2025 INSC 1110

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3826 OF 2020

MANSI BRAR FERNANDES ... APPELLANT

VERSUS

SHUBHA SHARMA AND ANR. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 540 OF 2021

SHUBHA SHARMA ... APPELLANT

VERSUS

MANSI BRAR FERNANDES AND ANR. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5495 OF 2025

ASHLESH GUPTA AND ANR. ... APPELLANT(S)

VERSUS

MANSI BRAR FERNANDES AND ANR. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 3903 OF 2022

SUNITA AGARWAL ... APPELLANT

VERSUS

ANKIT GOYAT AND ANR. ... RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. There are four appeals, which, having been heard together, are being disposed of by this common judgment.

2. The first three appeals, *viz.*, C.A. No. 3826 of 2020, C.A. No. 540 of 2021, and C.A. No. 5495 of 2025 arise out of the final judgment and order dated 17.11.2020[1] passed by the National Company Law Appellate Tribunal, New Delhi[2], in Company Appeal (AT) (Insolvency) No. 83 of 2020. The fourth appeal, *viz.*, C.A. No. 3903 of 2022, is directed against the final judgment and order dated

[1] For short, "the first impugned order"
[2] For short, "the NCLAT"

12.08.2021[3] passed by the NCLAT in Company Appeal (AT) (Insolvency) No.1020 of 2019.

3. C.A. No. 3826 of 2020 has been preferred by the appellant – Mansi Brar Fernandes in her capacity as a homebuyer / financial creditor. Cross-appeals, *viz*., C. A. No. 540 of 2021 and C.A. No. 5495 of 2025 have been filed by Shubha Sharma and Ashlesh Gupta, respectively – former and present directors of Gayatri Infra Planner Private Limited – Respondent No. 2 / Corporate Debtor. C.A. No. 3903 of 2022 has been filed by the appellant – Sunita Agarwal, also a homebuyer / financial creditor, against the Corporate Debtor Antriksh Infratech Pvt. Ltd.

4. By the first impugned order dated 17.11.2020, the NCLAT reversed the admission of the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016[4] by the appellant – Mansi Brar Fernandes, holding that she was a "speculative investor" and not a genuine homebuyer / financial creditor. Following this, by its second impugned order dated 12.08.2021, the NCLAT set aside the admission of the Section 7 application filed by the appellant – Sunita Agarwal, holding that she too fell within the category of "speculative buyer" who sought to profit from a lucrative agreement. The directors of the Corporate Debtor, in their cross-appeals, have further challenged the first impugned order

[3] For short, "the second impugned order"
[4] For short, "the IBC"

on the limited ground of non-applicability of the Ordinance / Amendment Act to the facts of the present case.

PREFATORY

5. The Insolvency and Bankruptcy Code, 2016 (IBC) is a landmark economic legislation enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. Its primary objectives are the maximisation of value of assets, promotion of entrepreneurship, availability of credit, and balancing of stakeholder interests – creditors, investors, employees and workmen *inter alia*. Yet, the IBC is also a highly misunderstood legislation. The nomenclature of the Code itself has often contributed to this perception. In popular imagination, the IBC is associated with bankruptcy and recovery of the "last drop of life" from a company. But a closer look reveals that the true character of the IBC lies not in its sombre title but in its design and purpose. It privileges resolution over ruin, revival over decay, and seeks to breathe life back into companies where revival is possible, while providing for an orderly and dignified closure where it is not. As emphasized by this Court in ***Swiss Ribbons v. Union of India***[5] and a catena of subsequent decisions, liquidation is not the primary object of the Code, but a measure of last resort. The Code is designed to revive and restructure distressed

[5] (2019) 4 SCC 17

entities, so that they continue as going concerns – safeguarding business continuity, protecting employment, and maximising value of stakeholders.

5.1. Within this framework, the homebuyers occupy a distinct position. Although their advances were, in substance, financial contributions to real estate projects, they initially lacked representation in the Committee of Creditors (CoC). To correct this imbalance, Parliament amended the IBC to recognize allottees as "financial creditors", thereby ensuring that their voices are represented in the resolution process. The legislative intent was to protect genuine homebuyers, secure completion of projects, and ensure delivery of homes. For such stakeholders, liquidation rarely yields meaningful relief.

5.2. However, this amendment also gave rise to an unintended consequence: a surge of individual Section 7 petitions, often filed not by genuine homebuyers but by speculative investors seeking premature exits or enhanced returns. Many of these applications were aimed at holding promoters to ransom by threatening commencement of the Corporate Insolvency Resolution Process. Such misuse burdened the adjudicatory machinery, strained the real estate sector, and stalled projects that could otherwise have been revived. To curb this mischief, through an ordinance and subsequent amendment, Parliament introduced a threshold requirement: at least 10% of the allottees or 100 in number must act collectively to file a Section 7 application against a real estate developer. This safeguard was

designed to prevent a handful of disgruntled or speculative investors from derailing entire projects to the detriment of genuine homebuyers.

5.3. The residential real estate sector plays a systemic role in the Indian economy. It is closely interlinked with banking, steel, cement, and allied industries, and is among the largest employment generators. Despite robust demand, the sector has been plagued by delays, defaults, and lack of accountability, leaving countless families without possession of homes despite having invested their life savings. In this backdrop, this Court has consistently reiterated that the IBC is not a recovery mechanism or a bargaining chip for individual disputes. Rather, it is a collective mechanism intended to revive viable projects and safeguard the fundamental right to shelter of genuine homebuyers.

5.4. With this prefatory discussion on the objectives of the IBC, the legislative recognition of homebuyers, and the safeguards introduced against speculative misuse, we now turn to the facts of the present case.

BRIEF FACTS

6. The appellant (Mansi Brar Fernandes) and Respondent No. 2 (Gayatri Infra Planner Pvt. Ltd) had entered into a Memorandum of Understanding (MoU) dated 06.04.2016 which a buy back agreement for four flats in Gayatri Life at Plot No. 1F, Sector 16, Greater Noida (West), Uttar Pradesh. She paid a sum of Rs.35,00,000/- via cheque towards part consideration, and the MoU included a

buy-back clause exercisable solely at the discretion of the Corporate Debtor. If the buy-back option was not exercised, the appellant was entitled to receive possession of the flats without payment of any additional amount. Despite the MoU having been extended twice (first on 07.04.2017 and second on 07.10.2017), neither flats were delivered, nor payment made; and post-dated cheques worth Rs.1 crore handed over by the Corporate Debtor, were returned dishonoured upon presentation. The appellant thereafter initiated section 7 IBC proceedings in the capacity as an allottee / Financial Creditor, before the National Company Law Tribunal, New Delhi[6], besides initiating the proceedings under Section 138 of the Negotiable Instruments Act, 1881[7]. The NCLT issued notice to the Corporate Debtor and after detailed arguments, admitted the application *vide* order dated 02.01.2020. Challenging the same, Respondent No. 1 preferred an appeal before the NCLAT, which allowed the appeal and set aside the CIRP proceedings initiated by the appellant against the Corporate Debtor, by the first impugned order.

