NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.2288 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4572 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Avni Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

Present:

For Appellant	:	**Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**
For Respondent	:	**Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With

Company Appeal (AT) (Insolvency) No.2289 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4574 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Paritosh Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

Present:

For Appellant	:	**Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhishek Anand, Ms. Palak Kalra, Mr. Karan Kohli and Ms. Niharika, Advocates.**
For Respondent	:	**Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With

Company Appeal (AT) (Insolvency) No.2290 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4659 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Sangeeta Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

Present:

For Appellant	:	**Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**
For Respondent	:	**Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With
Company Appeal (AT) (Insolvency) No.2293 of 2024 &
I.A. No.8596 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4518 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Akshat Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

Present:

For Appellant	:	**Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**
For Respondent	:	**Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With
Company Appeal (AT) (Insolvency) No.2294 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4573 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Divyansh Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

Present:

For Appellant : **Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**

For Respondent : **Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With
Company Appeal (AT) (Insolvency) No.2295 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4629 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Sarita Jain …Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. …Respondent

Present:

For Appellant : **Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**

For Respondent : **Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

With
Company Appeal (AT) (Insolvency) No.2296 of 2024

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4575 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

IN THE MATTER OF:

Meenu Jain …Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. …Respondent

Present:

For Appellant : **Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**

For Respondent : **Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

<u>With</u>

<u>Company Appeal (AT) (Insolvency) No.2297 of 2024</u>

(Arising out of Order dated 20.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in IA No.4576 of 2023 in Company Petition No. (IB) - 710/(PB)/2019)

<u>IN THE MATTER OF:</u>

Niharika Jain ...Appellant

Versus

Manoj Kulshrestha, IRP for
Rajesh Projects (India) Pvt. Ltd. ...Respondent

<u>Present:</u>

For Appellant	:	**Mr. Abhishek Anand, Ms. Palak Kalra and Mr. Karan Kohli, Advocates.**
For Respondent	:	**Mr. Ritin Rai, Sr. Advocate with Mr. Abhindra Maheshwari, Advocates.**

<u>J U D G M E N T</u>

<u>ASHOK BHUSHAN, J.</u>

All these Appeal(s) have been filed against the common judgment dated 20.09.2024 passed by National Company Law Tribunal, Court VI, New Delhi in different IAs filed by the Appellant(s) in Company Petition No. (IB) – 710/(PB)/2019. By the impugned order, different Applications filed by all 8 different Appellant(s), including IA No.4572 of 2023 filed by the Appellant Avni Jain has been rejected. Aggrieved by the common order dated 20.09.2024, these Appeal(s) have been filed.

2. Brief facts necessary to be noticed for deciding the Appeal are:

i. On an Application filed by Homebuyers, Corporate Insolvency Resolution Process ("**CIRP**") commenced against the Corporate Debtor ("**CD**") – Rajesh Projects (India) Pvt. Ltd.

vide order dated 19.09.2019 passed by the Adjudicating Authority. The Adjudicating Authority by the same order appointed Interim Resolution Professional ("**IRP**").

ii. Order of CIRP was challenged before this Tribunal in Company Appeal (AT) (Ins.) No.1056 of 2019, where this Tribunal vide order dated 05.02.2020 initiated reverse CIRP, wherein the Project of the CD is to be constructed under the supervision of Resolution Professional ("**RP**") and the funding was to be arranged by the Promoters and the Lenders. The earlier IRP resigned, consequently Mr. Manoj Kulshrestha (Respondent herein) was appointed as an IRP vide order dated 01.06.2021.

iii. The Appellant(s) before us claimed allotment of different units in the Project – "RG Luxury Homes" by Allotment-cum Builder Buyer Agreement ("**Buyer Agreement**") dated 19.09.2019.

iv. The IRP on perusal of records of the CD came to the conclusion that Units, which were allotted by Builder Buyer Agreements dated 19.09.2019 in favour of the Appellant(s) for example Unit No.E-2401 to Avni Jain – Appellant was unauthorised and the allotment was not made with the consent of IRP. The IRP being already in place, units could not have been allotted by the Promoters. The IRP communicated cancellation letter, which was received by the

