possession or actual possession of the land could have been incidence to decide the main question. We have noticed the Terms and Conditions of the Development Agreement dated 03.03.2007 where development rights were granted to the developer. We have also noted one of the terms of the Development Agreement i.e. Clause 7 where

developer was bound to promote and develop the project as a Today Group Project and Clause 7 specifically empowers the developer to develop the project either independently or by appointing partners contractors, sub-contractors or other agencies. After the Consent Terms were noticed by Sole Arbitrator, by Agreement dated 30.07.2010, the developer has transferred all its rights and obligations to the corporate debtor on consideration of Rs.40,00,00,000/- which was subsequently increased to Rs.120,00,00,000/- . The Development Agreement as amended contemplated in the group housing project 50% shares to the owners and 50% shares to the developer. 50% shares which came to the developer share was 10.81 acres on which project Canary Greens was constructed by the corporate debtor which project was taken possession after initiation of the CIRP by the IRP and thereafter by the Resolution Professional. The Sole Arbitrator in its proceedings dated 12.10.2010 has already noted that the possession has been given to the developer of the said land. Corporate Debtor having commenced the project Canary Greens on the subject land, the possession of the corporate debtor of the project could not have been doubted.

30. The developer having development rights which has subsequently assigned to the corporate debtor, development rights were property of the corporate debtor which could have been taken possession in the CIRP of the corporate debtor which is law well settled. We may refer to Section 18(1)(f) of the IBC which provides as follows:-

“18. Duties of interim resolution professional. -

The interim resolution professional shall perform the following duties, namely: -

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;”

31. Before we proceed further, it is relevant to notice the pleadings and prayers in I.A. No. 3356/2020 filed by the Resolution Professional (RP) and I.A. No. 5001/2021 filed by the Owners. In I.A. No. 3356/2020 filed by the RP dated 18.11.2020, the RP pleaded that Corporate Debtor is erecting/constructing a group housing Project in the name of “Canary Greens” spread over 10.81 acres in Sector 73, Sohna Road. It was further pleaded that Owners by Development Agreement dated 03.03.2007, has

transferred the subject land to New India City Developers Private Limited (Developer), and the Corporate Debtor has been transferred 8,00,000 sq. ft. residential for development/erecting housing Project on said land by Agreement dated 30.07.2010 entered between Developer and Corporate Debtor. Reference of irrevocable Power of Attorney dated 19.01.2010 executed by Owners in favour of Corporate Debtor was also made. After the appointment RP took steps for taking custody and control of the all assets including the land measuring 10.81 acres. On 11.08.2020, Owner dispossessed Applicant from the land, hence the Application was filed. In the Application, details, facts and events have been pleaded. It was pleaded that as per the Consent Award dated 05.09.2009, possession was handed over to the Developer. Reference of revocation of Power of Attorney on 30.08.2019 was also pleaded. In Para 21 of the Application, RP pleaded that Corporate Debtor is engaged in the business of construction and erecting of housing and building Project, namely Canary Greens, over 10.81 acres. Paragraphs 21 to 25 of the Application are as follows:

“21. That the Corporate Debtor, which is engaged in the business of construction and erection of houses and building, was developing a Housing Project in the name and style of “Canary Greens” (‘said Project’), spread over 10.81 acres (8,00,000 sq. ft. FSI), situated at Sector-73, Sohna Road, Gurugram (‘project site’). The said Project was being developed in pursuance of the Agreement dated 30.07.2010 entered between the Developers and Corporate Debtor, irrevocable POA issued in favour of the Corporate Debtor by the owners on 19.01.2010

and in lieu of the License issued and renewed by the Directorate Town & Country Planning.

22. It is a matter of record that the construction/development work on the said project had come to a halt much prior to the initiation of CIRP of the Corporate Debtor. As such, the hard earned monies of many homebuyers (over 500 in numbers) was stuck in the said project. The Applicant duly assessed the situation post his appointment as the Resolution Professional and was concerned about the fate of the project as the same was significantly impacting the rights of the homebuyers who are the primary stakeholders in the instant case.

23. The Applicant, post his appointment, duly took possession of the said project from the Interim Resolution Professional. Needless to mention that post commencement of CIRP, Section 25(1) makes it incumbent for the Applicant, in his capacity as the Resolution Professional, to keep the business operations of the Corporate Debtor as a going concern. Moreover, the Homebuyers/their association were also requesting the Resolution Professional to restart the construction at the earliest possible and were willing to pool in the funds being the pending sale consideration of units for completion of construction. The Applicant accordingly made herculean efforts to re-start the construction/development work on the said project and after various rounds of negotiations with the contractors alongwith the association of

home-buyers/financial creditors, the Applicant issued a Letter of Intent dated 09.07.2020 to M/s Krishna Sahil Construction Private Limited to re-start/continue with the remaining work of Civil, Electrical, Internal Plumbing and Sanitary Work of Towers of the said Project. Thereafter, on 05.08.2020, the Applicant issued two work orders to the Contractor, one for the construction of non-tower area and another for Towers 2, 3, 4 & 8. Therefore, vide the said work orders, the Applicant requested the Contractor to resume and expedite the construction work of the said Project. However, the Project Management Consultant and Project/Legal team of the Corporate Debtor was advised to obtain pending approval/clearance, if any so that construction is actually started after obtaining the requisite approval/clearance. Copy of Letter of Intent dated 09.07.2020 alongwith work orders dated 05.08.2020 are annexed herewith and marked as **ANNEXURE A-14 (COLLY)**.

