(2026) 07 NCLAT CK 0031

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Appeal (AT) (Ins) No. 938 of 2026 & I.A. No. 3739 of 2026

Brajesh Kumar Tripathi APPELLANT

Vs

Hasti Mal Kachhara RESPONDENT

Date of Decision : 13-07-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 61, 18, 36, 31, 14(1)(d), 7
Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India — Article 300A
RERA Act, 2016 — Section 2(zk), 14

Citation : (2026) 07 NCLAT CK 0031

Hon'ble Judges : Justice Yogesh Khanna, Member (Judicial);Naresh Salecha, Member (Technical)

Bench : Division Bench

Final Decision : Dismissed

Judgement

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals filed by the Appellants i.e., Brajesh Kumar Tripathi and Abhishek Tripathi, who are the joint and exclusive owners of the Subject land, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against the Impugned Order dated 09.03.2026 passed by the National Company Law Tribunal ("**Adjudicating Authority**"), Indore Bench, in IA(PLAN)/3(MP)/2025 in CP(IB)/26(MP)/2024 and against the Impugned Order dated 09.03.2026 passed by the National Company Law Tribunal ("Adjudicating Authority"), Indore Bench, in IA 260(MP)/2025 in CP(IB)/26(MP)/2024.

Hasti Mal Kachhara, who is the Resolution Professional of Pushp Ratna Realty Private Limited, is the Respondent No.1 herein.

Pushp Ratna Realty Private Limited, who is the Corporate Debtor through its Authorised Representative, is the Respondent No.2 herein.

Rajendra Hirani, who is the successful Resolution Applicant, is the Respondent No.3 herein.

2. The Appellants submitted that they are the absolute and lawful owners of the subject land bearing Survey No. 388/2/17 admeasuring 0.112 hectares situated at Village Khajrana, Tehsil and District Indore, Madhya Pradesh. The Appellants stated that their title originates from a registered Sale Deed dated 18.01.1995 executed for valuable consideration in favour of Appellant No. 1 and the predecessor-in-interest of Appellant No. 2, Late Smt. Sushila Devi Tripathi. The Appellants contended that their ownership rights have continuously remained reflected in the revenue records and have never been disputed by any party. It was submitted that at no point of time was the ownership of the subject land transferred, conveyed, assigned, leased, or otherwise alienated in favour of the Corporate Debtor.

3. The Appellants submitted that on 29.01.2010 they entered into a registered Development-cum-Collaboration Agreement with the Corporate Debtor, which was subsequently amended through a registered Amendment Deed dated 21.07.2010. The Appellants contended that the Agreement was purely a development arrangement under which the Corporate Debtor was engaged only as a builder for construction activities on the subject land. The Appellants stated that the Agreement expressly preserved their ownership rights over the land and merely granted limited and conditional development rights to the Corporate Debtor. It was submitted that no monetary consideration was paid by the Corporate Debtor to the Appellants and that the consideration flowing to the Appellants under the Agreement was restricted to 37% of the residential saleable area to be constructed on the subject land, while the remaining 63% was to belong to the Corporate Debtor. The Appellants further contended that the Agreement was neither a partnership nor a joint venture and did not create any proprietary interest in favour of the Corporate Debtor.

4. The Appellants submitted that the Development Agreement specifically contemplated the development of a residential project known as "**Pushpa Ratna Socrus City (PRS City)**" on the subject land. The Appellants stated that the Agreement required the respective shares of the parties to be demarcated through a map approved by the Municipal Corporation and signed jointly by the landowners and the builder. The Appellants contended that their contractual entitlement was not merely a percentage of any future project but was specifically linked to residential saleable area to be constructed on the subject land itself, including specified portions of the first and second floors of the first block and other designated portions of the development. According to the Appellants, the Agreement contemplated actual delivery of identified residential units and not any substituted or unspecified entitlement.

5. The Appellants submitted that in complete breach of the Development Agreement, the Corporate Debtor unilaterally sought to merge the subject land into a larger composite project styled "**Lush by Pushpratna**" without obtaining

their consent or approval. The Appellants contended that various statutory approvals, sanctions, and permissions were obtained by the Corporate Debtor behind their back and without their participation, despite the Agreement requiring consultation and cooperation between the parties. The Appellants stated that none of the approvals relied upon by the Corporate Debtor bear their signatures and none were obtained with their knowledge or authorization. The Appellants further submitted that the project originally agreed between the parties was silently abandoned and replaced by a completely different project structure, layout, and branding without any contractual basis.