Appellant on 10.09.2022, informing the cancellation of allotment to the Appellant for example cancellation of E-2401, RG Luxury Homes, allotted to the Appellant – Avni Jain. Avni Jain replied to the said letter vide letter dated 14.10.2022, questioning the action of IRP cancelling the unit. The Appellant sent Builder Buyer Agreement dated 19.09.2019, Allotment Letter dated 19.09.2019 and Bank Statement duly reflecting payment made to the CD and requested the IRP to reconsider his decision of cancellation of the unit. The IRP having cancelled the unit, allotted Unit No.E-2401 to some other Homebuyer vide Buyer Builder Buyer Agreement dated 16.01.2023.

v. The Appellant also filed a complaint dated 07.03.2023 against the IRP before the Insolvency and Bankruptcy Board of India ("**IBBI**") vide letter dated 11.04.2023. The IBBI vide order dated 11.04.2023, did not find any contravention and closed the complaint.

vi. All Appellant(s) filed IAs in August 2023 before the Adjudicating Authority, challenging the decision of IRP cancelling the Units. The Appellant – Avni Jain filed IA No.4572 of 2023 seeking direction to withdraw the cancellation of allotment of Unit bearing No.E-2401 - RG Luxury Homes and further direction was sought to maintain status quo in respect of Unit bearing No.E-2401. Other

Appellant(s) also filed similar Applications being IA Nos.4573, 4574, 4575, 4576, 4629, 4659 and 4518 of 2023.

vii. Before the Adjudicating Authority the RP filed its reply to the IAs. In his reply, the RP pleaded that on 19.09.2019 when units were allotted by CD, an IRP was appointed and allotment was unauthorised and void. It was further pleaded that payment of Rs.50,000/- booking amount was received only on 18.12.2019, i.e. after four months from the alleged date of application and about three months from the initiation of CIRP. The RP pleaded that RP is duty bound to protect the interest of the CD and allotment claimed by the Appellant being void *ab-initio*, no relief can be granted to the Appellant.

viii. The Adjudicating Authority heard the parties and Application filed by the Avni Jain, being IA No.4572 of 2023 was treated to be leading Application, facts of which were noticed for deciding all the Applications filed by the Appellant(s). The Adjudicating Authority after hearing the parties, took the view that in view of moratorium imposed under Section 14, sub-section (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") and CIRP was initiated on 19.09.2019, no assets of the CD could be transferred subsequent to the moratorium. It was held that amount of Rs.50,000/- was paid with respect to Unit No.E-2401, RG

Luxury Homes on 18.12.2019. It was also found that the amounts were required to be made in the U.P. RERA Bank account in the Karnataka Bank Ltd. with regard to different Towers in Rajesh Projects India Pvt. Ltd., in which account, no payment was made and payment of Rs.50,000/- was made by the Appellant on 18.12.2019, in different Bank could not have been accepted. It was further noticed that all the Appellant(s) were related to one – Adesh Jain, who has served as the CD's tax Consultant for over 15 years. The Adjudicating Authority after returning the aforesaid findings, rejected all the Applications, including IA No.4572 of 2023.

ix. Aggrieved by the common order dated 20.09.2024 passed by the Adjudicating Authority, all the Applicants, filed these Appeal(s).

3. The Appellant(s) sought liberty of this Tribunal to file additional documents. An IA No.223 of 2025 was filed by the Appellant, praying for taking on record the documents from Annexure A-1, A-2 & A-3. The learned Counsel for the Respondent sought liberty to file an affidavit on 13.01.2025 and an affidavit has been filed by the IRP dated 08.02.2025. Replies to which has also been filed by the Appellant(s). We allow IA No.223 of 2025 and other similar IAs filed in other Appeal(s) and takes the additional documents filed along with the Application Annexure A-1, A-2 and A-3 on record.

4. We have heard Shri Krishnendu Datta, learned Senior Counsel and Shri Abhishek Anand, learned Counsel appearing for the Appellant(s) and Shri Ritin Rai, learned Senior Counsel appearing for the IRP.