24. That as the construction work of the Housing Project was pending for a considerable period, the area surrounding the Housing Project required cleanliness, upkeep and regular maintenance. Being so, certain cleaning/maintenance staff was engaged to carry out the said task.

25. That while the Applicant was all set to re-start the construction/ development work and had finalized the terms with: the concerned contractor, to the utter shock and distress of the Applicant it was learnt in the morning of

11.08.2020, from the officers of the Corporate Debtor deployed at the said project site/ and security personnel deployed on the said project site that 4 unknown miscreants, sent by the Owners/ Respondent Nos. 1 to 4 herein, barged into the Project site and dispossessed the representatives of the Applicant from the project site. They threatened the security guards and cleaning staff with dire consequences, if the said project site was not vacated. The security guards were forcefully removed from the project site.

It is also learnt that some members of the Homebuyers' Association intervened and reached the project site and requested the said persons (sent by the Respondent Nos. 1 to 4) to immediately vacate the premises as the same belonged to the Corporate Debtor, however the said persons blatantly refused to accede to their request."

32. RP in the Application made following prayers:

- "a) Allow the instant Application;*
- b) Direct the Respondent Nos. 1 to 4 herein to restore the peaceful, vacant and physical possession of Canary Greens admeasuring 10.81 Acres, situated at Sector-73, Sohna Road, Gurugram to the Applicant immediately;*
- c) Pass an order directing Respondent No. 5 and 6 to assist the Applicant in restoring the peaceful, vacant and physical possession of the said project i.e. at Canary Greens admeasuring*

10.81 Acres, situated at Sector 73, Sohna Road, Gurugram;

d) Take appropriate action against the Respondent Nos. 1 to 4 in terms of Section 74 of IBC for violation of Section 14 of Insolvency and Bankruptcy Code, 2016;

e) Pass such other or further orders and other relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

33. On the I.A. 3356/2020, Adjudicating Authority passed an Interim Order on 24.08.2020 directing for restoring back the possession to the RP of subject land. Interim Order dated 24.08.2020 in I.A. 3356/2020 is as follows:

“IA-3356/2020 : *Counsel for the Resolution Professional is present. He has preferred the IA for seeking direction to the Respondent No. 1 to 4 to restore the peaceful, vacant and physical possession of Canary Greens situated at Sector 73, Sohna Road, Gurugram and direction to Respondent No. 5 & 6 to assess the Applicant in restoring the peaceful, vacant and physical possession of the said land. The Registry is directed to issue notice to the respondents. RP is permitted to issue private notice to the respondents and file proof of service along with an affidavit on or before the next date of hearing. List the matter on 28th August, 2020.*

It is submitted by the Counsel for the Resolution Professional that the Corporate Debtor has right of developing a housing project at Canary Greens admeasuring an area of 8 lac Sq. Feet in

terms of the agreement with New India dated 30.07.2010 and irrevocable power of attorney dated 20.01.2010 executed by the owners/Respondent No. 1 to 4 in favour of the Corporate Debtor. He further submitted that Respondent No. 1 to 4 have entered into the project site without any right and have interfered with peaceful possession and construction of the Corporate Debtor which is in violation of the provisions of IBC particularly Section 14, as the Corporate Debtor has been undergoing CIR process since 31.10.2019. In the circumstances, Respondent No. 5 & 6 are directed to ensure that the Respondents 1 to 4 do not interfere in the peaceful possession of the RP on the land in question i.e., Canary Greens situated at Sector 73, Sohna Road, Gurugram. The Respondents No. 5 & 6 are directed to provide due protection and assistance to the Resolution Professional namely, Mr. Nilesh Sharma. List this matter on the 28th August, 2020.”

34. RP's case further is that in pursuance of the Order dated 24.08.2020 was handed over the possession of Canary Green site on 02.09.2020 with assistance of Police Station, Badshahpur, Gurgaon.

