

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 13 of 2025

(Arising out of order dated 21.11.2024 passed by the National Company Law Tribunal, Mumbai Bench at Mumbai in I.A. No. 3390/2024 in CP (IB) No. 2517/MB/2018)

In the matter of:

1. Mr. Rajkumar Jhawar

R/o- Flat No. B 304, Tharwani Heritage,
Plot No. 24, Sector 7, Kharghar,
Navi Mumbai, Maharashtra, 410210.

2. Mrs. Shobha Jhawar

R/o- Flat No. B 304, Tharwani Heritage,
Plot No. 24, Sector 7, Kharghar,
Navi Mumbai, Maharashtra, 410210.

...Appellants

Versus

1. Mr. Arun Kapoor

Resolution Professional for
Monarch Brookfields LLP
G-601, Army Co-operative Housing Society,
Sector- 09, Nerul (East), Navi Mumbai,
Maharashtra, 400706

...Respondent No.1

2. Planet Builders and Developers

Resolution Applicant for
Monarch Brookfields LLP,

Arrayed through Arun Kapoor,
Resolution Professional of Monarch Brookfields LLP

Having address at:
G-601, Army Co-operative Housing Society,
Sector-09, Nerul (East), Navi Mumbai,
Maharashtra, 40070

...Respondent No. 2

3. Committee of Creditors of Monarch Brookfields LLP

Having address at:
G-601, Army Co-operative Housing Society,
Sector-09, Nerul (East), Navi Mumbai,
Maharashtra, 400706

...Respondent No. 3

Present:

For Appellant: Mr. Sonal Anand, Ms. Surbhi Singh, Mr. Aayush Sai, Advocates.

For Respondents: Mr. Sunil Fernandes, Sr. Advocate with Mr. Kailash Ram, Ms. Srishti Agarwal, Ms. Mehak N., Mr. Zeeshan Hashmi, Ms. Mitali Yadav and Mr. Ankit Parashar, Advocates for R1/RP.

Mr. Sharad Agnihotri, Advocate.

J U D G M E N T

(30th June, 2026)

INDEVAR PANDEY, MEMBER (T)

1. This appeal has been filed by Mr. Raj Kumar Jhawar and Mrs. Shobha Jhawar (hereinafter referred to as '**Appellants**'). The Appellants who are the Flat buyers of **Monarch Brookfields LLP (Corporate Debtor)**,

are aggrieved by the order dated **21.11.2024** passed by the Ld. **National Company Law Tribunal, Mumbai Bench-II (Adjudicating Authority)**, in I.A. No. 3390/2024, in C.P.(IB) No. 2517/MB/2018 whereby the Adjudicating Authority dismissed the application of the Appellant for excluding the Flat No. 1002 on the 10th Floor in "Vermont" Wing of project of the Corporate Debtor, which was purchased by them, from the resolution process of the Corporate Debtor.

2. The Appellants asserts that Mr. Arun Kapoor **Resolution Professional/Respondent No. 1** had failed to consider that the Appellant had submitted all the documents through email to the RP on 11.06.2024 and RP vide email dated 12.06.2024 informed the Appellants that the claim cannot be accepted as being submitted at a belated stage and since the resolution plan has already been approved by the CoC and reserved for orders by the Tribunal. The Appellants assert that the records of the Corporate Debtor also reflect that they had a valid Builder-Buyer-Agreement for the aforesaid flat and they had paid the full consideration amount to the builder but the same was not taken into consideration by the RP or the Adjudicating Authority. Aggrieved by the impugned order the Appellants have filed this appeal.

Brief facts of the case

3. The brief facts of the case are as given below:

- i. The Appellants approached the Corporate Debtor expressing their interest in purchasing a flat bearing Unit No. 1002 measuring

70.32 Sq. Mtrs, On the 10th Floor in "Vermont" wing in the project namely "Monarch Brookefields" situated at Plot no. 3, Sector-20, Kalamboli, Navi Mumbai developed by the Corporate Debtor.