5. Shri Krishnendu Datta, learned Senior appearing for the Appellant in support of the Appeal submits that allotment of the units to all the Appellant(s), were made on 19.09.2019. With regard to Avni Jain, as per the documents on the record including Builder Buyer Agreement, the unit was allotted for total consideration of Rs.46,80,000/- @ of Rs.3124.17/- per sq. ft. was in accordance with the market conditions at the time of allotment. The cancellation itself acknowledges that allotment was in favour of the Appellant. The IRP had no authority to cancel the allotment. The IRP did not issue any show-cause notice before the cancellation. The cancellation of the allotment is contrary to the provisions of the IBC. Learned Counsel for the Appellant submits that cheque dated 01.09.2019 of Rs.50,000/- was handed over to the CD and subsequently on asking of the IRP a fresh cheque dated 16.12.2019 was handed over to the IRP, which was encashed only on 18.12.2019 by the IRP and payment of allotment money was also made, which cheque has been brought on record along with IA filed for additional documents. It is submitted that role of IRP/ RP is not an adjudicatory role and IRP could not have cancelled the allotments. It is submitted that the CD is under reverse CIRP, which is under the Promoters, who are funding the Project under the supervision of IRP. Payment and issuance of receipt establishes bonafide allotment. The IRP had observed in letter received on

10.09.2019 that the unit allotted to the Appellant is undervalued. It is submitted that IRP was required to file an Application under Section 45 of the IBC for declaration of unit as undervalued and it was the jurisdiction of the Adjudicating Authority only to declare the unit undervalued. The IRP could not have cancelled the units on the said ground. The facts of each Appellant(s) are different.

6. Learned Senior Counsel appearing for the IRP refuting the submissions of learned Counsel for the Appellant(s) submits that CIRP having commenced on 19.09.2019, there was no occasion of allotment of any Units to the Appellant(s) on 19.09.2019 by the Ex-Management. It is submitted that all Appellant(s) are related to Adesh Jain, who was the Ex-Consultant of the CD. It is submitted that no allotment could have been made without receiving any payment. The allotment is contrary to the terms of the Agreement. The payments by the Appellant(s) have been made between 07.12.2019 to 15.01.2020, for example Avni Jain has made payment on 18.12.2019. All payments having been made subsequent to the commencement of CIRP, the said payments could not be treated to be payments for allotment, which as claimed to be issued on 19.09.2019 by the Ex-Management. The allotments were void. Further, the allotment money was required to be deposited in UP RERA account of Karnataka Bank, which was clearly mentioned in the Agreement. The payments claimed by the Appellant(s) are payments not made in the designated account, rather payments were made in a different account in different Bank and also several months after the commencement of CIRP. The

allotment of Units in favour of the Appellant(s) were void, since no payments were made even on the date when allotment is claimed, i.e. on 19.09.2019, which is the date when CIRP commenced. After commencement of the CIRP the Promoters have no authority or jurisdiction to make any allotment in favour of the Appellant(s). Initially, the amount was not paid at the time of booking of the Unit and was also not paid at the time of issuing allotment letter and Builder Buyer Agreement. The payments made by all Appellant(s) from 07.12.2019 to 15.01.2020, clearly indicate that allotment was sought to be validated by making payments subsequently, which is impermissible and contrary to the terms and conditions of allotment. The IRP did not have any adjudicatory function and functioned only in administrative capacity. It is submitted that present was not a case of IRP taking any steps for declaring any undervalued transaction, hence, Section 45 is not attracted in the facts of the present case. The IRP neither took any any action, nor formed any opinion for filing any Application under Section 45. The submission of the Appellant(s) that they have submitted a cheque on 01.09.2019 to the CD is not borne on the materials on record. The cheque number, which is mentioned in the receipt, which has been filed by the Appellant along with the Application for additional documents, gives a different cheque number and date of payment as has been mentioned by the Appellant in paragraph 12 of its written submission. Learned Counsel for the IRP submits that IRP being duty bound to protect the assets of the CD, after looking into the records, was of the view that allotments claimed by the Appellant(s) are undervalued and void, the Appellant(s) were communicated about the cancellation of the units, which units have already been allotted to other Homebuyers in the CIRP.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. For deciding all the Appeal(s), we need to refer to the facts on record in Company Appeal (AT) (Ins.) No.2288 of 2024 – Avni Jain vs. Manoj Kulshrestha, IRP for Rajesh Projects (India) Pvt. Ltd.