35. I.A. No. 5001/2021 was filed by the Owners dated 20.10.2021, where it was specifically pleaded that Application of the Land Owners are only concern with the Project titled as Canary Green. In Para 9 of the Application following has been pleaded:

“9. That while all the aforementioned Three Applications i.e. I.A. No.3356 of 2020, I.A. No.3629 of 2020 and I.A. No.3951 of 2020 are pending for consideration and decision before this Hon’ble Tribunal, it has come to the Notice of the Applicants, who are the Owner of the Land, which is the subject matter of the present proceedings, that the Corporate Debtor through Resolution Professional has submitted a Resolution Plan for approval before this Hon’ble Tribunal. Though the complete details of the Proposed Resolution Plan have not been made available or shared by the Resolution Professional (R.P.) with the Applicants i.e. the Land Owners, however, the Applicants (Land Owners) have been given to understand that in the proposed Resolution Plan the Resolution Applicant has proposed to provide a Contingency Fund which includes payment of Rs.10 Crores to the Land Owners of the Three Projects i.e. Canary Green, Callidora and Royal Eligncia Project of the Corporate Debtor. The present Applicants/Land Owners are only concern with the Project tilted as Canary Green.”

36. It was pleaded by the Owners that Applicants are Owners of the Project land admeasuring 10.81 acres, Development Rights was given to the Corporate Debtor by Power of Attorney dated 19.01.2010, which has been revoked on 30.08.2019. It is relevant to notice Pleading in Para 11.1 and 11.2 of the Application:

“11.1. That the Applicants are the Owners of the Project Land admeasuring 10.81 acres situated in estate of Village Behrampur, Tehsil & District Gurugram in the State of Haryana in respect of the Canary Greens Project.

11.2. That the Corporate Debtor only had the Development rights of the Project on the basis of Power of Attorney dated 19.01.2010 issued by the Applicants/Land Owners in favour of the Corporate Debtor, however, the said Power of Attorney stands revoked on 30.08.2019 i.e. much prior to the admission of Application filed by the Operational Creditor under Section 9 on 31.10.2019 and the Corporate Debtor has already filed a Civil Suit No.CS/3694 of 2019 before the Civil Judge Sr. Division Gurugram and the said Civil Suit is pending. Further, even, as admitted by the Resolution Professional in the Rejoinder dated 30.09.2020 at Page-13 in Para-(h), this Hon’ble Tribunal does not exercise appropriate jurisdiction to decide the issue of cancellation or rights of the parties.”

37. In the Application I.A. 5001/2021, Applicant prayed for following relief:

“17. In view of the facts and submissions mentioned/made herein above, the Applicant prays for the following reliefs:

a. The Resolution Professional be directed to exclude the Project Land admeasuring 10.81 acre situated in estate of Village Behrampur, Tehsil & District Gurugram in the State of Haryana from the Proposed Resolution Plan.

b. Pass such other and further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Interim Relief

a. Direct the Resolution Professional to provide complete copy of the Proposed Resolution Plan of Canary Greens Project to the Applicants; and/or

b. Pass ad interim orders in terms of above prayers;

c. Pass such other and further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

38. Thus, the above pleadings of the Owners themselves in I.A. 5001/2021 indicates that the Application filed by them concern only to Project land where Project Canary Greens was constructed. It was also admitted that Corporate Debtor has Development Right on the said land, which, according to Owners was revoked on 30.08.2019. What is consequence of revocation of Power of Attorney on 30.08.2019 is another issue which we will deal in subsequent Paragraph, but the pleadings in the aforesaid two IAs being I.A. 3356/2020 & I.A. 5001/2020 makes it clear that the issue raised before the Adjudicating Authority was only with regard to 10.81 acres land on which Project Canary Green was constructed. The area of 10.81 acres land on which Project was constructed was part of the Developers share as per the Development Agreement dated 03.03.2007.

39. It is further relevant to notice that in I.A. 3356/2020 Owners have also filed the Reply to which Rejoinder was filed by RP. Adjudicating Authority on 29.08.2023 asked for certain clarifications. RP has filed an Affidavit in

compliance of the Order dated 29.08.2023, with regard to Query No. 1 that who has actual physical possession of the land, the RP has given detailed clarifications by means of an Affidavit. It is relevant to notice the Affidavit of the RP, which is filed as Annexure to the Reply filed by Respondent in Comp. App. (AT) (Ins.) No. 1691/2023, Annexure R-6 is the Affidavit of the Resolution Professional. Para 2 of the Affidavit with respect to Query No. 1 is as follows:

“2. That the Deponent by way of the present Affidavit is clarifying the questions raised by the Hon'ble NCLT vide order dated 29.08.2023:

Sl. No.	Clarifications sought by the Hon'ble Tribunal	Clarifications given by the RP
1.	<i>Who has the actual physical possession of the land in dispute as on date and from which date, supporting documents in this regard Shall be filed.</i>	<i>The undersigned, after being appointed as RP of THIPL vide order of this Hon'ble Tribunal dated 09th January, 2020, obtained the physical possession of the Canary Greens Project Land from the IRP Mr. Deepak Bansal. However, the representatives of the erstwhile land owners dispossessed the undersigned of the project land on 11.08.2020. The undersigned therefore filed an IA bearing number IA/3356/2020 before this</i>