6. The Appellants contended that the very foundation of the project approvals was tainted by serious irregularities. It was submitted that the land diversion proceedings, which formed the basis of the layout sanction and subsequent approvals, were initiated through an application that bore no signature of the applicant. According to the Appellants, these facts cast serious doubt upon the legality and validity of the regulatory approvals relied upon by the Resolution Professional and the Successful Resolution Applicant.

7. The Appellants submitted that despite the passage of several years after execution of the Development Agreement, absolutely no construction was undertaken on the subject land. The Appellants contended that even if the commencement date of the project is reckoned from the layout sanction dated 24.01.2013, the maximum contractual period for completion, including the grace period (5 years + 18 months), expired by July 2019. However, the subject land continues to remain undeveloped. The Appellants stated that no part of their contractual share of 37% saleable area was ever identified, demarcated, or delivered. The Appellant further submitted that no monetary consideration was paid to them and that the Corporate Debtor failed to perform any of its core obligations under the Agreement.

8. The Appellants submitted that the project suffered from severe regulatory setbacks prior to commencement of CIRP. The Appellants stated that the Indore Municipal Corporation revoked the building permission on 04.07.2023 on grounds including misrepresentation by the Corporate Debtor. It was further submitted that the RERA registration of the project expired on 31.12.2019 and was never renewed. The Appellants contended that RERA also imposed restrictions on fresh bookings within the project, thereby demonstrating that the project had ceased to enjoy valid statutory approvals. According to the Appellants, these developments rendered the project legally and practically incapable of implementation.

9. The Appellants submitted that in view of the complete failure of the Corporate Debtor to perform its obligations and complete the project within the stipulated period, they validly terminated the Development Agreement by issuing a registered notice dated 06.08.2024. The Appellants contended that the Corporate Debtor neither replied to the termination notice nor challenged the termination before any competent forum. It was further submitted that the Corporate Debtor

never sought a declaration that the termination was invalid and never initiated any proceedings seeking specific performance of the Agreement. The Appellants therefore contended that the termination attained finality and remained operative as on the date of commencement of CIRP.

10. The Appellants submitted that immediately after termination of the Agreement they approached the Commercial Court at Indore under Section 9 of the Arbitration and Conciliation Act, 1996. The Appellants stated that the Commercial Court, after hearing the Corporate Debtor, passed an order dated 06.09.2024 directing maintenance of status quo with respect to the subject land. The Appellants contended that the said order continued to remain in force even on the date of approval of the Resolution Plan and has not been vacated or set aside by any competent authority. According to the Appellants, the existence of the status quo order constituted a significant legal impediment to any attempt to include the subject land in the insolvency estate or utilize it for implementation of the Resolution Plan.

11. The Appellants submitted that when CIRP commenced on 16.10.2024, the factual and legal position was clear: the Development Agreement stood terminated; the termination remained unchallenged; the status quo order was subsisting; the building permission had already been revoked; and the RERA registration had expired. The Appellants contended that under such circumstances the Corporate Debtor possessed no enforceable rights over the subject land capable of being treated as assets of the Corporate Debtor. The Appellants therefore maintained that the subject land could not legally form part of the insolvency estate under Sections 18 and 36 of the Code.

12. The Appellants submitted that they accordingly filed IA/260(MP)/2025 seeking exclusion of the subject land from the Information Memorandum, asset pool, and Resolution Plan. The Appellants stated that despite repeated directions issued by the Adjudicating Authority requiring the Resolution Professional to furnish parcel-specific information and identify the exact allotments corresponding to the subject land, the Resolution Professional repeatedly failed to comply with such directions. The Appellants contended that no material was produced showing any correlation between individual homebuyers and specific sanctioned units on the subject land. According to the Appellants, the failure of the Resolution Professional to comply with repeated judicial directions warranted an adverse inference against him.

13. The Appellants submitted that notwithstanding the pendency of their application and unresolved issues concerning ownership and asset-pool composition, the Adjudicating Authority approved the Resolution Plan on 09.03.2026. The Appellants contended that the Resolution Plan expressly proceeds on the assumption that the existing land parcels, of various land owners including the subject land, of the Appellants are available for implementation of the project. The Appellants stated that the Resolution Applicant proposed to complete the project by "leveraging" the existing land

parcels and obtaining fresh approvals from regulatory authorities. According to the Appellants, the Resolution Plan is therefore fundamentally dependent upon utilization of land which admittedly belongs to third parties.