7. The appellants in C.A. No. 540 of 2021 and C.A. No. 5495 of 2025 assail the first impugned order dated 17.11.2020 passed by the NCLAT on the limited ground of non-compliance with the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, promulgated on 28.12.2019. The appellants

[6] For short, "the NCLT"
[7] For short, "N.I. Act"

stated that the Section 7 petition under the IBC filed by Respondent No. 1 (Mansi Brar Fernandes) on 02.01.2020, was reserved on 04.12.2019, i.e., prior to the promulgation of the Ordinance. As on 28.12.2019, the application was still pending consideration. Consequently, the Ordinance and the subsequent Amendment Act squarely applied to the proceedings. It was urged that the failure of Respondent No. 1 to satisfy the threshold requirement mandated under the Ordinance is fatal to the maintainability of the petition.

7.1. The appellants further stated that specifically, the third proviso to Section 7 IBC mandated compliance even for insolvency applications filed by financial creditors that had not yet been admitted by the Adjudicating Authority within thirty days of the promulgation of the Ordinance / Amendment Act. In the absence of such compliance, the proviso expressly deemed such pending applications to have been withdrawn prior to admission. Therefore, the finding of the NCLAT that the Ordinance was inapplicable to the facts of the present case, is erroneous, untenable, and unsustainable in law, and the admission order was liable to be set aside on this ground alone.

7.2. The appellants also stated that compliance with the requirements of the Ordinance / Amendment Act cannot be subsequently cured in appellate proceedings before the NCLAT. Hence, after the Ordinance / Amendment Act, a Section 7 IBC petition could not have been admitted by the Adjudicating Authority, unless the statutory threshold prescribed for allottees to initiate CIRP

against a real estate project was met. The admission order dated 02.01.2020, therefore, failed to give effect to the binding mandate of the Ordinance / Amendment Act. Consequently, the appellants submitted that the requirements of the Ordinance / Amendment Act are squarely attracted, and to that extent, the first impugned order of the NCLAT warrants interference by this Court.

8. The facts of the case in CA. No. 3903 of 2022 are that Respondent No. 2 (Antriksh Infratech Pvt. Ltd) approached the appellant (Sunita Agarwal), and represented that they were in the process of developing a housing project in the name and style of "Antriksh Urban Greek" at L-Zone, Dwarka, New Delhi - 110 075. The appellant agreed to invest a sum of Rs.25,00,000/- and paid the same by cheque dated 08.07.2015. Pursuant thereto, Respondent No. 2 issued letters dated 13.07.2015, stating that a 4BHK residential unit on the 6th floor, admeasuring 2500 sq.ft. @ Rs. 5000/- per sq.ft., had been booked in the name of the appellant under buy-back plan, and also issued receipt No. 0492 dated 13.07.2015 acknowledging the payment of Rs.25,00,000/-. On 28.07.2015, an Agreement / MoU was executed between Respondent No.2 and the appellant. As per Clause 2(a) of the Agreement, Respondent No. 2 admitted the payment of Rs. 25,00,000/- and agreed to provide a return of 25% per annum at the end of 24 months or upon the issuance of final LTC by the competent authority, whichever was earlier. The 24-month period ended on 07.07.2017.

8.1. Since construction was never commenced and, as reported by the Insolvency Resolution Professional appointed by the NCLT, even land had not been acquired by Respondent No. 2, the appellant issued a demand notice/e-mail dated 01.02.2019 demanding a sum of Rs. 47,31,164.38 (comprising the principal amount of Rs. 25,00,000/- plus interest @ 25% per annum till 08.02.2019). Respondent No. 2, however, refused to accept the notice. The appellant also sent the notice through e-mail on 01.02.2019.

8.2. Thereafter, the appellant filed an application under Section 7 IBC before the NCLT. On 02.05.2019, the NCLT issued notice to Respondent No. 2 and directed filing of an affidavit of service, renotifying the case on 10.05.2019. The appellant served the complete set of the petition and documents on Respondent No. 2 through e-mail on 07.05.2019, and filed an affidavit of service along with a certificate under Section 65B of the Indian Evidence Act on 14.05.2019. *Vide* order dated 15.05.2019, the NCLT directed that the matter proceed *ex parte* as Respondent No. 2 failed to appear. Arguments were heard on 30.08.2019, and by order dated 17.09.2019, the NCLT admitted the Section 7 IBC petition and appointed an Interim Resolution Professional (IRP) to act in accordance with the Code.

8.3. Challenging the said order, Respondent No. 1 preferred Company Appeal (AT) (Insolvency) No. 1020 / 2019 before the NCLAT. In support, Respondent No. 1 relied upon the NCLAT judgment dated 17.11.2020 in *Subha Sharma v.*

Mansi Brar Fernandes and others [Company Appeal (AT) (Insolvency) No. 83 of 2020] wherein, the NCLAT, referring to clauses of a similar agreement, held that at the end of the stipulated period, the corporate debtor was obliged to buy-back the apartment and refund the amount along with premium, which was a lucrative agreement for the investor, thereby making the allottee a speculative investor. On this reasoning and applying the ratio of this Court in ***Pioneer Urban Land and Infrastructure Ltd v. Union of India***[8], the NCLAT by the second impugned order dated 12.08.2021, set aside the NCLT's admission order. Aggrieved thereby, the appellant is before this Court with the present appeal.

CONTENTIONS OF THE PARTIES

9. According to the learned senior counsel for the appellant, the appellant (Mansi Brar Fernandes) is a homebuyer and qualifies as a financial creditor under Section 5(8)(f) of the IBC. She entered into a MoU dated 06.04.2016 with the Corporate Debtor (Gayatri Infra Planner Pvt. Ltd) for the purchase / buy-back of four apartments in its project "Gayatri Life", and paid a sum of Rs.35 lakhs through cheque as part consideration. The MoU, which was commercially structured by the Corporate Debtor itself, contained a buy-back clause that was entirely at the option of the Corporate Debtor. It could either buy back the units after 12 months for Rs.1 crore or hand over possession of the flats to the appellant

[8] (2019) 8 SCC 416

at no extra cost. The MoU was extended twice, i.e., on 07.04.2017 (for six months) and 07.10.2017 (for twelve months), and all post-dated cheques issued by the Corporate Debtor for Rs.1 crore, were dishonoured upon presentation. Despite the expiry of the final extension period on 06.10.2018, the Corporate Debtor failed to hand over the flats or honour its buy-back commitment, thereby constraining the appellant to initiate proceedings under Section 138 of the N.I.Act, and subsequently, file a Section 7 IBC petition.

9.1. Continuing further, it was submitted that the NCLT, by order dated 02.01.2020 admitted the petition, holding that the appellant was a homebuyer / financial creditor under Section 5(8)(f), and that the Corporate Debtor had committed default. However, on appeal, the NCLAT reversed the admission, branding the appellant as a speculative investor. The learned counsel submitted that this finding is wholly erroneous, as it was based merely on the existence of the buy-back clause, the dishonour of post-dated cheques, and the appellant's resort to remedies under the N.I. Act. None of these, it was argued, demonstrate speculative intent. On the contrary, the appellant never withdrew from the MoU and was always willing to accept possession of the flats, while the option of buy-back was solely with the Corporate Debtor, not the appellant. The NCLAT's approach, according to the learned counsel, disregards the builder's default and unfairly penalise the homebuyer.