		<p><i>Hon'ble Tribunal and that vide order dated 24.08.2020, this Hon'ble Tribunal issued directions to the DM, Gurugram and Commissioner of Police, Gurugram to ensure that the landowners do not interfere in the peaceful possession of the RP on the project site land and further directed to provide due protection and assistance to the RP. In compliance of the said directions, the possession of the project land was handed back to the undersigned with the assistance of SHO, Badshahpur Police Station on 02.09.2020. In this regard, a letter dated 02.09.2020 was written by the RP to the local district administration/concerned Police Station, intimating them about taking the possession of the said project land on 02.09.2020 and extending his appreciation on the quick</i></p>
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		<p>action taken by the said authorities. The copy of the letter dated 02.09.2020 is attached as Annexure A-2 in IA No 347/2020. Since then the possession of the Canary Green project land is in the possession of the undersigned. However, the land owners of the said land are not allowing anybody other than the RP team, including the contractors engaged by the undersigned or any homebuyer to enter the project site. The undersigned therefore filed IA 347/2020 for initiating contempt proceeding against the land owners for violating the directions of this Hon'ble Tribunal as issued vide order dated 24.08.2020 and causing hinderance in the possession of the project land which is in possession of the RP. The said application is pending adjudication before this Hon'ble Tribunal.”</p>
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40. The legal submission which has been advanced by Counsel for the Owners is that Mordhwaj Singh & Ors., owns the land is undisputed fact, there was no right with the RP to file an Application seeking possession of 10.81 acres land. It is contended that by virtue of Section 18(1)(f) explanation assets which are owned by third-party, even if in possession of the Corporate Debtor are not the asset which can be taken control of by Interim Resolution Professional (IRP). Section 18(1)(f) along with explanation is as follows:

“Section 18: Duties of interim resolution professional. – *The interim resolution professional shall perform the following duties^{J1}, namely:—*

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

Explanation.—For the purposes of this ¹[section], the term “assets” shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

41. The materials on the record makes it clear that there is no dispute regarding Ownership of the land of the Mordhwaj Singh & Ors. The Corporate Debtor has not claimed any Ownership Right on the land. The claim raised by RP in I.A.3356/2020 was on basis of Development Right granted to the Corporate Debtor. The Application 3356/2020 in detail traces how the Development Right came to be assigned to the Corporate Debtor. Section 25(2) obliged the RP to take immediate custody and control of all the assets of the Corporate Debtor and business records of the Corporate Debtor. Section 25(1) & Section 25(2)(a) is as follows:

“Section 25: Duties of resolution professional.–(1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;”

42. It is no more *res integra*, that the Development Rights are Rights which can be claimed by a Developer in assets. Development Rights are also fully covered by the definition of Property under Section 3(27) of the IBC. Section 3(27) of the IBC is as follows:

“3. In this Code, unless the context otherwise requires,—

(27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property”

43. The definition under Section 3(27) of the Property is an inclusive definition which obviously includes the Development Rights which was obtained by the Developers from the Owners by Development Agreement dated 03.03.2007 were subsequently assigned to the Corporate Debtor by an

Agreement dated 30.07.2010. The Developer was handed over the possession in pursuance of Consent Award dated 05.09 2009 noticed above.

44. The Hon'ble Supreme Court has clearly laid down in the case of '**Victory Iron Works Ltd.' Vs. 'Jitendra Lohia & Anr.'**' reported in **(2023) 7 SCC 227** that Development Rights are Rights which can be taken control by the RP. Hon'ble Supreme Court in the above case had occasion to consider provisions of Sections 18, 25 & 3(27) of the IBC. Hon'ble Supreme Court has also examined the jurisdiction of NCLT and NCLAT in cases to grant Orders protecting possession of the Corporate Debtor at instance of RP. It was held by the Hon'ble Supreme Court that Development Rights making in favour of the Corporate Debtor constitute Property. In Para 38 of the Judgment following was laid down:

“38. From the sequence of events narrated above and the terms and conditions contained in the agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the corporate debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the corporate debtor constitute “property” within the meaning of the expression under Section 3(27) IBC. At the cost of repetition, it must be recapitulated that the

definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”. Since the expression “asset” in common parlance denotes “property of any kind”, the bundle of rights that the corporate debtor has over the property in question would constitute “asset” within the meaning of Section 18(1)(f) and Section 25(2)(a) IBC.”