- ii. The Corporate Debtor on 23.04.2012 entered into a Registered Agreement for Sale bearing Registration no. 4264/2012 for a total sale consideration of Rs. 42,00,000/- (Rupees Forty-Two Lakhs Only) which was fully paid by the Appellants prior to the execution of the said agreement through online transaction made from his HDFC Bank account to the Corporate Debtor's IDBI account, which is evident from the certificate dated 24.09.2024 issued by the HDFC bank, confirming the payments made by the Appellants to the Corporate Debtor. That pursuant to making the entire payment of sale consideration in compliance with the terms of the said agreement, the Appellants obtained the ownership rights over the said flat.
- iii. That as per Clause 16.1 of the Agreement for Sale, the Corporate Debtor was duty bound to hand over the possession of the said Flat to the Appellants, being the owners of the said Flat, within a period of 36 months (3 years) + grace period of 90 days. However, the Corporate Debtor failed to hand over possession of the said to the Appellants within the stipulated period.
- iv. That in the intervening period, an Application U/s 7 of the Code was filed by Capri Global Capital Ltd. against the Corporate

Debtor and pursuant to which the Hon'ble NCLT vide order dated 27.09.2019 initiated Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor and appointed Shri S. Gopalakrishnan as Interim Resolution Professional. Mr. Arun Kapoor/Respondent No.1 was later appointed as the Resolution Professional (RP) on 03.08.2021.

- v. The Appellants at a later stage came to know that Respondent No.2/Resolution Applicant had submitted a Resolution Plan, which was approved by CoC and an application filed for approval of the Resolution Plan was reserved for orders on 16.05.2024.
- vi. Thereafter, the Appellants submitted their claim, though belatedly via email on 11.06.2024 to the tune of Rs.42,00,000/- along with interest w.e.f. 02.02.2015 till the date of payment at the rate of 24% to the Respondent No.1. However, the Respondent No.1 vide email dated 12.06.2024 informed the Appellants that the claim cannot be accepted as being submitted at a belated stage, since the resolution plan has already been approved by the CoC and reserved for orders by the Tribunal. The Resolution Plan was later approved by the Ld. Adjudicating Authority on 27.08.2024.
- vii. Thereafter, the Appellants file an interlocutory Application bearing IA No. 3390/2024 before the Hon'ble NCLT, Mumbai Bench in June 2024 seeking directions to be passed to the Respondents to jointly, severally or individually exclude the Flat No. 1002 on the 10th Floor in "Vermont" from the aforesaid

project of the Corporate Debtor from the resolution process. The said Application filed by the Appellants was dismissed by the Hon'ble NCLT vide Order dated 21.11.2024 on the ground that no person can be held entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.

- viii. **M/s Planet Builder and Developers** who are the **Successful Resolution Applicants** are arrayed as the **Respondent No.2**. The Committee of Creditors of Monarch Brookfields LLP has been arrayed as Respondent no.3 in this appeal.

Submissions of the Appellant:

4. Ld. Counsel for the Appellants submits that owing to old age-related ailments, heart conditions, and COVID-19 pandemic health decline as also the ironical yet 'normal' delays in real estate projects, the Appellants remained unaware of the aforesaid CIRP proceedings until early June, 2024. Subsequently, the Appellants forthwith submitted their claim after learning about the aforesaid CIRP proceedings *via* email on 11.06.2024 to the tune of Rs.42,00,000/- claiming the flat to the Respondent No.1. However, the Respondent No.1 vide email dated 12.06.2024 rejected the claim of the Appellants.

5. Consequently, the Appellants filed an interlocutory Application bearing I.A. No. 3390/2024 before the Hon'ble NCLT, Mumbai Bench on 15.06.2024 seeking directions to be passed to the Respondents to jointly,

severally or individually exclude the Flat No. 1002 on the 10th Floor in "Vermont" from the aforesaid project of the Corporate Debtor from the resolution process. That while pendency of the said application filed by the Appellants, the Ld. NCLT without deciding the aforesaid Application, approved the Resolution Plan vide Order dated 27.08.2024. Thereafter, the Application bearing I.A. No. 3390 of 2024 was dismissed by the Ld. NCLT vide Order dated 21.11.2024. Thus, compelling the Appellants to approach this Hon'ble Tribunal.

6. Ld. Counsel submits that it was the categorical stand of the RP before the Ld. Adjudicating Authority that he is unable to trace any record evidencing receipt of the sale consideration under the Agreement to Sell in the account of the Corporate Debtor. This fact has been duly noted in the impugned order.

7. Ld. Counsel further highlights that there exists a material contradiction in the stand taken by Respondent No. 2/ the Resolution Professional before the Ld. Adjudicating Authority and before this Hon'ble Tribunal in relation to the payments made by the Appellants. Before this Hon'ble Tribunal, the RP has alleged a discrepancy in the payments made by the Appellants and in contrast, before the Ld. NCLT, the RP categorically contended that he was unable to trace any record evidencing receipt of the sale consideration under the Agreement to Sell in the account of the Corporate Debtor. These are two entirely inconsistent positions and demonstrate clear inefficiency and negligence on the part of the Resolution Professional.