9.2. It was also submitted that the transaction clearly bears the hallmarks of a financial debt, having the commercial effect of borrowing and carrying the element of time value of money, as recognized in the IBC. The sum of Rs.35 lakhs was duly received by the Corporate Debtor, reflected in its financial records, and is undisputed. The transaction is not alleged to be preferential, undervalued, fraudulent, or extortionate under Sections 43 to 50 IBC, and the appellant is not a related party of the Corporate Debtor or its promoters. Reliance was placed on the judgment of this Court in ***Pioneer Urban Land and Infrastructure Ltd v. Union of India*** (supra), wherein the 2018 amendment recognising homebuyers as financial creditors was held to be clarificatory in nature. It was submitted that the presence of a buy-back clause in the MoU does not exclude a homebuyer from the purview of Section 5(8)(f), especially where such clause was devised by the builder and not at the instance of the allottee.

9.3. The learned senior counsel further pointed out that during the pendency of the present appeal, another Section 7 IBC petition filed by Amit Joshi and others against the same Corporate Debtor was admitted by the NCLT on 28.03.2023 and a CIRP is presently ongoing. The appellant has already submitted her claim in those proceedings. She clarified that she does not seek revival of her original Section 7 IBC petition, but only challenges the erroneous finding of the NCLAT branding her as a "speculative investor", which prejudices her rights in the ongoing CIRP and under other proceedings including those under the N. I. Act.

9.4. In view of this subsequent CIRP, it was submitted that it is not necessary for this Court to adjudicate on other issues raised in the first impugned order, including the maintainability of her Section 7 IBC application in light of the 2018 amendment to the IBC requiring a threshold number of homebuyers to initiate insolvency proceedings. For the same reason, the cross-appeals preferred by Shubha Sharma and Ashlesh Gupta also do not require consideration.

9.5. With these submissions, the learned senior counsel prayed that the impugned finding of the NCLAT describing the appellant as a "speculative investor" be set aside, she be recognised as a homebuyer and financial creditor under Section 5(8)(f) IBC, and she be treated at par with similarly situated allottees in the ongoing CIRP in Amit Joshi (supra).

10. The learned counsel for the applicant in IA. No. 9936 of 2021 in C.A. No. 3826 of 2020 / intervenor submitted that the applicant– Gayatri Life Buyers Welfare Society – comprises allottees of the now-defunct residential housing project "Gayatri Life" promoted by the corporate debtor / Respondent No. 2. The members of the applicant who hold 89 apartment units in the said project, had supported the appellant – Mansi Brar Fernandes – before the NCLAT by filing affidavits in support of initiation of CIRP against the corporate debtor. They continue to support the appellant / homebuyer in seeking admission of the builder to insolvency proceedings. Therefore, there is material and substantial compliance with the amendment introduced on 28th December 2019 to Section 7

of the IBC, and the hyper-technical objections taken by the corporate debtor in this regard merit rejection.

11. On behalf of Respondent No. 2 (Gayatri Infra Planner Private Limited), the Resolution Professional made the following submissions:

(i) The appellant, claiming to be a financial creditor, seeks to rely on a Memorandum of Understanding dated 06.04.2016, which was purely provisional in nature and did not result in final allotment. The appellant had paid Rs.35 lakhs out of a total consideration of Rs.1,03,78,521/- for four flats and the MoU provided the company a discretionary option to repurchase the flats for Rs.1 crore within 12 months, failing which the appellant would be entitled to possession. This optional buy-back clause does not create any binding repayment obligation, and therefore, does not constitute a "financial debt" under the IBC. The appellant's own case confirms that the buy-back was at the sole discretion of the respondent, and no evidence has been adduced to show that the company exercised the option or agreed to repay Rs.1 crore. The transaction was clearly speculative in nature, structured to yield an abnormal return of over 350% within a short duration, reflecting an investment for profit and not a genuine homebuying intent.

(ii) Furthermore, the appellant fully aware of the project's construction timeline, instead sought to recover money under the garb of insolvency proceedings. As held in ***Pioneer Urban and Infrastructure Ltd v. Union of India***

(supra), the IBC cannot be used by speculative investors to initiate coercive proceedings. Therefore, the appellant not being a financial creditor under section 5(8)(f) had no locus to initiate CIRP, and the Admission Order was rightly set aside. The first impugned order correctly distinguishes the appellant as a "speculative investor" rather than a genuine allottee, and upholds the principles underlying the Code.

(iii) The appellant is not a genuine allottee but a speculative investor who entered into a transaction with the Corporate Debtor purely for assured financial returns and not for the purpose of acquiring residential property. A speculative allottee, as recognized in law, is one who seeks short term gains through devices like buy-back clauses and post-dated cheques (PDCs) with no genuine intent to obtain possession or use the property for residential purposes. In contrast, a genuine allottee under section 5(8)(f) is a person who seeks a home for personal use and falls within the protective ambit of the Code. In the present case, the appellant was issued Post-dated cheques against the investment made, a practice not followed in respect of genuine homebuyers, thereby clearly indicating the speculative nature of the transaction. The MoU executed between the appellant and the Corporate Debtor included a buy-back clause offering the appellant an exorbitant return of Rs.1 crore on an investment of Rs.35 lakhs within 12 months, reflecting a commercial arrangement rather than a residential purchase. The structure of the MoU, absence of a builder-buyer agreement, lack of follow-up

for possession, and reliance on section 138 N.I. Act proceedings all point to the appellant's intent to profit financially rather than obtain residential possession.

(iv) The NCLAT, in the first impugned order, rightly found that the appellant was a speculative investor and not a genuine allottee. It specifically observed that the MoU was a highly lucrative agreement designed to yield massive returns with no real obligation on the part of the appellant to pay the balance amount for the flats. Further, the appellant never sought possession during the term of the MoU, nor monitored the project's progress, thereby indicating the absence of genuine buyer conduct. The transaction lacked the characteristics of a real estate allotment protected under the IBC or the Real Estate (Regulation and Development) Act, 2016 (RERA). The appellant's failure to produce any registered builder-buyer agreement or other formal documentation also supports the conclusion that the arrangement was speculative in nature.

(v) Moreover, the appellant's attempt to use the IBC framework only after dishonour of the PDCs and commencement of CIRP proceedings reflects a coercive and opportunistic invocation of the Code, which has been disapproved by this Court in ***Pioneer Urban Land & Infrastructure Ltd v. Union of India*** (supra), wherein, it was clearly held that speculative investors cannot misuse the IBC for recovery of returns or enforcement of investment contracts disguised as real estate allotments. The present case squarely falls within that prohibition.

Similarly, in ***Binani Industries Ltd v. Bank of Baroda***[9], it has been reiterated that the IBC is not a recovery mechanism for investors who do not qualify as genuine stakeholders affected by insolvency.

(vi) The NCLAT, by order dated 17.11.2020 in Company Appeal (AT)(Ins) No.83 of 2020, directed initiation of reverse CIRP against Respondent No. 2, and the construction of the project continues smoothly under IRP supervision.