9. The Appellant – Avni Jain has come up with a case that Allotment-cum-Builder Buyer Agreement was issued to her on 19.09.2019. In the Appeal copy of the allotment letter for the Unit E-2401 in Rajesh Projects (India) Pvt. Ltd. has been brought on record as Annexure A-2, which bears the date 19.09.2019. The said allotment letter refers the application of the Appellant dated 20.08.2019, which application has also been part of Annexure A-2. The allotment letter mentions the area of unit, total amount of consideration as Rs.46.80 lakhs. Clause-12 of the application, which is claimed to be submitted by the Appellant contain following stipulation:

> 12. The Applicant acknowledges that the Allotment Letter will be issued/ dispatched to the applicant by the promoter for execution after the receipt of 10% of the net sale price of the said Apartment and the applicant shall sign the same as acceptance and sent back to the promoter. The applicant further understands that the allotment shall become final and binding upon the company only after the Applicant signs and confirm the terms and conditions of

> the Allotment Letter. If, however, The Applicant falls to sign/execute and return the Allotment Letter within thirty (30) days from its dispatch by the company then the company may at its discretion treat the application as cancelled and the earnest money paid by the Applicant shall be refunded within 90 days from the date of such cancellation without any interest/compensation and deduction. In case payment is not made within 90 days simple interest @ of SBI MCLR + 1% per annum will be paid for the period commencing from the date of expiry of such 90 days till the date of payment.

10. The application further mentions that allotment letter shall be issued after payment of 10% of the net sale price. The Appellant's case is that they have issued a Cheque No.784710 dated 01.09.2019 to the CD of Rs.50,000/- of the Corporation Bank, which is filed as Annexure A-1. With Annexure A-1, there is also a receipt given by the CD dated 16.12.2019. The receipt A-1 mentions as follows:

> "Received with thanks from AVNI JAIN, Resident(s) of 61, Vaishali, Pitampura, North West Delhi, Delhi-110038 North West Delhi Delhi – 110034, Delhi, India, the sum of Rs.50,000 (Rupees Fifty Thousand Only) vide Cheque No.784711 dated 16-Dec-2019 drawn on Corporation Bank, payable at Delhi."

11. Further, Annexure A-1 mentions about an Account Ledger Entry of 18.12.2019, which mentions Cheque No.784711. Thus the cheque on the basis of which the amount was credited in the CD dated 18.12.2019, was the Cheque No.784711 dated 16.12.2019. The above document itself indicate that cheque on the basis of which payment was made by the Appellant, was cheque dated 16.12.2019, which was encashed on 18.12.2019. The Appellant has filed a receipt for submitting cheque

dated 16.12.2019, however, there is no receipt by the CD for the alleged cheque dated 01.09.2019 filed as Annexure A-1 at page 8 of the IA.

12. We also need to notice the reply, which was filed by the RP to the Application filed by the Appellant before the Adjudicating Authority. Copy of the reply filed by the RP has been brought on record as Annexure A-17, to Company Appeal (AT) (Ins.) No.2288 of 2024. The RP in reply to the Application in paragraphs 11, 12 and 14 pleaded following:

> "11. It is respectfully submitted that as per the application for allotment, which was executed on 19.09.2019, it was explicitly stated that at the time of booking of the unit, the applicant was required to make a payment of Rs 50,000/- as a booking money. As per the terms of the application the payment plan is stated to be as under:

Date	Particular	Amount
29.08.2019	At the time of booking	50,000.00
	On offer of possession	46,30,000.00

> 12. It is also noted from the records that as per clause 2.1 at page 26 of the application for allotment of unit in the project, the payment towards the booking of the unit was to be made in the bank account of the company in the following manner:
>
> Through A/c Payee cheque / demand draft / bankers cheque / online payment in favour of:

For Apartment of Tower B C D & E	Rajesh Projects India Pvt. Ltd. Tower B C D & E Rera Account	5492000100085901	Karnataka Bank Ltd.
For Apartment of Tower A F & M	Rajesh Projects India Pvt. Ltd.	54920001000860	Karnataka

	Tower A F & M Rera Account	01	Bank Ltd.
For Apartment of Tower G & H	Rajesh Projects India Pvt. Ltd. Tower G & H Rera Account	54920001000861 01	Karnataka Bank Ltd.