45. In Paragraph 40, Hon’ble Supreme Court in **‘Victory Iron Works Ltd.’ (Supra)**, noted the series of documents which reflected bundle of rights and interest. Para 40 of the Judgment is as follows:

“40. *Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the corporate debtor, by a series of documents such as:*

(i) the MoU dated 24-1-2008;

(ii) the shareholders' agreement dated 24-1-2008;

(iii) the flow of the consideration from the corporate debtor to the UCO Bank and to Energy Properties;

(iv) the development agreement dated 16-6-2008;

(v) the memorandum recording possession dated 2-3-2010 executed by the original shareholders of Energy Properties;

(vi) the memorandum recording possession dated 24-6-2010 executed by Energy Properties in favour of the corporate debtor; and

(vii) the leave and licence agreement primarily executed by the corporate debtor in favour of Victory, which was merely confirmed by Energy Properties as a confirming party.

Some of these bundle of rights and interests, partake the character and shade of ownership rights. Therefore, these rights and interests in the immovable property are definitely liable to be included by the resolution professional in the information memorandum and the resolution professional is duty bound under Section 25(2)(a) to take custody and control of the same.”

46. When we look into the materials which are on the records of the present case, following are documents which reflects the bundle of right claimed by the Corporate Debtor, they are:

- i. Development Agreement dated 03.03.2007 entered between Owners and Developers.
- ii. Consent Award by sole Arbitrator dated 07.09.2009 and two Power of Attorneys dated 19.01.2010 executed by Owners in favour of Developers and Corporate Debtor.
- iii. Agreement dated 30.07.2010 entered by which Developer transferred/assigned all its right under Development Agreement dated 03.03.2007 in favour of the Corporate Debtor. First and second addendum to the Agreement dated 30.07.2010.

47. From the above, it is clear that although Corporate Debtor had not claimed any Ownership Right in the 10.81 acres of the land, but Corporate

Debtor has claimed Development Rights on the basis of documents and materials as has been detailed in I.A. 3356/2020.

48. The Issue No. 2, which was framed by the Hon'ble Supreme Court in above case was noted in Paragraph 41, which is as follows:

“Issue 2

41. *The main ground of attack of the appellants to the impugned orders of the NCLT and Nclat is that by virtue of the Explanation under Section 18 of the Code and also by virtue of the judicial pronouncements, the disputes between the corporate debtor and the third-party lessee/licensee are not amenable to the jurisdiction of the authorities under the Code.”*

49. The Hon'ble Supreme Court has approved the decision of NCLT and NCLAT in the above case, in holding that the possession of the Corporate Debtor of the Property need to be protected. In Paragraph 53 of the Judgment, following has been laid down:

“53. *Therefore, NCLT as well as Nclat were right in holding that the possession of the corporate debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.”*

50. Following is the ratio which can be culled out from the above Judgment of the Hon'ble Supreme Court:

- i. Development Rights are the Property within meaning of Section 3(27) of the IBC and Development Right of Corporate Debtor are to be protected in the proceedings under the IBC.

ii. NCLT has jurisdiction to protect the Development Right of the Corporate Debtor.

51. From the above, it is clear that Corporate Debtor had Development Rights in the asset, area of 10.81 acres of land on which Project Canary Green was constructed by the Corporate Debtor. In the Project, allotments were also made to the 500 Homebuyers.

52. As noted above, Adjudicating Authority in the Impugned Order has observed that RP has failed to produce any material to prove that RP was in possession of the land in question. We have noted above the several materials and pleadings which were brought by the RP on the record to prove its possession which we have noticed above. We have already noticed the pleading in I.A. 5001/2021 filed by the Owners themselves, where it was admitted that the Corporate Debtor has Development Rights, however, the plea taken by the Owners was that Development Rights which were given by Special Power of Attorney dated 19.01.2010 was revoked on 30.08.2019.

53. As noted above, the Affidavit was filed by RP in response to the query made by Adjudicating Authority on 29.08.2023, giving details response pleading that RP is in possession. Reference of the Interim Order dated 24.08.2020 passed by the Adjudicating Authority itself was pleaded in response that the RP was put back in possession on 12.09.2020. The materials on record fully prove that on the land 10.81 acres, the Project Canary Green was constructed which Project was the Project of the Corporate Debtor. Corporate Debtor having Development Right in subject land RP was

entitled to have possession and take possession. Thus, the observations of the Adjudicating Authority that the RP was not in possession of the land in question is erroneous and without considering the relevant materials on the record which fully proves that it was Corporate Debtor who was in possession of the Project land and the Project.