(vii) The respondent company has always been ready and willing to allot the four flats on a fully paid-up basis to the appellant, which would entitle the appellant to take possession of the same upon completion of construction. However, the appellant was only interested in the premium of Rs.1 crore from the respondent company, instead of delivery of the flats. That apart, the appellant sought to encash the cheques and even filed a complaint under section 138 of the N.I. Act.

(viii) Respondent No. 2 was admitted into Corporate Insolvency Resolution Process (CIRP) on 28.03.2023, pursuant to an order passed by the NCLT in C.P. (IB) No. 350/(PB)/2021, under Section 7 IBC, whereupon a moratorium under Section 14 came into effect.

(ix) The Respondent company is currently undergoing CIRP, and the construction is progressing under the supervision of the IRP, who is ensuring that

[9] (2018) 150 SCL 703

possession is handed over to genuine homebuyers in a fair and lawful manner. The CoC proceedings have been stayed by the NCLAT, and the project continues to be developed smoothly. The appellant's speculative claim, if allowed, would upset the priority and fairness principle enshrined in the Code and prejudice the rights of genuine homebuyers and creditors.

(x) In view of the above submissions, it was prayed that the appeal be dismissed, and the findings of the NCLAT -holding the appellant to be a speculative investor not entitled to initiate proceedings under section 7 of the IBC – be confirmed.

12. The learned senior counsel for the appellants in C.A. No. 540/2021 and C.A No. 5495 of 2025 assailed the finding of the NCLAT in the first impugned order in respect of inapplicability of Ordinance / Amendment Act, to the facts of the present case, on the following grounds:

(i) The NCLAT erred in concluding that the provisions of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 (later enacted as Amendment Act, 2020) were inapplicable to the present case. The Ordinance was promulgated on 28.12.2019, prior to the NCLT's admission order dated 02.01.2020. Hence, its provisions squarely governed the present proceedings.

(ii) The Ordinance / Amendment Act does not envisage any carve-out or exception in favour of real estate allottees. The statutory threshold introduced by

the amendment applies uniformly, and an allottee is required to comply with the threshold requirement before initiating proceedings under Section 7 IBC. The company cannot be deprived of its right to insist on such compliance before being subjected to CIRP.

(iii) The NCLAT erroneously assumed that this court's interim order in the earlier proceedings had the effect of staying the Ordinance /Amendment Act. It failed to appreciate that the legal effect of an interim order is entirely distinct from that of a stay order. The statutory amendments remained fully operative and binding at the relevant time.

(iv) The impugned order runs contrary to the plain language and intent of the Ordinance / Amendment Act, which clearly applied to the present case. The finding of inapplicability is legally impermissible as well as factually unsustainable.

(v) This Court in ***Manish Kumar v. Union of India***[10] upheld the constitutional validity of the Ordinance / Amendment Act and recognized the crucial importance of the threshold prescribed for financial creditors who are allottees.

(vi) The respondent (Mansi Brar Fernandes), in her reply affidavit before the NCLAT, effectively admitted non-compliance with the statutory threshold. On this ground alone, the Section 7 application was liable to be rejected.

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[10] (2021) 5 SCC 1

(vii) The appellants were deprived of their right to natural justice, as they were not afforded an opportunity to rebut the filing of the Section 7 application. This procedural lapse further vitiates the impugned order.

(viii) On these grounds, it was submitted that the NCLAT's finding on the inapplicability of the Ordinance / Amendment Act is contrary to law, unsustainable on facts, and liable to be set aside.

13. The learned senior counsel for the appellant in C.A. No. 3903 of 2022 submitted that Section 5(8)(f) was added by way of amendment on 17.08.2018 with effect from 06.06.2018 under which the debt of appellant comes within the definition of financial debt. The definition of 'allottee' under 5(8)(f)(ii) is taken from RERA which under section 2(d) defines 'allottee'. The appellant falls in the category of 'allottee'. The constitutional validity of section 5(8)(f) has been upheld by this Court in ***Pioneer Urban Land Infrastructure Ltd and another v. Union of India*** (supra).

13.1. It was further submitted that the finding of the NCLAT that as the appellant entered into an MoU, the appellant becomes "speculative investor" is patently illegal, as the MoU was executed by both parties and they remain bound by that. The appellant has not changed her stand depending upon the market conditions and therefore, by no stretch of imagination, she is "speculative investor" as parties are bound by definitive terms.

13.2. It was also submitted that the second impugned order was passed ignoring the interim order dated 11.12.2020 passed by this Court in C.A. No. 3826/2020 [Mansi Brar Fernandes v. Shubha Sharma and another]. Moreover, the corporate debtor is admittedly, withholding the money of the appellant since 13.07.2015 and did not deliver the promised unit.

13.3. The learned senior counsel further submitted that *vide* orders dated 01.10.2019, 13.11.2019 and 19.11.2019, the NCLAT had recorded the submissions of the IRP that "there is no land for project". In these circumstances, the second impugned order is liable to be set aside.

ANALYSIS AND FINDINGS

14. We have heard the learned senior counsel appearing for all the parties, and perused the materials available on record.

14.1. This Court by order dated 11.12.2020 in Civil Appeal No. 3826 of 2020, granted an *ad-interim* direction to the effect that the finding of the National Company Law Appellate Tribunal that the appellant is a 'speculative investor' is confined to the facts of the present case and shall not be treated as a precedent in any other case for the present.

15. The present matter, though seemingly straightforward, provides this Court with a timely occasion to clarify and reaffirm key principles under the Insolvency and Bankruptcy Code, 2016, particularly on the role of speculative investors in residential real estate. While subsequent legislative amendments have sought to

address this concern, uncertainty persists in pending matters before Tribunals. A clear pronouncement at this stage will eliminate inconsistency, prevent conflicting orders, and bring stability to a sector vital significance to the Indian middle class.

15.1. This case also raises a jurisprudential concern: the manner in which litigants may be protected from prejudice caused by changes in law or external factors arising after hearings conclude, but before judgment is delivered. Courts and Tribunals across the country are grappling with an ever-increasing docket explosion. While such a surge indicates greater citizen engagement with the justice system, it also results in orders being reserved for longer than desirable. Though Courts ordinarily take judicial notice of subsequent changes in law, the failure to do so should not operate to the detriment of any party. In the context of the present case, Article 21 demands that *bona fide* homebuyers receive expeditious and effective redressal before the designated fora, including the Consumer Commissions, NCLT, NCLAT, and RERA[11].

15.2. In this necessary in this backdrop to reiterate certain settled principles:

- RERA remains the primary forum for redressal of homebuyers' grievances;
- The IBC is a forum of last resort, intended to secure revival and completion of viable projects, not to serve as a debt recovery mechanism; and

[11] Upendra Choudhury v. Bulandshahar Development Authority and others, (2022) 11 SCC 449

- Consumer forums should confine themselves to adjudicating individual service deficiencies, thereby avoiding conflicting or overlapping orders across multiple fora.

15.3. The decision of this Court in ***Pioneer Urban Land and Infrastructure Ltd v. Union of India*** (supra) drew a distinction between speculative investors and genuine homebuyers. The present case affords an opportunity to reinforce that distinction through a principled intelligible differentia, so as to protect bona fide homebuyers, deter misuse of the Code by speculative investors, and prevent dishonest developers from exploiting systemic loopholes.