8. It is submitted by the Appellant during the course of arguments, when this Appellate Tribunal posed a query to the RP as to what exactly he had done viz-a-viz Registered ATS dated 23.04.2012 executed in favour of the Appellants and in respect to the same and directed him to file an Affidavit. Pursuant to the same, the RP filed an Affidavit dated 29.08.2025 along with additional documents (filed on 01.09.2025) and the stand taken by the RP in his affidavit is below: -

“...2. I say that the erstwhile IRP, Mr. S. Gopalakrishnan had created a data room on the basis of information in his possession. From a perusal of the said data room it is reflected that the IRP was aware of the agreement to sell executed in favour of Mr. Raj Kumar Jhavar. A copy of the extract of the said data room is attached herewith as ANNEXURE – A...”

9. The RP by way of the Additional documents filed on 01.09.2026 contends that one, Mr. Amit Kirplani has been allotted the same unit prior in time. The ICICI bank statement shows actual debit of Rs.44,48,500/- from Kirpalani's account to “Monarch Brookfields,” evidencing payment flow to the Corporate Debtor. Further, Mr. Kirpalani filed Form CA on 24.11.2019 as a financial creditor in the homebuyer class, claiming Rs.2,58,27,137/- (principal plus interest) based on those allotment letters and payments. RP contends that Mr. Kirpalani's claim is supported by allotment letters (admittedly not registered), banking trail, and timely claim filing at the start of CIRP, which is used to justify inclusion of Kirpalani's claim vis-à-vis the Appellants.

10. Ld. Counsel submits that the entire narrative surrounding Mr. Amit Kriplani was never propounded before the Ld. NCLT by the RP, nor were

any supporting documents in respect thereof placed on record and it is only before this Appellate Tribunal that the Resolution Professional has, for the first time, disclosed the alleged transaction. Further the said Mr. Kriplani has purchased two units which prima facie show him to be an investor; The “Letter of Reservation” of Mr. Kriplani itself says “*On completion of one year from the date of this allotment letter, the allottee shall have the option to receive effective the date of this letter, the premium @2% per month in lieu of the amount invested by him or may retain the said flat and pay the additional charges as agreed in this allotment letter.*” leaving no doubt he is an investor who had availed the scheme of assured return/buy back and is not a home buyer at all. The said Mr. Kriplani is in any case only seeking return of money with interest and claims only “security” in the flat. Most importantly his agreements are not registered vis-à-vis the Appellant who has a registered agreement to sell in his favour.

11. Appellant further submitted that he was sanctioned a home loan of Rs.30,00,000/- by SBI, of which Rs.20,96,375/- was actually disbursed via cheque, forming part of the payments identified by the RP. He expressly accepts the RP’s computation that the total amount paid is Rs.65,72,000/- (as per RP’s table below para 3(c) of RP’s affidavit). Appellant clarifies that agreed flat cost is Rs.42,00,000/- and therefore, out of Rs.65,72,000/- paid, an excess of Rs.23,72,000/- was to be refunded by the builder or adjusted. He states that after SBI disbursal, he followed up through the broker; the broker assured that excess would be adjusted towards other charges/registration at possession and balance, if

any, refunded. The Appellant also states that he has paid all EMIs and the loan now stands cleared. The Appellant points out that the SBI loan was already disclosed before the Hon'ble NCLT and the sanction letter dated 08.06.2012 and arrangement letter are on record and the same is extracted below:-

"...6. That it is further apposite to note that in order to pay the balance consideration out of the total sum of Rs. 42 Lakhs, the Applicants had also applied for a Medium - Term Loan of Rs.30 Lakhs from State Bank of India (SBI) vide application on 05.05.2012, which was sanctioned by SBI on 08.06.2012. Thus, the Applicants had not only invested their life time savings, but had also applied for loans in order to purchase the said flat. Hereto annexed and marked as EXHIBIT - "C" is a copy of the Sanction Letter dated 08.06.2012 along with the arrangement letter..."

12. The Appellant clarifies that in the present appeal he is claiming treatment as a homebuyer and allotment of the flat for Rs.42,00,000/- i.e., the contractual apartment price and for the remaining Rs.23,72,000/- (excess over flat cost), he states he will file a separate claim and/or pursue appropriate remedies in law.