14. The Appellants submitted that the subject land never vested in the Corporate Debtor and consequently could not form part of the insolvency estate. The Appellants relied upon the decisions of the Hon'ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka*** *[2019 SCC OnLine SC 1542]*, ***Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority & Anr***. *[Civil Appeal No. 12248 of 2018]* **and *A.A. Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd.,*** *[2025 SCC OnLine SC 2579]* to contend that property belonging to third parties and merely held under contractual arrangements cannot be treated as assets of the Corporate Debtor. The Appellants argued that once the Development Agreement stood terminated prior to CIRP, even the limited contractual development rights of the Corporate Debtor ceased to exist.

15. The Appellants further submitted that the Resolution Plan fundamentally rewrites the Development Agreement. The Appellants contended that their entitlement under the Agreement was specifically confined to 37% of the saleable area to be constructed on the subject land. However, the Resolution Professional sought to substitute this contractual entitlement with a vague assurance that the Appellants' interests would be protected by granting them 37% of the larger project. The Appellants stated that no specific unit, block, floor, tower, or parcel was identified for this purpose. The Appellants contended that such an approach amounts to unilateral modification of a registered contract without the consent of the landowners and is legally impermissible.

16. The Appellants submitted that the Resolution Plan was neither feasible nor viable. The Appellants contended that the entire implementation schedule rests upon assumptions that are incapable of fulfilment, including obtaining fresh approvals despite revocation of building permissions, expiration of RERA registration, pending title disputes, pending proceedings concerning land-use conversion, and the subsisting status quo order of the Commercial Court. According to the Appellants, the Adjudicating Authority failed to undertake the mandatory examination of feasibility and viability required under Section 31 of the Code and instead approved the Resolution Plan solely on the basis of approval by the Committee of Creditors.

17. The Appellants submitted that the doctrine of commercial wisdom of CoC cannot justify inclusion of third-party property in the insolvency estate. The Appellants contended that while the Committee of Creditors may exercise commercial judgment regarding assets belonging to the Corporate Debtor, it cannot by majority vote convert private property belonging to third parties into resolution assets. According to the Appellants, permitting such an approach would undermine Sections 18 and 36 of the Code and violate the constitutional protection afforded to property under Article 300A.

18. The Appellants finally submitted that the combined effect of the dismissal of IA/260(MP)/2025 and approval of the Resolution Plan amounts to an indirect compulsory acquisition of their private property without authority of law, without due process, and without compensation. The Appellants contended that the Resolution Plan seeks to appropriate their land for completion of the project while extinguishing objections and transferring rights to the Successful Resolution Applicant.

19. The Appellants further submitted that the Impugned Order is entirely silent regarding the subsisting status quo order passed by the Commercial Court, Indore under Section 9 of the Arbitration and Conciliation Act, 1996. The Appellants stated that the said order was passed on 06.09.2024 and continues to remain in force. The Appellants contended that the Adjudicating Authority neither considered nor distinguished this judicial order while approving a Resolution Plan that proposes implementation over the very same land. The Appellants argued that Section 14(1)(d) of the Code expressly preserves the rights of owners to recover property in possession of the Corporate Debtor and that the Code does not authorize extinguishment of such rights.

20. The Appellants further submitted that the Impugned Order grants sweeping reliefs and concessions beyond the scope of Section 31 of the Code. The Appellants stated that the Order directs revalidation of revoked approvals, waiver of municipal dues, expedited grant of statutory permissions, extinguishment of liabilities, and transfer of all encumbrances to the Successful Resolution Applicant. The Appellants contended that such directions effectively substitute the functions of regulatory authorities and operate against the rights of third parties, including the Appellants. According to the Appellants, these reliefs travel beyond the permissible scope of judicial review under the Insolvency and Bankruptcy Code.

21. The Appellants submitted that the Resolution Plan itself acknowledges its dependence on future negotiations with the landowners. The Appellants pointed out that Clause 7.5 of the Resolution Plan expressly provides that the Successful Resolution Applicant may interact and negotiate with the landowners regarding the undeveloped portion of the land and that the future terms and conditions are yet to be decided. The Appellants contended that this admission demonstrates that no concluded arrangement presently exists between the Resolution Applicant and the Appellants. Therefore, the approved Resolution Plan is contingent, speculative, and incapable of immediate implementation. The Appellants submitted that a Resolution Plan whose core implementation mechanism depends upon uncertain future negotiations cannot satisfy the statutory requirement of feasibility and viability.