15.4. Strict adherence to IBC timelines and settled precedent is imperative to realise two complementary objectives:

(i)ensuring revival and completion of stalled projects for the benefit of genuine homebuyers; and

(ii)curbing speculative activity which has functioned as a "slow poison" for the residential real estate sector and, by extension, the Indian middle class.

15.5. A balanced judicial approach in this regard will have far-reaching benefits: protecting homebuyers, restoring confidence in the real estate market, and encouraging reputed business houses and conglomerates to participate in residential development. In taking this approach, this Court seeks to contribute towards cleansing and strengthening a core economic sector that sustains millions

of livelihoods in both the organised and unorganised economy and touches the lives of people at their most fundamental level.

16. In the present case, as indicated above, there are two impugned orders, whereby the NCLAT set aside the admission of Section 7 IBC applications by the NCLT, holding that the appellants in C.A. No. 3826 of 2020 and 3903 and 2022 *viz.*, Mansi Brar Fernandes and Sunita Agarwal, respectively, were "speculative investors". Further, in the first impugned order, the NCLAT held that the statutory requirements introduced by the Ordinance / Amendment Act were not applicable to the facts of the present case. It is however, undisputed that Section 7 IBC application filed by one Amit Joshi was admitted by the NCLT and that the CIRP is presently ongoing against the Corporate Debtor – Gayatri Infra Planner Pvt. Ltd.

17. In light of these facts, the following issues arise for consideration in these appeals:

(i) Whether the appellants, Mansi Brar Fernandes and Sunita Agarwal, fall within the category of "speculative investors" so as to disentitle them from initiating proceedings under Section 7 of the IBC?

(ii) Whether the Ordinance / Amendment Act introducing threshold requirements for filing of Section 7 IBC applications by allottees was applicable to the facts of the present case?

18. Issue No.1 – Speculative Investors

18.1. The determination of whether an allottee is a speculative investor depends on the facts of each case. The inquiry must be contextual and guided by the intent of the parties. Indicative factors include: (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buyback clauses; (iv) the stage of completion of the project at the time of investment; and (v) existence of alternative arrangements in lieu of possession. Possession of a dwelling unit remains the *sine qua non o*f a genuine homebuyer's intent.

Speculation in real estate and Pioneer Urban

18.2. The problem of speculative misuse of real estate agreements has long been recognised. Such speculative arrangements artificially inflate demand, fuel asset bubbles, and prejudice genuine buyers. Unlike financial markets – where speculation may sometimes serve a liquidity function – speculation in residential housing undermines stability, fairness, and the very object of housing development. Schemes of assured returns, compulsory buybacks, or excessive exit options are in truth financial derivatives masquerading as housing contracts. These arrangements enable developers, on the one hand, to mislead gullible individuals, and seasoned investors, on the other, to 'jump ship' when the market turns or to hold developers to ransom by invoking the IBC as a coercive recovery mechanism, thereby creating a situation of 'heads I win, tails you lose'. This

Court, in ***Madhubhai Amathalal Gandhi v. the Union of India***[12] while deprecating speculative activities in the stock market, strongly cautioned against such distortions, observing:

> *"These mischievous potentialities inherent in the transactions, if left uncontrolled, would tend to subvert the main object of the institution of stock exchange and convert it into a den of gambling which would ultimately upset the industrial economy of the country".*

18.3. This Court in ***Pioneer Urban Land and Infrastructure Ltd v. Union of India*** (supra), while upholding the constitutional validity of the 2018 amendment recognising allottees as financial creditors, drew a crucial distinction between genuine homebuyers and speculative investors. It clarified that speculative investors cannot be permitted to misuse the Code as a debt recovery mechanism. The judgment struck a balance: ensuring representation of genuine homebuyers in the CoC, while shielding developers and projects from being derailed by investors who never intended to take possession.

18.3.1. The Court further noted that remedies under RERA and the Consumer Protection Act are additional, not exclusive. Both statutes operate alongside the IBC, but with distinct purposes: RERA protects individual investors by enforcing compliance with project obligations, while the IBC operates in rem to revive the corporate debtor and maximise value for all stakeholders.

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[12] AIR 1961 SC 21

18.3.2. Importantly, *Pioneer Urban* held that once a prima facie default is established under Section 7 of the Code, the burden shifts onto the developer to demonstrate that the applicant is a defaulter, or that the process has been invoked fraudulently, with malicious intent, or by a speculative investor. These safeguards were intended to prevent "trigger-happy" investors from destabilising projects or prematurely driving developers into insolvency.

18.3.3. For better appreciation, the relevant paragraph of the said decision is reproduced below:

> *"56. It can thus be seen that just as information utilities provide the kind of information as to default that banks and financial institutions are provided under Sections 214 to 216 of the Code read with Regulations 25 and 27 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, allottees of real estate projects can come armed with the same kind of information, this time provided by the promoter or real estate developer itself, on the basis of which, prima facie at least, a "default" relating to amounts due and payable to the allottee is made out in an application under Section 7 of the Code. We may mention here that once this prima facie case is made out, the burden shifts on the promoter/real estate developer to point out in their reply and in the hearing before NCLT, that the allottee is himself a defaulter and would, therefore, on a reading of the agreement and the applicable RERA Rules and Regulations, not be entitled to any relief including payment of compensation and/or refund, entailing a dismissal of the said application. At this stage also, it is important to point out, in answer to the arguments made by the petitioners, that under Section 65 of the Code,* ***the real estate developer can also point out that the insolvency resolution process under the Code has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency. This the real estate developer may do by pointing out, for example, that the allottee who has knocked at the doors of NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the petitioners' contention that a wholly one-sided and futile hearing will take place before NCLT by trigger-happy allottees who would***

> ***be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death.****"*

Criteria to identify speculative investors

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

18.4.1. In ***Duni Chand Rataria v. Bhuwalka Brothers Ltd.***[13] this Court considered the validity of an ordinance of the State of West Bengal prohibiting speculative transactions in the jute trade. A Constitution Bench (four Judges) held that constructive delivery by intermediate parties would be valid provided that it culminated in actual delivery to the end purchaser. The Court observed:

> *"The mate's receipts or the delivery orders as the case may be, represented the goods. The sellers handed over these documents to the buyers against cash payment ....The constructive delivery of possession which was obtained by the intermediate parties was thus translated into a physical or manual delivery of possession in the ultimate analysis eliminating the unnecessary process of each of the intermediate parties taking and in his turn giving actual delivery of possession of the goods ....."*

[13] AIR 1955 SC 182

Thus, where there is an actual chain of delivery ending with possession by a genuine buyer, the transaction is not speculative. Conversely, in the present context, where there is no intention to take possession, the onus to find another buyer and effect resale is cast on the developer. Delivery in such cases is more in the nature of a lien or an option. For a genuine allottee, however, delivery and possession are a *sine qua non*.

18.4.2. In ***Jute Investment Co. Ltd v. CIT***[14], this Court held that for a transaction to fall outside the ambit of "speculative" under the Income-tax Act, 1961, actual delivery of the commodity is essential. By analogy, where an allottee has no intention to take delivery of the unit, the arrangement assumes the character of a speculative transaction.