13. The Appellants contend that, on the admitted facts, they fall squarely within Category A of the Resolution Plan (payments towards flats with valid CC / approvals and registered agreements), whereas Mr. Kriplani's claim, if at all, falls only within Category B (payments supported by verified allotment letters) and yet the RP has ignored the rights already accrued in favour of the Appellant, which is per se arbitrary and discriminatory.

14. The Appellant submits that in his case the RP has asserted that a registered ATS does not create any right in his favour. However, he has recognised and admitted the claim of Mr. Amit Kriplani on the strength of mere unregistered reservation / allotment letters and rejected the claim of the Appellants inter alia on the ground that a Registered ATS does not create any right, which is intrinsically illogical and contrary to the settled legal position that a registered agreement ranks higher than an informal, unregistered allotment letter. The Appellants emphasise that, in law, a registered Agreement to Sell, duly reflecting the transaction in the data room, must carry greater evidentiary weight than an unregistered reservation letter, and therefore, if anyone was to be preferred, it ought to have been the Appellants and not Mr. Kriplani. The complete absence of any reference to the prior alleged allotment in favour of Mr. Kriplani in the proceedings and submissions before NCLT, and the fact that his documents surfaced only at the appellate stage, shows complete inefficiency, lack of transparency and after-thought on the part of the RP.

15. The Appellant submits that in regard to alleged discrepancies in payment, the Appellants have filed an affidavit explaining the structure and timing of payments, including the interim self-funding and subsequent SBI loan disbursal. He submits that while the total remittances are Rs.65.72 lakh, their present claim for homebuyer treatment is confined to the contractual flat price of Rs.42 lakh. It is their submission that even the RP does not dispute that at least about Rs.6.75 lakh is recorded as paid under the ATS, which itself suffices to give the

Appellants the status of allottees entitled to lodge their claim and also to get their claim admitted.

16. Ld. Counsel submits that the RP has taken mutually inconsistent stands regarding the Appellants' claim—ranging from non-existence, to delay, to partial admission of payments—thereby exposing negligence and inefficiency. RP's shifting stand on payments, from inability to trace any record to admitting RTGS credits and payments under ATS, undermines his credibility and evidences failure to reconcile records. RP claims notices were sent to all allottees, he has failed to produce any proof of communication to the Appellants, unlike in other cases, demonstrating negligence.

17. Ld. Counsel submits that it is not in dispute that the Appellants had an Agreement to Sell dated 23.04.2012 which was registered in their favour. It is further now duly admitted by the RP that an amount of Rs.65,72,000/-stands duly paid by the Appellants. That it is the stand of the Appellant that they are as such only claiming right of flats towards which the total consideration of Rs.42 lakhs which has been duly paid by them and they are not raising any claim for the balance amount of approximately 23 lakhs. Further, the Appellants squarely falls within category A of the resolution plan approved vide Order dated 27.08.2024 which is approved by the Ld. NCLT.

18. Ld. Counsel submits that the Appellants have explained the alleged discrepancies and confined their claim to Rs.42 lakh, and even the RP admits at least Rs. 6.75 lakh paid under ATS, which suffices to establish

their status as allottees. Despite the Appellants' name and registered ATS being part of the data room from inception, no steps were taken to verify or process their claim, evidencing dereliction of duty. Only upon directions of this Hon'ble Tribunal RP disclosed data-room extracts, bank entries, and contradictions, exposing serious lapses and discriminatory treatment, placing the Appellants' lifetime savings at risk.

19. Ld. Counsel further submits that the Appellants, despite investing their lifetime savings and holding a registered ATS, stand deprived of both flat and money due to the manner in which their claim was handled. The delay in filing a claim is attributable to the RP's failure to notify and process their rights, and cannot be used to deny relief.

20. Ld. Counsel submits that the case reflects grave hardship to homebuyers, where despite registered ATS and payments, negligence of RP and failure of NCLT to decide pending applications has caused serious prejudice. The Appellants cannot be made to suffer the consequences of the RP's negligence and be rendered remediless.

21. In light of the above facts and circumstances, Ld. Counsel seeks intervention of this Appellate Tribunal to prevent grave injustice and a complete miscarriage of justice by correcting the errors that have occurred in the conduct of the CIRP and by ensuring that the Appellants' legitimate rights as genuine homebuyers are effectively protected. Thus, it is humbly prayed that this Hon'ble Tribunal may be pleased to allow the present Appeal and grant the Appellants appropriate relief under the Resolution Plan.