> 14. However, it is pertinent to mention that the applicant made a payment of Rs. 50,000/- only on 18.12.2O 19 i.e. after about four months from the alleged date of application and after about three months from the initiation of CIRP of the Company that too in some other account and not the aforesaid designated bank account. Consequently, it is evident that the booking amount was never tendered in accordance with the stipulated terms outlined in the alleged application for allotment. The noncompliance clearly demonstrates that the booking was never confirmed on 19.09.2019.

13. The RP has also pleaded that usual practice of a Company is to issue allotment letter only when advance booking amount was paid by the allottee. Whereas in the present case, allotment letter was issued without receiving booking amount, which amount could be received only on 18.12.2019. It was further pleaded that IRP never initiated any proceedings under Section 45 of the IBC. The RP has further pleaded that entire transaction between the CD and the Applicant was never been consummated in the relevant period as stipulated in Section 56 of the Code. In paragraph 18 of the reply, following has been pleaded:

> "18. The applicant is frivolously attempting to shape the narrative by contesting that the Respondent has allegedly non-compliance with the provisions of Section 45 of the code. However, it is pertinent to mention that the Respondent never initiated an investigation or subsequent cancellation of the applicant's unit in accordance with

> Section 45, since the entire transaction between the Corporate Debtor and the applicant was never been consummated in the relevant period as stipulated in Section 46 of the Code. The Respondent herein reiterates the fact that the cancellation of the applicant unit was done solely on the grounds that the agreement between the Corporate Debtor and applicant, was never enforced until the booking amount was paid by the applicant i.e., on 18.12.2019, which was after the initiation of CIRP proceeding against the Corporate Debtor."

14. The present is a case where IRP who was running the CD as a going concern under orders of this Tribunal, while going through the records of the CD, came to know about the units allotted to the Appellant(s). The RP found that allotments were claimed on 19.09.2019, on which date CIRP had already commenced and there was no authority in the CD, to make any allotment on 19.09.2019. When the CIRP has commenced on 19.09.2019, the jurisdiction of the Suspended Director clearly came to an end and no allotment letter could have been issued on 19.09.2019. The allotment, which is claimed on 19.09.2019 appeared to be unusual, since it was made without receiving any payment in the account of the CD and the payments were received in the account of the CD on 07.12.2019 to 15.01.2020 with regard to the Appellant(s) herein. In paragraph 13 of the reply, the RP has pleaded the following:

> "13. It is respectfully submitted that the alleged allotment letter in question was issued on the date when the CIRP was initiated against the Corporate Debtor, which makes the document void ab initio as the concerned person on behalf of the Corporate Debtor hold no authority to sign and execute any agreement."

15. The submission of the Appellant is that RP had no adjudicatory role, hence, he could not have issued a letter cancelling the allotment. The present is a case where RP has not exercised any adjudicatory function, rather from perusal of the record, came to know that no allotment has been made in favour of the Appellant and on 19.09.2019, when CIRP commenced, no allotment could have been made without consent of the IRP and the Suspended Director has no jurisdiction to issue any allotment letters in favour of the Appellant. It is due to the above reasons, the IRP sent a communication to the Appellant that their allotment cannot be accepted and allotment was cancelled. The IRP in the reply has also pleaded that after cancellation of allotment of the Appellants', units have been allotted on 16.01.2023 to other Homebuyers by Builder Buyer Agreement. The IRP is duty bound to protect the assets of the CD and if it is found that allotment claimed by the Appellant(s) is void, the allotment was impermissible in view of the moratorium imposed on 19.09.2019 and it required no adjudication for treating the allotment as void and impermissible.