54. In this context, we may also refer to Award given by sole Arbitrator dated 09.12.2017, which has been brought on record as Annexure A-11 in Comp. App. (AT) (Ins.) No. 1691/2023. The Award was delivered on claim and supplementary claim filed by Developer and the Reply and response given by the Owners. In the said award, the question of possession of Developer was addressed. The findings were returned by the Arbitrator that Claimant i.e., Developer was put in actual physical possession of the entire land on 12.10.2010. In fact, the Arbitrator has noted the pleading of the Owners in which pleading it was mentioned that Claimant was put in possession on 12.10.2010. Although the Claimant has not done any development work in the land falling in the shares of Owners till date. Para 40 of the Award is as follows:

“40. The Respondents, in the Counter Claim have asserted that the Claimant is under obligation to develop the entire portion of property falling in the share of Owners/ Respondents being 17.093 acres of the total land i.e. 50% of 21.637 acres of Group Housing Project and 50% of 12.55 Acres of IT Park/ Cyber Park. With reference to Clause 8 of the Consent Award and Clause 4.1 of the

agreement, the Respondents averred that the Claimant was put in possession on 12.10.2010 but Claimant has not done any development work on the land falling in the share of the Respondents till date and consequently the Claimant stands liable to pay the penalty as per the above provisions.”

55. We may also refer to the findings of the Arbitrator in Para 278, which are as follows:

“278. I have considered the submissions of the parties. Two things may be immediately observed. One, as per clause 4.1 of the Development Agreement, the Developer is bound to complete the development of the entire area (including the Owner/Respondent’s share) within 24 months from the date of being handed over of the possession of the land. Two, it is not in dispute that pursuant to the consent award, the Claimant was put in actual physical possession of the entire land on 12.10.2010. That the Claimant has not carried out any development work at all on the land falling in the share of the Respondents till date is not in dispute. In terms of the consent award, the timeline fixed under clause 4.1 of the Development Agreement starts from 12.10.2010 being zero date.”

56. The Award given by Arbitrator has not been challenged by the Owners and they are Claiming Right under the Award. Thus, the issue that

Developers were put in possession is conclusively established. In the I.A. 6558/2020, which has been filed by the Intervenor (Developer) in Comp. App. (AT) (Ins.) No. 1691/2023, the copy of the Arbitration Order dated 12.10.2010 has also been annexed, which clearly records that receivers have handed over the possession today (12.10.2010) to the Claimants (Developer).

57. The case of the RP throughout was that Corporate Debtor was in possession and was constructing the Project and it was only on 11.08.2020 that they were forcefully dispossessed by the Owners which possession was restored back on 12.09.2020 in pursuance of the Interim Order dated 24.08.2020. Thus, we find that there were sufficient materials to hold that Corporate Debtor was throughout in possession of the assets and Adjudicating Authority committed an error in observing that there was no material to hold that Corporate Debtor was in possession. We hold thus RP has satisfactorily proved that they were in possession of the assets in which Corporate Debtor had Development Right.

58. We now come to the another finding given by Adjudicating Authority that Adjudicating Authority has no jurisdiction to decide the issue of possession and the said issue is to be appropriately decided along with other question with regard to Rights of the Corporate Debtor under the Development Agreement by the Civil Court. The view of the Adjudicating Authority that it has no jurisdiction to decide the issue of possession is contrary to the law declared by Hon'ble Supreme Court in '**Victory Iron**' (*Supra*). Hon'ble Supreme Court has clearly affirmed the Orders of the NCLT and NCLAT where

possession of the RP with regard to asset in which Corporate Debtor had Development Rights was protected, which Orders were affirmed.

59. It is further relevant to notice that it is the case of the Owners that assets having been made part of the Resolution Plan which is been already approved by the Committee of Creditors (CoC). The Owners in the I.A. 5011/2021 has prayed for excluding the assets from the Resolution Plan. It was thus necessary for the Adjudicating Authority to decide the question as to whether assets i.e., land 10.81 acres have rightly been included in the Resolution Plan or they should be kept out of the Resolution Process. The decision regarding it being part of the assets of the Corporate Debtor or not is essential to be decided in CIRP Process and Adjudicating Authority committed error in observing that said issues i.e., Rights of the Development which is claimed by the Corporate Debtor are to be decided by the Civil Court is wholly erroneous and against the Scheme of the IBC.

60. In view of the foregoing discussions, we answer Question No. I to IV in following manner:

- i. The observation of the Adjudicating Authority in Order dated 05.12.2023 that the RP could not place on record the evidence to show that physical possession of land in question was handed over to him is unsustainable.
- ii. There are sufficient materials on record to come to conclusion that RP/Corporate Debtor is in possession of area admeasuring 10.81 acres, i.e., land in question.

iii. Adjudicating Authority was competent to decide the question of possession of subject land in which Development Rights was claimed by the Corporate Debtor and subject question was not required to be relegated to be adjudicated by the Civil Court.

iv. The subject land i.e., 10.81 acres was not required to be excluded from the CIRP of the Corporate Debtor as prayed by the Owners in their I.A. No. 5001/2021.

Question No. V

61. In view of the reasons and our conclusion as above, we are of the view that I.A. No. 3356/2020 filed by the RP was required to be allowed by the Adjudicating Authority. Adjudicating Authority committed an error in disposing of the Application with the observations as noted above.