Submission of Respondent No. 1/Resolution Professional

22. Ld. Counsel for the Respondent No. 1/RP submits that the present Appeal arises out of the Impugned Order dated 21st November 2024 passed by the Ld. NCLT, Mumbai Bench, whereby IA No. 3390 of 2024 filed by the Appellants seeking exclusion of Unit No.1002 was dismissed on well-reasoned and legally sustainable ground. The Impugned Order records that the Appellants had no ownership rights, no conveyance deed was executed, possession was never handed over, and their claim did not form part of the approved Resolution Plan. It was rightly held that no proceedings can be initiated for claims not forming part of the approved Plan.

23. Ld. Counsel reiterated that the Appellants were never declared owners, their claim was not admitted in CIRP, and they approached the Resolution Professional nearly three years after CoC approval, seeking to unsettle a concluded process. The Information Memorandum did not include the Appellants' claim, and there is no record of their alleged payments. Claims not part of the Resolution Plan stand extinguished, and there is an admitted delay of 1357 days in filing the claim.

24. Ld. Counsel for RP submits that the Appellants approached the Resolution Professional only after the Resolution Plan was approved by the CoC and reserved for orders by NCLT. He submits that CIRP commenced on 27 November 2019. The Resolution Plan was approved by the CoC on 19 November 2021. The Appellants filed their claim only on 11 June 2024, which was rejected as belated. Subsequently IA No.

3390/2024 was filed on 15 June 2024; the Plan was approved on 27 August 2024; IA was dismissed on 21 November 2024; and this appeal was filed on 19 December 2024. This shows gross delay and negligence, with no grounds for condonation.

25. Ld. Counsel further submits that the Appellants never challenged the IM and are now barred by estoppel. Their financial claims contain serious discrepancies: from Rs.6,75,625/- in the Agreement to Rs.42,00,000/- and later Rs.65,72,000/-, including admission of excess payment. Such inconsistencies undermine the claim. The Corporate Debtor's books do not reflect these payments; some payments are by third parties and prior to the Agreement, raising doubts about the nature of the transaction and their status as homebuyers.

26. Ld. Counsel for RP submits that Another claimant, Mr. Amit Kriplani, filed a timely claim for the same unit, which was admitted. Entertaining the Appellants' belated claim would prejudice the Resolution Plan and settled claims.

27. Ld. Counsel further submits that the Resolution Plan was approved unanimously by the CoC, and its commercial wisdom is paramount and non-justiciable. Upon approval under Section 31, the Plan is binding on all stakeholders. No claims outside the Plan can be entertained. The Contingent Provision Fund of Rs.50,00,000/- cannot be used to revive belated private claims; it is limited to unforeseen statutory liabilities.

28. Ld. Counsel reiterated that in light of the above The Appellants failed to act despite multiple opportunities and raised claims only at the

final stage. There is no perversity in the Impugned Order warranting interference.

Submission of Respondent No.2/Successful Resolution Applicant(SRA)

29. Ld. Counsel for Respondent No. 2 submits that the present Appeal is misconceived, legally untenable and an attempt to reopen issues that have attained finality upon approval of the Resolution Plan. The Appellants seek to disrupt the sanctity of a resolution plan under the Insolvency and Bankruptcy Code, by raising belated claims after conclusion of the CIRP.

30. Ld. Counsel further submits that the Impugned Order correctly rejected the belated claim, noting failure to justify the delay and that permitting such claims would defeat the object of the Code. The Impugned Order warrants no interference as it suffers from no illegality or perversity. He places reliance upon the judgment of Hon'ble Supreme Court in "*Punjab and Sind Bank Vs. Frontline Corporation Ltd. (2023) SCC OnLine SC 470*" and "*RPS Infrastructure Pvt. Ltd. Vs. Mukul Kumar, (2023) INSC 816*", which holds that a Successful Resolution Applicant cannot be faced with undecided claims post approval, as it would create uncertainty and defeat the IBC framework.

31. Ld. Counsel submitted that Adjudicating Authority has considered all issues and rightly exercised discretion in rejecting the Appellants' claims for want of any plausible explanation for delay. No illegality or

prejudice is made out. He relies on the judgment of this Tribunal in “*Pralhad Hage vs. Shyam Srirur*” (2021) SCC OnLine NCLAT 4114”.

32. Ld. Counsel further submits that IBC is a time-bound process ensuring finality. Post approval, the process must attain closure and the Appeal deserves dismissal with costs as it seeks to unsettle a concluded CIRP.