22. Concluding their arguments, the Appellants requested this Appellate Tribunal to set aside the impugned order and allow the appeals.

23. Per contra, the Respondent No.1 denied all the averments of the Appellants

as misleading and baseless.

24. The Respondent No. 1 submitted that he is the duly appointed Resolution Professional of the Corporate Debtor, “Lush by Pushpratna”, and is fully conversant with the facts and circumstances of the present matter. The Respondent No. 1 submitted that the present appeals are devoid of merit, frivolous, misconceived, and liable to be dismissed in limine.

25. The Respondent No. 1 stated that the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by the Adjudicating Authority vide order dated 16.10.2024 and a moratorium under the Code, came into force. The Respondent No. 1 submitted that the entitlements of the Appellants in respect of the developed area under the Joint Venture Agreement are not disputed, as the Appellants are owners of the land and had entered into the development arrangement with the Corporate Debtor. The Respondent No. 1 contended that such entitlement has already been duly recognized and incorporated in the Information Memorandum prepared during the CIRP.

26. The Respondent No. 1 submitted that all Prospective Resolution Applicants, including the Successful Resolution Applicant, were duly informed about the Joint Venture Agreements executed by the Corporate Debtor with various landowners, including the Appellants. The Respondent No. 1 stated that all relevant documents and contractual rights arising from such agreements were made available to the Resolution Applicants through the Information Memorandum and Virtual Data Room. The Respondent No. 1 further contended that the land belonging to the Appellants forms an integral part of the sanctioned real estate project and is covered under the approvals granted by the Town and Country Planning Department, Municipal Corporation, and the RERA. Consequently, the said land cannot be segregated from the project at this stage.

27. The Respondent No. 1 submitted that the project consists of multiple land parcels brought together under a common development scheme and substantial third-party rights have already been created in favour of homebuyers. The Respondent No. 1 stated that approximately 43 homebuyers have invested substantial sums in the project and have filed their claims during CIRP proceedings. The Respondent No. 1 elaborated that the Corporate Debtor had raised funds and marketed the entire project as one project of multiple towers and common facilities, based on the collective land parcels forming part of the sanctioned project, which included the said land parcel of the Appellants also. Therefore, permitting the Appellants to isolate or carve out their land from the project is practically impossible and impermissible and would seriously prejudice the interests of homebuyers and other stakeholders. The Respondent No. 1 further submitted that such a course would be contrary to the law laid down by the Hon’ble Supreme Court in ***Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.,*** reported in *(2021) 7 SCC 209*.

28. The Respondent No. 1 contended that under the settled position of law and

the provisions of Section 2(zk) of the RERA Act, 2016, landowners who contribute land for development projects are treated as "Promoters." The Respondent No. 1 stated that the Appellants, being parties to a Joint Development Arrangement and being entitled to a share in the developed area, fall within the definition of Promoters under RERA. Reliance was placed on the judgment of this Appellate Tribunal in ***Namdeo Ramchandra Patil v. Vishal Ghisulal Jain*** *[CA (AT) (Ins.) No. 821 of 2021].*

29. The Respondent No. 1 stated that prior to filing the present Appeals, the Appellants had approached the Commercial Court, Indore, under Section 9 of the Arbitration and Conciliation Act, 1996, expressing apprehension that the management of the Corporate Debtor intended to alienate the subject property. Pursuant thereto, the Commercial Court had directed the parties to maintain status quo with respect to the concerned land parcel. The Respondent No. 1 submitted that such apprehension no longer survives since the CIRP had commenced, the Resolution Professional has taken control of the Corporate Debtor, and all relevant details concerning the Appellants rights had been disclosed to the Resolution Applicants and the Respondent No. 3 (SRA) submitted the Resolution Plan which was approved by 100% of CoC consisting of Homebuyers and was also approved by the Adjudicating Authority vide the impugned order dated 09.03.2026. The Respondent No. 1 further contended that Section 14(1)(d) of the Code protects all properties in possession of the Corporate Debtor during the subsistence of the moratorium.