62. In result, Comp. App. (AT) (Ins.) No. 1691/2023 is allowed. Order dated 05.12.2023 is set aside. I.A. No. 3356/2020 is allowed. The I.A. No. 3629/2020 and I.A. NO. 5001/2021 filed by the Owners are rejected.

Comp. App. (AT) (Ins.) No. 336 of 2024
&
Comp. App. (AT) (Ins.) No. 337/2024

63. Comp. App. (AT) (Ins.) No. 336/2024 has been filed by the RP challenging the Order dated 22.12.2023, by which I.A. 4876/2020 filed by the RP was disposed of relying on the Order dated 05.12.2023 passed by the Adjudicating Authority in I.A. 3356/2020, I.A. 3629/2020 and I.A.

5001/2021. By disposing of the I.A. 4876 of 2020, following was observed in Para 7 of the Impugned Order:

“7. In an identical situation in IA-3356/2020, IA-3629/2020 & IA-5001/2021 in IB-2130(ND)/2019 vide order dated 05.12.2023, this Adjudicating Authority has taken a view with the disputed questions with regard to possession of the land which cannot be decided by this Adjudicating Authority and such issues have to be decided by a Competent Civil Court having Jurisdiction.”

64. Comp. App. (AT) (Ins.) No. 337/2024, has been filed by the RP challenging the Order of the same date i.e., 22.12.2023 passed in I.A. 987/2021. I.A. 987/2021 was filed by Owners of the land, prayers in the I.A. has been noted in Paragraph 1 of the Order, which is as follows:

“1. The present Application has been filed by Mr. Nilesh Sharma, Resolution Professional of the Corporate Debtor, the Applicant on 20.02.2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

- “a) Allow the present application;*
- b) Direct the Respondent herein to handover the peaceful, vacant and physical possession of portion of land measuring 9.675 acres bearing Rect. No. 5 Killa No. 23 (8-0), Rect No. 9 Killa No. 8 (7-8), Killa No. 19/1 (5-2), Killa No. 13/1 (5-11), Killa No. 15/1 (0-10), Killa No. 17/3 (1-16),*

Killa No. 3(8-0), Killa No. 4/ 1 (5-8), Killa No. 7 (8-0), Killa No. 12 (4-5), Killa No. 13/2 (2-9), Killa No. 14/ 1 (6-17), Killa No. 18/ 1 (7-19), Killa No. 20/ 1/ 1 (5-7) and Rect No. 9 Killa No. 26 (0-12), Village Behrampur, District Gurugram to the Applicant with immediate effect;

c) Direct the Respondent to not make the said land admeasuring 9.675 acres bearing Rect. No. 5 Killa No. 23 (8-0), Rect No. 9 Killa No. 8 (7-8), Killa No. 19/ 1 (5-2), Killa No. 13/ 1 (5-11), Killa No. 15/ 1 (0-10), Killa No. 17/ 3 (1-16), Killa No. 3 (8-0), Killa No. 4/ 1 (5-8), Killa No. 7 (8-0), Killa No. 12 (4-5), Killa No. 13/ 2 (2-9), Killa No. 14/ 1 (6-17), Killa No. 18/ 1 (7-19), Killa No. 20/ 1/ 1 (5-7) and Rect No. 9 Killa No. 26 (0-12), Village Behrampur, District Gurugram as an asset of the Corporate Debtor and to exclude the said land admeasuring 9.675 acres from the assets of the Corporate Debtor.

d) Pass any order or orders, direction or directions, relief or reliefs which this Hon'ble Bench deems fit and proper in view of facts and circumstances mentioned hereinabove, in favour of the Applicants, in the interest of Justice.”

65. The Adjudicating Authority after noticing the brief facts has relied on its earlier Order dated 05.12.2023, and relying on the said Order held that Adjudicating Authority has no jurisdiction to decide the issue and question of possession in the present case need to be decided by the Civil Court. Para 7 & 8 of the Judgment is as follows:

“7. In an identical situation in IA-3356/2020, IA-3629/2020 & IA-5001/2021 in IB-2130(ND)/2019 vide order dated 05.12.2023, this Adjudicating Authority has taken a view with the disputed questions with regard to possession of the land which cannot be decided by this Adjudicating Authority and such issues have to be decided by a Competent Civil Court having jurisdiction.

8. We are therefore of the considered view that the question of possession in the present case also has to be decided by a Competent Civil Court having jurisdiction.”

66. We having already set aside the Order dated 05.12.2023, by deciding Comp. App. (AT) (Ins.) No. 1691/2023, & Comp. App. (AT) (Ins.) No. 331/2024, the Impugned Orders in these Appeals become unsustainable.