18.4.3. *Pioneer Urban* (supra), in para 56, defines a speculative investor as one who intends to evade possession and "jump ship", or one who is not genuinely interested in purchasing a flat / apartment. Any allottee, who, from the inception of the agreement, does not intend to take possession, or who later abandons such intent, falls within this category. Such an allottee is primarily concerned with refund or profit, and not with completion of the project.

[14] (1980) 1 SCC 117

18.4.4. Thus, the determination of whether an allottee is a speculative investor, must be holistic, having regard to the terms of the agreement, the allotment letter, the payment terms, and the overall conduct of the allottee.

18.4.5. Non-exhaustive indicators include:

(1) If the agreement substitutes possession with a buyback or refund option, or any other special arrangement, the allottee is likely a speculative investor.

(2) Insistence on refund with high interest, coupled with refusal to accept possession would indicate speculation.

(3) Purchase of multiple units, especially in double digits, shall invite greater scrutiny, though it is not conclusive. If the terms of the agreement provide for possession or refund in the event of failure to give possession alone, this factor may not be held against the allottee.

(4) Special rights, preferential treatment, or unusual privileges to the allottee would signal investment intent.

(5) Deviation from the RERA Model Agreement shall be a crucial indicator as to the nature of the transaction – the greater the departure, the greater the likelihood of speculation.

(6) Unrealistic interest rates and promises of 20 – 25% returns over a short duration are indicative of speculation.

18.4.6. However, it must be clarified that the distinction between speculative investors and genuine homebuyers is relevant only at the stage of initiation of CIRP. Such allottees are not barred from filing claims for the principal amount invested, or from pursuing remedies before other fora in accordance with law.

Application to the present appeals viz., C.A. Nos. 3826 of 2020 and 3903 of 2022

18.5. In C.A No. 3826 of 2020 (Mansi Brar Fernandes), the MoU executed reveals that possession was never contemplated. The agreement stipulated a buyback whereby Rs. 35 lakhs invested would be returned with an additional Rs.65 lakhs as premium within 12 months. Though four apartments were notionally "allotted", the appellant paid only Rs. 35 lakhs with no provision for the balance. Instead, the corporate debtor issued post-dated cheques of Rs. 1 crore, which were repeatedly dishonoured. Successive extensions of the MoU were granted without justification, and the appellant invoked proceedings under Section 138 of the N.I. Act for recovery. These circumstances make clear that the appellant's true interest lay in assured returns, not possession. The MoU was in substance a buyback contract, not an agreement to sell flats. By the standard in *Pioneer Urban*, the appellant was a speculative investor, disentitling her from invoking Section 7.

18.6. In C.A. No. 3903 of 2022 (Sunita Agarwal), the MoU dated 28.02.2015 provided for an investment of Rs. 25 lakhs per unit with assured returns of 25% per annum after 24 months. It contained a compulsory buyback clause and provisions for profit-sharing over and above guaranteed returns. The repeated use of the term "investment" coupled with a risk-free exit option, confirms that possession was never intended. While the NCLT admitted her Section 7 application *ex parte*, the NCLAT correctly reversed the order. As this Court has observed, a homebuyer cannot simultaneously demand refund with guaranteed returns while retaining the option to refuse possession. Such risk-free contracts place speculative investors in an advantageous position, to the detriment of genuine homebuyers and developers.

18.6.1. The reliance placed by the NCLAT on its earlier decision in *Subha Sharma v. Mansi Brar Fernandes* [decided on 17.11.2020 in Company Appeal (AT) (Insolvency) No. 83 of 2020], despite interim order of this Court, does not vitiate its reasoning. An interim order suspends enforcement between parties, but does not efface the declaration of law or reasoning in a judgment. Unless specifically overruled, such reasoning remains available for guidance, particularly when judicial discipline demands consistency in sensitive sectors such as real estate.

18.7. On the facts and law, it is evident that both appellants are speculative investors. Their claims are in the nature of recovery, not insolvency resolution.

Consistent with *Pioneer Urban*, speculative investors cannot be permitted to trigger CIRP as this would undermine revival, destabilise projects, and prejudice genuine homebuyers.

18.8. Accordingly, the findings of the NCLAT treating the appellants as speculative investors warrant no interference. Both impugned orders, setting aside admission of the Section 7 applications, stand affirmed. However, liberty is reserved to the appellants to pursue their remedies before appropriate fora in accordance with law. In such proceedings, the bar of limitation shall not apply, in line with settled jurisprudence of this Court[15].

Issue No. 2 – Applicability of Ordinance / Amendment Act to the facts of the present case (Mansi Brar Fernandes)

19. Section 7 IBC, as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, enforced with effect from 28.12.2019, added a proviso to sub-section (1) before the explanation, providing a threshold limit for initiation of CIRP at the instance of allottees under a real estate project. It mandated that an application shall be filed jointly by not less than 100 allottees or not less than 10% of the total number of such allottees under the same real estate project, whichever is less. It further provided that where an application for initiating the CIRP against a corporate debtor had been filed by such financial creditors and had not been admitted by the adjudicating authority before

[15] Rameshwar Lal v. Municipal Council Tank and others (1996) 6 SCC 100

commencement of the IBC (Amendment) Act, 2020, such application was required to be modified to comply with the said requirement within thirty days of commencement of the Act, failing which it would be deemed to be withdrawn before its admission.

19.1. In the present case, the appellant filed a Section 7 application against the corporate debtor on 18.03.2019. On 28.12.2019, when the Ordinance was promulgated, the application was still pending before the Adjudicating Authority. However, arguments had already been heard and the matter reserved for orders on 04.12.2019. The order came to be passed on 02.01.2020, admitting the application without reference to the Ordinance. At that stage, the requirement introduced by the Ordinance had not been complied with by the appellant. Nevertheless, she subsequently complied with the said requirement in the appellate proceedings.

19.2. The NCLAT relied upon the coordinate Bench decision in ***Sushil Ansal v. Ashok Tripathi in Company Appeal (AT) (Ins) No. 452 of 2020***, wherein reliance was placed on the interim order of this Court dated 13.01.2020 passed in ***Manish Kumar v. Union of India***, and observed that the provisions of section 7 as they stood prior to the amendment continued to occupy the field. Proceeding on that basis, NCLAT concluded that the IBC Amendment Ordinance, 2019 (later replaced by the IBC Amendment Act, 2020) had no effect on the present proceedings. However, such reasoning was erroneous in the facts of the instant case. It is pertinent to note here that the appellant's application had already been

admitted on 02.01.2020, prior to the status quo order of this court dated 13.01.2020, whereas the Section 7 application filed by *Sushil Ansal* was admitted only on 17.03.2020. Thus, while the decision in *Sushil Ansal* was correct on its own facts, NCLAT wrongly applied it in *Mansi Brar*.