30. The Respondent No. 1 submitted that the Development-cum-Collaboration Agreement expressly provides that the Appellants was entitled to 37% of the developed area while the Corporate Debtor was entitled to 63% of developed area. The Respondent No. 1 further stated that the agreement contained an express non-termination clause stipulating that the agreement cannot be terminated or transferred under any circumstances. It was contended that this clause was incorporated to safeguard the interests of homebuyers and ensure continuity of the project. Therefore, neither unilateral nor bilateral termination of the agreement is permissible yet still the Appellants contractual rights remain protected.

31. Concluding arguments, the Respondent No. 1 requested this Appellate Tribunal to dismiss both appeals.

Findings

32. The core issue of both appeals, is based on the pleadings of the Appellants that the Development-cum-Collaboration Agreement dated 29.10.2010 was a standalone contract confined only to the subject land bearing Survey No. 388/2/17 admeasuring 0.112 hectares situated at Village Khajrana, Tehsil and District Indore, Madhya Pradesh and the subject property did not form part of the larger project known as Lush by Pushpratna. The Appellants stated that the contract executed between the Appellants and Corporate Debtor was never

intended to be a part of any larger real estate development, i.e. Lush by Pushpratna as the Development-cum Collaboration Agreement dated 29.01.2010 was restricted strictly to Khasara No. 388/2/17 admeasuring 0.112 hectares, and that no clause therein permitted the inclusion of the subject land in any composite or integrated township project as done by the Corporate Debtor.

33. On this aspect, we have also noted the pleadings of the Respondent No. 1 brought out that the subject land formed an integral and inseparable part of the larger Lush by Pushpratna, which was conceived and developed as a composite real estate project comprising contiguous parcels of land, including that of the Appellants.

34. We note that the layout plan of project was approved by the Town and Country Planning Department (TNCP) in the year 2013. Thereafter, the permissions from municipal Corporation and RERA were also taken by the Corporate Debtor which included land parcel of the Appellants i.e., including the subject property in the overall Lush by Pushpratna. Thus, it is not in dispute that the subject property was reflected and included in the said approved layout plan by various authorities in favour of the Corporate Debtor. We also note that the Development Agreement, provided that the responsibility of obtaining necessary permissions, approvals and sanctions from the competent authorities were to rest upon the Corporate Debtor, and that the Appellants were required to cooperate and sign requisite documents, as may be required, for various approvals of the authorities. Thus, we find that the obligations to obtain statutory approvals was upon the Corporate Debtor, and the Appellants were required only to extend cooperation. The inclusion of the said subject land in the sanctioned layout of the Lush by Pushpratna, therefore, clearly establish that the entire project was conceived as a composite project and not an isolated or unilateral act as claimed by the Appellants.

35. It has been submitted by the Resolution Professional that the Appellants did not raise any objection with respect to the permissions or approvals taken by the Corporate Debtor from time to time. The Respondent emphasized that at no stage before the commercial court, Indore, did the Appellants contend that such approvals were forged or fabricated. Thus, it seems that the Appellants were fully aware of the permissions obtained in respect of the project as a whole by the Corporate Debtor, based on which homebuyers invested in the composite project.

36. We also find from the sequence of events and dates that since approval of the layout plan in 2013, until the termination notice dated 06.08.2024 by the Appellants by registered post, nearly a decade elapsed and during this long period, permissions from various statutory authorities, including planning authorities and regulatory bodies, were indeed obtained by the Corporate Debtor. We find it difficult to accept that the Appellants remained completely unaware of the inclusion of their land in the sanctioned layout and the development activities undertaken under the banner of the Lush by Pushpratna throughout this entire duration. We consciously note that the Resolution Professional has submitted that

the entire information with respect to the plan approval was available on RERA Website. As such, we do not find any merit in the arguments of the Appellants that project was conceived as a whole, without their knowledge or consent.

37. As regard, issue of absence of signature by the Appellants during approval by authorities, we note that as per the terms of the Agreement, it was the Corporate Debtor who was required to obtain necessary permissions, and the Appellant was only required to cooperate. Therefore, the mere absence of the Appellants signature on certain documents, by itself, does not invalidate the approvals, particularly when no timely challenge was made by the Appellants at any legal forum or even writing as protest to the Corporate Debtor.