16. The submission of the Appellant that when IRP was of the view that allotment is undervalued, he ought to have initiated proceedings under Section 45. It is true that in the letter which was communicated by the IRP on 10.09.2022, one of the reason mentioned was that allotment made to the Appellant was undervalued. The letter sent by the IRP, which was received by the Appellant on 10.09.2022, following was stated by the IRP:

“To,

Avni Jain
61, Vaishali, Pitampura,
North West Delhi
Delhi-110034

INDIA

Dear Sir,

As you are aware that M/s Rajesh Projects India Pvt. Ltd. is undergoing insolvency proceedings and Corporate Insolvency Resolution Process (CIRP) was admitted on September 19, 2019 whereby Mr. Gaurav Katiyar was appointed as Interim Resolution Professional (IRP). Thereafter, NCLAT passed an order of of Reverse-CIRP with certain conditions to complete the project under the supervision of IRP. Subsequently, vide order dated June 6, 2021 passed by the Hon’ble NCLT, Mr. Gaurav Katiyar was discharged and I was appointed as the IRP for the said Company.

While perusing the records of the Company, I found your details from the records maintained by the company and have noticed the following concerns with regard to the allotment of unit no. E-2401 in your name in the project, RG Luxury Homes, situated at Plot No.GH-07 A, Sector 16 B, Greater Noida (U.P.):

1. You were allotted the said unit at the time when the company was undergoing CIRP and moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 (IBC) was imposed without any approval from the IRP.

2. The price at which the said unit has been allotted to your is undervalued.

3. Advance paid by you towards the allotment is only a small sum as a token amount and at this stage the payment made by you is not in accordance with the existing policies for fresh booking/ allotments.

It is in view of the aforesaid facts and circumstances, the allotment stated to have been made in your name is not in accordance with law and as such cannot be treated as valid allotment. Therefore, the allotment of unit no.E2401 made in your name stands cancelled.

Please provide your email id, contract number and bank details so the amount paid by you may be returned accordingly.

Sd/

Manoj Kulshrestha
Interim Resolution Professional
Rajesh Projects India Private Limited."

17. Thus, the IRP has communicated to the Appellant that allotment made in favour of the Appellant, cannot be treated as a valid allotment. The IRP in its reply to the Application, has clearly pleaded that no proceedings has been initiated by the IRP under Section 45. It was not the case for adjudication undervalued transaction, hence, no exercise was taken. When we look into Section 45 of the IBC, it provides as follows:

"**45. Avoidance of undervalued transactions. -**

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor–

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

18. As per Section 45, if the IRP forms an opinion for a transaction to be undervalued, which took place within the look-back period, which is one year with any person and with related party is two years prior to the date of commencement of the CIRP, the present is a case where allotment is being claimed on 19.09.2019, which is a date of commencement of CIRP. Hence, there can be no question of applicability of Section 45, since look-back period is a period, which is one year/ two years prior to commencement of the CIRP. Hence, the submission of learned Counsel for the Appellant that proceedings were required to be initiated for declaring the transaction undervalued, is without any substance and IRP has correctly taken the decision that he has neither initiated any proceedings, nor it was a case of Section 45. From the facts, which have been brought on record, makes it clear that on the date when allotment is claimed to be made in favour of the Appellant on 19.09.2019, the CIRP has commenced by the order of the same date. When CIRP has commenced on 19.09.2019, no allotment could have been made by Suspended Management in favour of the Appellant(s). More so, present is a case where payment of Rs.50,000/-towards allotment was paid by the Appellant(s) in December 2019 and January 2020, which is several months after the alleged allotment in their favour, without paying of any amount to the CD at the time of allotment. Without the payment, no

allotment could have been made in favour of the Appellant(s). The facts, which have been brought on the record, makes it clear that Suspended Management has tried to unduly benefit the Appellant(s) by giving papers of allotment. The IRP has also in his reply stated that payments were to be made in the UP RERA account of Karnataka Bank, whereas payments claimed by the Appellant(s) were made in another account of different Bank. The facts, which have been brought on record, clearly indicate that present is a case where the allotment claimed by the Appellant(s) was non-est and void. The IRP did not commit any error in communicating the Appellant(s) that their allotment is non-est and invalid. The Adjudicating Authority in the impugned order has also noticed the fact that the requisite amounts were to be deposited in the UP RERA Bank account, whereas the amounts, which the Appellant(s) claimed, were not deposited in the UP RERA account. Hence, the amount, which was claimed to be paid by the Appellant in December 2019 and January 2020 was also not paid in the designated account, which has been noticed in paragraphs 14 and 15 of the impugned order, which are as follows:

> "14. Additionally, it is pertinent to mention that in order to give effect to the aforesaid allotment letter, the applicant was obligated to submit the requisite amount in the following manner and in the following designated U.P. RERA bank account/s, in accordance with the clause 2.1 of the allotment application, i.e,-
>
> Through A/c Payee cheque / demand draft / bankers cheque / online payment in favour of:

For Apartment of Tower B C D & E	Rajesh Projects India Pvt. Ltd.	54920001000859	Karnataka

	Tower B C D & E Rera Account	01	Bank Ltd.
For Apartment of Tower A F & M	Rajesh Projects India Pvt. Ltd. Tower A F & M Rera Account	5492000100086001	Karnataka Bank Ltd.
For Apartment of Tower G & H	Rajesh Projects India Pvt. Ltd. Tower G & H Rera Account	5492000100086101	Karnataka Bank Ltd.

15. However, it has been averred by the RP in its reply that the applicant herein has not submitted requisite amount in the aforesaid U.P. RERA bank account but rather in another bank account. Consequently, it can be further stated that the terms and conditions allotment agreement were not adhered to by the applicant in light of the fact that the requisite amount was never paid by the applicant in the correct account. Moreover, the applicant herein has failed to attach any proof of payment with regards to the aforesaid payment of INR 50,000."

19. The Adjudicating Authority has also returned a finding that when the CIRP has commenced on 19.09.2019 allotment on same day was invalid, in the light of the fact that moratorium was initiated in accordance with Section 14 of the IBC. The Adjudicating Authority in paragraph 13, returned following:

"13. Moreover, in light of the fact that the applicant herein has admitted that the letter of allotment itself was issued on the date when the CD was admitted into CIRP i.e., 19.09.2019. Consequently, the said letter of allotment was invalidated in light of the fact that moratorium was initiated in accordance with section 14 of IBC, 2016 and the IRP was given control of the CD"

20. The submission of the Appellant is that allotments and payments made by the Appellant are reflected in records of the CD, hence, the allotment was actually made and could not have been declared invalid by the IRP. The materials on the record, including the letter of allotment dated 19.09.2019 in favour of the Appellant without any payment to the designated account, which payment according to the materials on record is claimed to be made only in December 2019 and January 2020, clearly prove that allotment made in favour of the Appellant(s) is non-est and without any authority. The Adjudicating Authority has considered all relevant facts and has rightly came to the conclusion that after enforcement of moratorium no allotment could have been made to the CD by Suspended Management in favour of the Appellant. Further, the payments as claimed by the Appellant(s) were made in December 2019 and January 2020, which itself indicate that allotment was only paper allotment, which was not in accordance with the conditions of allotment as per application for allotment and the Adjudicating Authority has not committed any error in rejecting the Applications filed by the Appellant(s).

21. Learned Counsel for the Appellant further submitted that there was some distinguishing facts in each of the case and fact in Avni Jain was not the facts of all cases. When we look into the facts, which have been brought on record, it is clear that all Appellant(s) claimed same date of allotment, i.e. 19.09.2019. It is only payments made by the Appellant(s), which is on different dates between 07.12.2019 to 20.01.2020. The payments being made several months after the alleged allotment on

19.09.2019, rest of the Appeal(s) are also on the same footing and the payments made on different dates in the month of December 2019 and January 2020, is inconsequential. Hence, the submission of the Appellant that facts of each case are not similar, does not commend us.

22. In view of the foregoing discussions, we do not find any error in the order of the Adjudicating Authority rejecting Applications filed by the Appellant(s). There is no merit in the Appeal(s). The Appeal(s) are dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

23rd April, 2025

Ashwani