67. We have already held that Development Right claimed by Corporate Debtor are included within the definition of Property as contained in Section 3(27) of the IBC and Development Rights which were claimed by RP need to be protected. Both Comp. App. (AT) (Ins.) No. 336 & 337/2024 arises out of same subject land, which was covered by Collaboration Agreement dated 06.08.2010 between R-1 to R-3, Realtech Realtors Private Limited and Jaimata Realtors Private Limited. By Agreement dated 06.08.2010 executed between Jaimata Realtors Private Limited in favour of the Corporate Debtor, on consideration of Rs.110 Crores out of which Rs.105 Crores was paid immediately rights of Jaimata Realtors Private Limited were transferred to Corporate Debtor. General Power of Attorney was executed on 06.08.2010 by Owners in favour of the Corporate Debtor, license was obtained from Directorate of Town and Country Planning and on the subject land, the Corporate Debtor had constructed Projects namely Callidora and Royal Eligncia Project with 8 Towers having more than 650 Flats which construction

started since 2010. From the materials brought on the record in I.A. filed by the RP being I.A. No. 4876/2020, which is brought on the record as Annexure A-14 relevant pleadings by the RP, details of joint Collaboration Agreement, General Power of Attorney, a separate Agreement between Jaimata Realtors Private Limited and the Corporate Debtor. Area of 10.3 acres fell in the share of the Corporate Debtor. There is a reference of supplementary Joint Collaboration Agreement dated 06.11.2015 in the Application filed by RP following were the prayers made in I.A.4876/2020:

- “a) Allow the present Application;*
- b) Direct the Respondent Nos. 1 to 3 herein to handover the peaceful, vacant and peaceful physical possession area admeasuring 2.14 Acres (approx.) of Killa No. 18(7-3), 19(8-0) and part of Killa No. 20(2-0) totaling to 17 Kanal and 3 Marla situated at Sector-73, Sohna Road, Gurugram to the Applicant immediately;*
- c) Pass an order directing Respondent No. 5 and 6 to assist the Applicant in restoring the peaceful, vacant and peaceful physical possession of 2.14 Acres (approx.) of Killa No. 18(7-3), 19(8-0) and part of Killa No, 20(2-0) totaling to 17 Kanal and 3 Marla situated at Sector-73, Sohna Road, Gurugram to the Applicant immediately;*
- d) Take appropriate action against the Respondent Nos. 1 to 3 in terms of Section 74 of IBC for violation of Section 14 of Insolvency and Bankruptcy Code, 2016;*
- e) Pass ad-interim ex-parte order in terms of prayer (c) hereinabove;*

f) Pass such other or further orders and other relief(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

68. When we come to the Application filed by Owners being I.A.987/2021, prayers in the Application have been noted in the Impugned Order dated 22.12.2023 passed in I.A. 987/2021. The prayers in the Application filed by the Owners sought direction to handover the peaceful vacant possession, a portion of land to the Owners with immediate effect clearly contained the admission of the Owners that they are not in possession and they want Project land to be handed over to them and the said land to be excluded from assets of the Corporate Debtor. From the materials which have been brought on the record in I.A. 4876/2020 filed by the RP, Corporate Debtor successfully proved that it had Development Right in the subject land and subject land has already been included in the Resolution Plan which was submitted by a consortium of Homebuyers of all the three Projects, the Adjudicating Authority committed an error in disposing of I.A. 4876/2020 and I.A. 987/2021.

69. In view of our decision of the date in Comp. App. (AT) (Ins.) No. 1691/2023 & Comp. App. (AT) (Ins.) No. 331/2024, where we have already set aside the Order dated 05.12.2021, the Impugned Order dated 22.12.2023 passed in I.A. 4876/2020 & I.A. 987/2021, deserves to be set aside and is set aside. Application filed by RP being I.A. 4876/2020 deserves to be allowed and I.A. 987/2021 filed by the Owners, Respondents 1-3 in Comp. App. (AT) (Ins.) No. 336/2024, deserves to be rejected.

70. In result of our reasons and conclusion as noted above, we decide all the aforesaid four Appeals in following manner:

i. Comp. App. (AT) (Ins.) No. 1691/2023 is allowed. The Order dated 05.12.2023 passed in I.A. 3356/2020 is set aside. I.A. 3356/2020 as prayed is allowed.

ii. Comp. App. (AT) (Ins.) No. 331/2024 is dismissed. I.A. 5001/2021, filed by Applicants of Comp. App. (AT) (Ins.) No. 331/2024 before the Adjudicating Authority is dismissed.

iii. Comp. App. (AT) (Ins.) No. 336/2024 is allowed. Order dated 22.12.2023 passed by the Adjudicating Authority in I.A. 4876/2020 is set aside. I.A. 4876/2020 is allowed as prayed.

iv. Comp. App. (AT) (Ins.) No. 337/2024 is allowed. Order dated 22.12.2023 passed in I.A. 987/2021 is set aside. I.A. 987/2021 filed by Respondents No. 1-3 in Comp. App. (AT) (Ins.) No. 337/2024 is rejected.

The Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

New Delhi
Anjali/Himanshu