19.3. In the present case, limitation was due to expire on 27.01.2020. Even if computation is reckoned from 02.01.2020 (the date of reopening of the NCLT after the winter recess), the limitation period would have run its course by 31.01.2020. Although the affidavits bear the date 27.01.2020, the undisputed position is that they were actually filed before the NCLAT only on 01.02.2020, by which time the limitation period had already lapsed. Consequently, the appellant had no option but to comply with the requirements of the Ordinance which had come into effect on 28.12.2019. However, it was incumbent upon the NCLT to take cognizance of the Ordinance and afford an opportunity to the appellant to meet its stipulations. Since no such opportunity was granted, the appellant had no occasion to comply before the NCLT.

19.4. Indeed, even the respondents have contended that the NCLT ought to have deferred the admission order in light of the Ordinance. Though no specific objection was raised on 02.01.2020 by the Director / Respondent No. 1 or the Corporate Debtor / Respondent No. 2, the failure to consider the Ordinance was essentially an act of the Court. For such an act, no party can be prejudiced. The appellant, in fact, succeeded in obtaining the consent of 10% of allottees in

compliance with the Ordinance, albeit with slight delay. The provision being procedural in nature and not affecting substantive rights, no prejudice has been caused to the respondents.

19.5. This situation exemplifies the doctrine of *Actus Curiae Neminem Gravabit* – that an act of the Court shall prejudice no one. Where prejudice arises solely because of a judicial act, such as reserving orders without accounting for a legislative change, the Court must neutralise the effect so that no party suffers. As Benches of this Court of various strengths have consistently held in a catena of decisions in ***High Court Bar Association, Allahabad v. State of U.P. and others***[16], ***Jang Singh v. Brijlal***[17] and ***State of Punjab v. Shamlal Murari***[18], *inter alia*, no litigant can be penalised for delay, mistake, or inadvertence of the Court. In the words of the great judicial maverick, Justice V.R. Krishna Iyer, in *Shamlal Murari* (supra):

> *"Where the non-compliance, the procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities.*
>
> *Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time."*

[16] MANU/SC/0149/2024
[17] AIR 1966 SC 1631
[18] AIR 1976 SC 1177

19.6. In the present case, once orders were reserved, the appellant could not have complied with the Ordinance until pronouncement. To insist otherwise would be to compel the appellant to perform an impossibility – contrary to the maxim *lex non cogit ad impossibilia*. It would be apt to reproduce the words of Lord Cairns in ***Alexander Rodger v. The Comptoir D'escompte De Paris***[19], as quoted in ***A.R. Antulay v. R.S. Nayak***[20] wherein, it was observed thus:

> *"Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors. And* ***when the expression 'the act of the Court' is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case****. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."*

19.7. Accordingly, the outcome on grounds of equity should be determined as on the date the order was reserved, and no subsequent legislative or administrative change should prejudice the parties. In conclusion, while the validity of the threshold requirement introduced by the Ordinance has been upheld by this court in ***Manish Kumar v. Union of India*** (supra), its application must necessarily depend on the stage of proceedings and the feasibility of compliance. Where orders were already reserved prior to the promulgation of the Ordinance, the requirement cannot be retrospectively enforced so as to defeat vested rights. The

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[19] Law Reports Vol. III 1869-71 page 465 at page 475
[20] MANU/SC/0002/1988

subsequent compliance by the appellant during appellate proceedings sufficiently cures the defect, and the act of the Court must not prejudice the litigant. Therefore, the finding of the NCLAT in respect of the inapplicability of the Ordinance / Amendment Act to the facts of the present case requires interference, and the first impugned order deserves to be set aside to that effect. Accordingly, this issue is answered by us.

RIGHT TO SHELTER AS A FUNDAMENTAL RIGHT: CONSTITUTIONAL OBLIGATION OF THE STATE TO PROTECT HOMEBUYERS

20. This Court has, in a catena of decisions, consistently held and reaffirmed that the Right to Shelter is an integral part of the right to life under Article 21 of the Constitution. This recognition casts a corresponding duty on the State to ensure access to adequate housing, particularly for weaker sections. Indeed, various welfare schemes such as the Pradhan Mantri Awas Yojana (PMAY) have been initiated by the Government to provide affordable housing.

20.1. A home is not merely a roof over one's head; it is a reflection of one's hopes and dreams – a safe space for a family, a refuge from the worries of the world. With India rapidly industrialising and the rural-to-urban mobility proceeding at lightening pace, the demand for housing has risen sharply.

20.2. Yet, the plight of tax-paying middle-class citizens paints a disheartening picture. Having invested their lifelong savings in pursuit of a home, many are

compelled to shoulder a double burden – servicing EMIs on one hand, and paying rent on the other – only to find their "dream home" reduced to an unfinished building. In some cases, construction has not even commenced despite full or substantial payment. An average homebuyer may be a teacher, lawyer, doctor, IT professional, or a government employee, who has poured his or her hard-earned money into the pockets of a developer. For such individuals, a stable roof over their family's head is all they desire. The anxiety of not having a home despite paying a fortune is bound to take a serious toll on health, productivity, and dignity.

20.3. It is therefore imperative that the life savings of a common person culminate in timely possession of their promised home. Article 21 would mandate nothing less. In ***Samatha v. State of A.P.***[21], this Court reiterated that the right to social and economic justice as well as the right to shelter are fundamental rights encompassed within the ambit of the right to life. Similarly, in ***Chameli Singh v. State of U.P.***[22], this Court observed:

> *"Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of*

[21] (1997) 8 SCC 191
[22] (1996) 2 SCC 549

> *the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself."*

20.4. Thus, it would be thoroughly erroneous to treat home-buying as a mere commercial transaction, or worse, to reduce housing to the status of speculative instruments such as stocks, debentures, futures, or options through creative contractual devices. Housing is neither a luxury nor a commodity for speculation – it is a fundamental human need. The right to secure, peaceful, and timely possession of one's home is therefore a facet of the fundamental right to shelter enshrined under Article 21[23].

20.5. The State carries a constitutional obligation to create and strictly enforce a framework wherein no developer is permitted to defraud or exploit homebuyers. Ensuring timely project completion must be a cornerstone of India's urban policy. Equally, the State must proactively address the menace of a parallel cash economy and speculative practices in the real estate market, which artificially inflate housing costs and enable "trigger-happy" investors seeking easy exits to jeopardize the interests of genuine end-users.

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[23] U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd., 1995 Supp (3) SCC 456, Shantistar Builders v. Narayan Khimalal Totame, (1990) 1 SCC 520, Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509

20.6. Comparative experience from Western countries demonstrates the dangers of unchecked speculation. Despite smaller populations, several nations face acute housing shortages, prompting measures such as restrictions on the number of houses an individual may own. India must ensure, through robust policies and strict enforcement, that such a crisis never arises here.

20.7. While recent amendments and regulatory measures are welcome – and the Government merits commendation for undertaking proactive structural reforms – much remains to be done. It is imperative that RERA authorities are not reduced to toothless tigers. They must be equipped with adequate infrastructure, empowered tribunals, and effective enforcement mechanisms so that their orders are implemented swiftly, in letter and spirit. Only then can the constitutional promise of the Right to Shelter under Article 21 be meaningfully realized for homebuyers.