38. It is the case of the Appellants that there is no clause in the Development Agreement declaring that the subject property shall form part of the Lush by Pushpratna. It is also a fact that the Corporate Debtor had entered into multiple development arrangements in respect of adjacent lands forming part of the same layout, and that the Appellants land is geographically contiguous to such parcels. We can therefore interpret that if subject land that was not from part of any composite or larger project, it was open to the Appellants to incorporate a specific restrictive covenant to that effect in the Agreement. No such stipulation is found. Even from the date of approval of the layout plan in 2013 until the issuance of termination notice in August 2024, that too by sending registered post the Corporate Debtor, no objection was raised by the Appellants against the inclusion of their land in the sanctioned layout of the composite project. This also does not support the case of the Appellants.

39. We note the submissions of the Appellants that Development Agreement contains a clause clarifying that it is not a joint venture between the parties, that stipulation pertains to the legal relationship between the landowner and the developer in respect of rights and liabilities. However, we find that it does not, by itself, establish that the subject property could not be developed as part of a larger composite project, especially when statutory approvals reflect otherwise.

40. Thus, based on above discussion on the contractual terms, the statutory approvals, the inclusion of the subject land in the 2013 sanctioned layout plan and the conduct of the parties over more than a decade, we hold that the subject property was correctly found by the Adjudicating Authority as part of the larger composite project- Lush by Pushpratna. We agree with the logic of the Adjudicating Authority in the Impugned Order that the prolonged silence and absence of objection on the part of the Appellants amounts to acquiescence by conduct and the doctrine of approbation and reprobation squarely applies and the Appellants cannot be allowed to derail the CIRP proceedings especially when the Resolution plan of SRA has been approved by the Adjudicating Authority. Thus, we tend to agree that the Development-cum-Collaboration Agreement 29.10.2010 was not a stand-alone contract.

41. We note that any order passed pursuant to the invocation of arbitration does

not continue to bind the Corporate Debtor from the date of commencement of the Corporate Insolvency Resolution Process (CIRP), owing to the operation of the moratorium. Furthermore, upon approval of the Resolution Plan, the Corporate Debtor stands vested in the Successful Resolution Applicant on a "clean slate" basis, with all liabilities pertaining to the pre-CIRP period standing extinguished, except to the extent specifically preserved under the approved Resolution Plan. Consequently, any claims, disputes, or liabilities not recognized or provided for in the approved Resolution Plan, are deemed to have been extinguished. The Appellants cannot, by indirect means, seek to resurrect alleged contractual disputes that no longer survive against the Corporate Debtor following the approval of the Resolution Plan.

42. It has been brought that that the Development-cum Collaboration Agreement dated 29.10.2010 executed between the Appellants and the Corporate Debtor contains two different clauses. One clause stipulates that in the event the project is not completed within a period of five years with an additional grace period of eighteen months, the Appellants would be entitled to terminate the contract. The other clause provides that the agreement shall not be terminated under any circumstances. It has been seen that various permissions and approvals were obtained from the competent statutory authorities such as TNCP, Municipal Corporation and RERA. It is also an admitted fact that homebuyers had booked their flats and plots in the project and few towers had already been constructed and substantial development activity had thus taken place. The termination clause of the contract provided a period of five years plus eighteen months for completion of the project. Even if the project commencement is taken from the year 2013, the outer limit for completion would expire in the year 2019. It is undisputed fact that the Appellants did not invoke the alleged termination clause immediately upon expiry of the stipulated period. No notice invoking breach was issued at that stage by the Appellants to the Corporate Debtor. The alleged termination was affected in the year 2024, that is, several years after expiry of the stipulated period and at much later stage when and third-party rights had stood created in the favour of Homebuyers.

43. It has also been brought to our notice by the Resolution Professional that the Agreement executed between the Corporate Debtor and the Appellants contains an express "Non-Termination" clause, which unequivocally stipulates that the Agreement cannot be terminated. It is further the case of the Resolution Professional that in view of this express stipulation, the Agreement was not amenable to unilateral termination and, in any event, cannot be terminated even by mutual consent, particularly in light of the vested interests of third-party homebuyers, whose rights have subsisted since 2010 and are recognized under law. The inclusion of the said clause appears to have been intended to safeguard the interests of prospective homebuyers in the project. The relevant clause of the Agreement is reproduced below:

"That, this agreement cannot be terminated or transferred under any

circumstances."

We find merit in the submissions of the Resolution Professional and tend to agree with the same.