CONCLUSION

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

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

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

21.2. In exercise of this Court's jurisdiction, and to advance the constitutional and statutory objectives, the following **directions** are issued to the concerned authorities, in the larger interests of *bona fide* homebuyers and the stability of the real estate sector, which demand coordinated action by all stakeholders:

(1) Vacancies in NCLT / NCLAT shall be filled on a war footing. Dedicated IBC benches with additional strength should be constituted. Services of retired judges may be utilized on *ad hoc* basis until regular appointments are made. This Court is cognizant of the fact that similar directions have been issued in the past, including in ***Pioneer Urban*** case (supra), but no effective step has been taken on the ground.

(2) The Union Government shall, within three months, file a compliance report on measures taken to upgrade NCLT/NCLAT infrastructure nationwide. The recent closure of Chandigarh NCLT and portions of Delhi NCLT due to water seepage in the Courtrooms and Chambers of Members underscores the urgency of robust infrastructural support.

(3) Within three months, a Committee chaired by a retired High Court Judge shall be constituted, with representatives from the Ministry of law, Ministry of Housing, domain experts in Real Estate, Finance and IBC from NIUA, HUDCO's HSMI, IIMs, NLUs, and NITI Aayog, as well as two eminent industry representatives. The Committee shall suggest commercially viable systemic reforms for cleansing and infusing credibility into the real estate sector. NITI Aayog/ NIUA shall provide research and secretarial support. The Committee shall submit its report within six months of its constitution.

(4) States shall ensure that RERA authorities are adequately staffed with infrastructure, experts, and resources. At least one member of every RERA must be a legal expert or consumer advocate with proven expertise in real estate field. RERAs must conduct thorough diligence before granting approval to any project. Failure to do so, resulting in miscarriage of justice, shall amount to an error unpardonable in law and may invite strict intervention by this Court.

(5) Since real estate is the second largest sector in IBC proceedings, IBBI[24], in consultation with RERA authorities, shall constitute a council to frame specific guidelines for insolvency proceedings in real estate, including timelines for project-wise CIRP, and safeguards for allottees.

(6) Resolution of real estate insolvency should, as a rule, proceed on a project-specific basis rather than the entire corporate debtor, unless circumstances justify otherwise. This would protect solvent projects and genuine homebuyers from collateral prejudice. IBBI shall also devise a mechanism to enable handover of possession to willing allottees where substantial units in a project are complete.

(7) The Union Government shall consider establishing a revival fund under NARCL[25] or expanding the SWAMIH[26] Fund, to provide bridge financing for stressed projects undergoing CIRP, thereby preventing liquidation of viable projects and safeguarding homebuyer interests. SWAMIH Fund is a commendable initiative; however, being a large fund involving public money, every rupee must be utilised strictly for its intended purpose of last-mile financing. To prevent misuse, we direct that a comprehensive

[24] Insolvency and Bankruptcy Board of India
[25] National Asset Reconstruction Company Ltd.
[26] Special Window for Affordable and Mid-Income Housing

periodic performance audit by the CAG[27] be carried out, with reports placed in the public domain in a form comprehensible even to laypersons.

(8) Regulations shall ensure meaningful representation of allottees in the CoC through authorized representatives, with safeguards against conflicts of interest.

(9) At the admission stage of Section 7 petitions filed by allottees, NCLTs must record a *prima facie* finding on whether the applicant is a genuine homebuyer or speculative investor. This would prevent unnecessary admissions and reduce docket burden.

(10) The Government shall prioritize e-filing, video-conferencing, and dedicated case management systems for IBC matters, in view of the heavy caseload before NCLTs.

(11) Every residential real estate transaction for new housing projects shall be registered with local revenue authorities upon payment of at least 20% of the property cost by buyer/allottee. Further, to protect senior citizens and bona fide homebuyers, contracts that significantly deviate from the Model RERA Agreement to Sell, or that incorporate returns / buyback clauses where the allottee is over the age of 50, must be supported

[27] Comptroller and Auditor General of India

by an affidavit sworn before the competent Revenue Authority, certifying that the allottee understands the attendant risks.

(12) In projects at nascent stages, such as where land is yet to be acquired or construction has not commenced, proceeds from allottees shall be placed in an escrow account and disbursed in phases aligned with project progress, as per a RERA-sanctioned SOP. Every RERA shall devise such SOPs within six months from today.

Suggestions for future reform:

(1) IBBI may consider introducing "Basel-like" early warning frameworks, drawing from comparative practices, such as, pre-bankruptcy mediation and preventive restructuring, requiring directors to initiate restructuring before defaults spiral out of control.

(2) The Union Government should undertake a consultative exercise to bring about uniformity in RERA Rules across States, to remove ambiguity and fill lacunae in what is otherwise a watershed legislation.

(3) Housing Boards, State-level Urban Development Authorities (e.g., DDA, GMADA, MHADA, CHB) and CPSUs should establish dedicated wings to revive and complete stalled projects under IBC mechanisms. This would instill faith in the sector, ensure affordable housing, and protect genuine homebuyers.

(4) It is a matter of grave concern that despite funding hundreds of crores into various government-run think tanks and management institutions such as IIMs and IITs, India still requires a robust homegrown consulting industry. Collaboration with Indian think tanks and academic institutions should be strengthened to build indigenous capacity for sectoral restructuring. This has the potential to improve India's ease of doing business and accelerate economic growth.

(5) The Union Government may also consider establishing a body corporate, on the lines of NARCL or otherwise, promoted by real estate/ construction-focused PSUs or through Public-Private Partnerships, to identify, take over, and complete stalled projects under the IBC framework. Unsold inventory from such projects could be utilized towards affordable housing schemes like PMAY or for Government quarters, thereby addressing both the housing shortage and revival of sick projects.

While this is a matter of policy falling within the exclusive domain of the Government, it cannot remain a silent spectator. The Government is constitutionally obliged to protect the interests of homebuyers and the economy at large. It is not merely about houses or apartments; the banking sector, allied industries, and employment for a large populace are also at stake.

22. Before parting, we observe that the right to housing is not merely a contractual entitlement but a facet of the fundamental right to life under Article 21. Genuine homebuyers represent the backbone of India's urban future, and their protection lies at the intersection of constitutional obligation and economic policy. Through these directions, this Court seeks to restore faith in the regulatory and insolvency framework, deter speculative misuse, and ensure that the "dream home" of India's citizens does not turn into a lifelong nightmare.

23. Registry is directed to circulate a copy of this judgement to the learned Cabinet Secretary to Government of India as well as to the Chief Secretaries of all States, who shall take necessary steps at the earliest.

24. To sum up:

(i) The findings of the NCLAT holding the appellants (Mansi Brar Fernandes and Sunita Agarwal) to be speculative investors are affirmed. Consequently, both the impugned orders setting aside the admission of the Section 7 applications by the NCLT, also stand affirmed. However, the appellants are at liberty to pursue their remedies before the appropriate forum in accordance with law, and in such event, the bar of limitation shall not apply.

(ii) Ordinance / Amendment Act is squarely applicable to the facts of the present case and to that extent, the first impugned order stands set aside.

25. With the aforesaid directions and suggestions, all the appeals stand disposed of. There is no order as to costs.

26. Connected Miscellaneous Application(s), if any, stand disposed of.

….....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

NEW DELHI;
SEPTEMBER 12, 2025.