44. We note that the application under Section 7 was initiated at the behest of the long-waiting homebuyers, whose legitimate expectation is to receive fully constructed homes without being subjected to any additional financial burden or escalation in cost by the Successful Resolution Applicant. Homebuyers constitute a protected class under the insolvency framework, and their rights and interests cannot be compromised or defeated.

45. We are of the opinion that from circumstances, it appears that the termination was affected only when the Appellant became aware of the pending CIRP and then only the termination notice dated 06.08.2024 was issued i.e., barely two months prior to the commencement of the CIRP on 16.10.2024, as ordered by the Adjudicating Authority. In view of these facts, we find that when the Appellants knew the impending commencement of CIRP, then only the Appellants chose to unilaterally rescind the contract, after five years after the expiry of the stipulated time. This does not find favours for the Appellants and we do not find merit in the arguments of the Appellants on this ground.

46. We have noted that all information of the whole project was already available in the public domain on the RERA website public portal under Registration No. p-ind-17-1023 and details pertaining to the permissions and approvals obtained from all competent authorities, including sanctions and requisitions granted for the project, were duly uploaded, including approvals issued by the various authorities, which expressly reflect inclusion of the subject property within the project. We have been informed by Respondent No. 1 that the complete list of agreements executed in respect of the project, as well as the entire list of allotments made therein, were already uploaded and accessible on the said public portal. Thus, the plea of lack of knowledge taken by the Appellants is untenable in light of the material available in the public domain.

47. The Resolution Professional submitted that the Appellants, having contributed the subject land under a development arrangement for execution and sale of the project, fall within the definition of a "Promoter" under Section 2(zk) of the RERA Act, 2016. As promoters, they are under a statutory obligation to honor the commitments made to the allottees and cannot seek relief that is inconsistent with their obligations under RERA.

Further, Section 14 of the RERA Act prohibits any alteration to the sanctioned plans, layouts or project specifications without the consent of at least two-thirds of the allottees. In the present case, no such consent has been obtained from the 77 allottees; on the contrary, the proposed course of action is opposed by them.

48. We agree that in these circumstances, the Appellants cannot seek to carve out or isolate the subject land from the composite project. Such a course would

not only defeat the statutory rights of the allottees but would also be contrary to the settled legal position that the development rights in the project constitute assets of the Corporate Debtor, as recognized by the Hon'ble Supreme Court in ***Victory Iron Works Ltd. v. Jitendra Lohia*** **& Anr.** *[2023 SCC OnLine SC 260]* **and *Gujarat Urja Vikas Nigam Ltd. (Supra)*.**

49. We observe that the Appellants allowed the project to proceed well beyond the stipulated period, including statutory approvals and substantial construction was undertaken and most importantly third-party rights of homebuyers were created and therefore, the termination invoked by the Appellants at much later stage, just prior to commencement of the CIRP can't be allowed to derail the resolution of the Corporate Debtor by Respondent No. 3 as SRA.

50. It is the case of the Appellants that the subject property bearing Khasara No. 388/2/17 admeasuring0.112 hectares was not part of the larger project namely the Lush by Pushpratna and therefore no rights of homebuyers were created in respect of the said land. However, we have noted that the subject land was included in the sanctioned layout of the Lush by Pushpratna and the entire project was marketed to homebuyers as a single integrated project. No one can deny that the homebuyers applied for allotments on the legitimate expectation that the project was a composite and unified real estate project including the subject land of the Appellants in the approved layout plan of the Lush by Pushpratna and formed part of the composite project as approved by various authorities. The homebuyers acquired rights in property of the Corporate Debtor for consideration and therefore in terms of Code, after the amendment recognising allottees under real estate projects as financial creditors as a class, such homebuyers stand as financial creditors of the Corporate Debtor. We take into consideration that the Hon'ble Supreme Court, in Pioneer Urban Land and Infrastructure Ltd. v. Union of India case, recognised that amounts raised from allottees under real estate projects have the commercial effect of borrowing and that homebuyers are entitled to protection under the insolvency framework.

51. It is undisputed fact that the Agreement between the Corporate Debtor and the Appellants is a registered instrument. Prima facie, therefore, the agreement could be validly cancelled only through a duly executed bilateral deed upon payment of the requisite stamp duty and after obtaining the consent of the requisite majority of allottees, as mandated under RERA. Consequently, the Agreement could not have been terminated or cancelled by a mere unilateral communication addressed by the Appellants to the now Suspended Management at the stage when the Section 7 application was pending admission. In the present case, the third-party rights in the favour of Homebuyers have crystallised. In catena of judgments by the Hon'ble Supreme Court of India as well as this Appellate Tribunal, has protected the rights of homebuyers as a class. In this case also the right of the homebuyers has been created and if the termination of the Agreement is allowed, at this stage and if the subject land is excluded from the entire project, the rights of homebuyers, who have invested

their savings, would be severely prejudiced. The Code is required to maximise value of assets of the Corporate Debtor while protecting rights of all stakeholders including homebuyers and the Appellants too.

52. We also consciously note that the Corporate Debtor is developing a single integrated township project, namely "Lush by Pushparatna", comprising multiple land parcels contributed by various landowners, including the Appellants' as well as lands acquired by the Corporate Debtor. The subject land forms an inseparable part of the sanctioned layout, and all statutory approvals, including those granted by the Municipal Corporation, Town and Country Planning authorities, and under RERA, have been obtained for the project as an integrated whole. The entire project, including its towers, common amenities, parking, EWS housing, gardens, internal roads, open spaces and other infrastructure, has been planned, financed and approved on the basis of this composite layout, with homebuyers investing on the legitimate expectation of completion of the integrated development. In these circumstances, once statutory approvals have been granted and third-party rights have crystallized, no individual land parcel can be segregated without fundamentally impairing the sanctioned project, frustrating the implementation of the approved Resolution Plan, and causing irreparable prejudice to the homebuyers and other stakeholders. Thus, we cannot find any merits in the Appellants' attempt to isolate the subject land.

53. It is very pertinent here to note that one similar intervener/land owner of the same Lush by Pushparatna, who had entered into an MOU with Corporate Debtor for development of subject land, had challenged the admission order dated 16/10/2024 passed in CP(IB) 26 of 2024 before this Appellate Tribunal, wherein this Appellate Tribunal has made the following observations in reference to the home buyers:

> *"24……The rights of the home buyers cannot be sacrificed on account of inter se dispute between the shareholders. We are of the considered view that the home-buyers have every right to safeguard their interest and were justified in taking steps permissible under the statutory construct of the IBC to seek redressal of their grievance by seeking initiation of the CIRP of the Corporate Debtor….*
>
> *(Emphasis supplied)*

54. Thus, this Appellate Tribunal has already upheld and protected the rights of the homebuyers in this very case, albeit in other approval and therefore the home buyers cannot be sacrificed on account of inter se dispute between the Appellants as land owner, and the Corporate Debtor Therefore, the homebuyers have all rights to safeguard their interest. Having, noted that rights of homebuyers have been created in respect of the subject land forming part of the Lush by Pushpratna, and such rights warrant protection, we find alleged termination of the Development agreement, if allowed in favour of the Appellants at this stage of CIRP, when Resolution Plan has been approved by the CoC and by the Adjudicating Authority, will further worsen the condition of Homebuyers waiting for a long time to have the possession of their respective Flats.

55. As discussed earlier, the conduct of the Appellants in permitting the project to proceed for nearly a decade, allowing statutory approvals to be obtained, permitting construction of towers and not invoking the termination clause at the appropriate stage, indicates that the right to terminate stood waived by acquiescence and conduct by the Appellants. Thus, the termination of the Development-cum-Collaboration Agreement dated 29.10.2010, allegedly effected by notice dated 06.08.2024, is not found to be valid in law and cannot be permitted to defeat the CIRP or the rights of the homebuyers.

56. Incidentally, the appeals were heard and reserved for judgement on 03.06.2026, granting two weeks' time for submitting written submissions vide our order dated 03.06.2026. The order reads as under:-

We are constrained to record that till 10.07.2026, no written submissions have been submitted by either of the Parties, except by Mr. Hasti Mal Kachhara, the Resolution Professional of Pushp Ratna Realty Private Limited, who took permission to file their written submission while mentioning their matter on 28.06.2029 and the same was filed on 29.06.2026. We have decided the appeals based on the record available with us. In any case, written submissions perhaps would have only given same/similar details, as such no prejudice would have been caused to either of the parties.

57. In view of above detailed discussions, we do not find any merits in the appeals. The Appeals fail and stand rejected. No order as to the cost. Pending, I.A. if any, stand closed.