33. Ld. Counsel reiterated that The Appellants filed claims on 11 June 2024, after CoC approval. No explanation is provided. Their claims were not part of the Information Memorandum as no payments were made to the Corporate Debtor. It is settled that no surprise or belated claims can be entertained as decided by the Hon’ble Supreme Court in “*CoC of Essar Steel vs. Satish Kumar*, (2020) 8 SCC 531” and judgment of this Appellate Tribunal in “*Calyx Chemicals & Pharma vs. Ravindra N Athawale*, CA (AT) (Ins) No. 522 of 2024”. The Resolution Plan was unanimously approved by the CoC in its commercial wisdom, which cannot be interfered with “*Ebix Singapore vs. CoC of Educomp*, (2022) 2 SCC 401”. The SRA cannot be saddled with claims outside the Plan.

34. Ld. Counsel submitted that the claims were neither recorded in the Information Memorandum nor challenged. The SRA acted in good faith based on available records. Allowing such claims would prejudice Respondent No. 2, who has already commenced implementation. Implementation is at an advanced stage and reopening CIRP would disrupt revival. As held by Hon’ble Supreme Court in “*RPS Infrastructure vs. Mukul Kumar*, (2023) 10 SCC 718” and “*Sneha Kore vs. Arun Kapoor*,

CA (AT) (Ins.) No. 2019 of 2024” no new claims can be admitted post approval, nor can the Plan be modified.

35. Ld. Counsel further submits that Upon approval under Section 31, the Resolution Plan attains finality and binds all stakeholders. Claims not forming part of the Plan stand extinguished, ensuring certainty and a clean slate. Ld. Counsel reiterated that the Appellants failed to prove any payment to the Corporate Debtor and have not challenged this finding. Their reliance on judgment of this Tribunal “*Puneet Kaur vs. KV Developers, (2022) SCC OnLine NCLAT 245*” is misplaced, as their claims are not reflected in the books.

36. Ld. Counsel submitted that the contingent provision fund under *Clause 5.3* of Resolution Plan cannot be used to revive unverified private claims. The SRA cannot be burdened with indeterminate liabilities. The conduct of the Appellants disentitles them from equitable relief. Despite opportunities, they failed to act during CIRP and approached only at a belated stage.

37. Ld. Counsel submitted that in the circumstances, no perversity or illegality is demonstrated in the Impugned Order, which aligns with settled law. Accordingly, the Appeal is devoid of merit and liable to be dismissed.

Analysis and findings

38. We have heard both the parties in detail, gone through the voluminous records of the case and also seen the written submissions of Appellants as well as Respondents.

39. The Appellants contended that they had booked Flat No. 1002 in the project “Monarch Brookefields” promoted by the Corporate Debtor vide registered Agreement to Sale dated 23.04.2012 for Rs. 42,00,000/- and consequently became owners of the said flat, which was taken during CIRP proceedings. They submitted that CIRP was initiated pursuant to an application under Section 7 of the Code filed by Capri Global Capital Ltd., and that they filed their claim on 11.06.2024 before approval of the Resolution Plan. The delay in filing the claim was due to the fact that the CIRP of CD was conducted during the Covid period and due to ill health and old age they could not go out and were unaware of CIRP. They did not get any information about CIRP from any source. The Appellants contended that they fall within Category A of the Resolution Plan and that the RP acted arbitrarily and discriminatorily in ignoring their rights while including Mr. Kriplani’s claim, who is merely an investor with unregistered allotment letters and a buy-back/assured return scheme. They further contended that the RP introduced the case of Mr. Kriplani for the first time before this Tribunal without placing it before the Adjudicating Authority, and that there are material contradictions in the RP’s stand regarding the Appellants’ payments, demonstrating inefficiency and negligence.

40. Per contra, Respondent No. 1/RP contended that the Appellants have no ownership rights in the subject unit as no conveyance deed was executed and possession was never handed over, and their claim did not form part of the approved Resolution Plan. It was further contended that the Appellants' claim was hopelessly belated and could not be entertained after approval of the Resolution Plan by the CoC, with the Adjudicating Authority having already reserved the matter for final order. The RP justified inclusion of Mr. Kriplani's claim on the basis of allotment letters, banking trail, and timely filing of Form CA in 2019, supported by ICICI bank statements evidencing payment to the Corporate Debtor. The RP also raised discrepancies in the Appellants' documents, including inconsistencies between payments and the Agreement to Sell, unexplained excess payments, and timing of loan sanction, thereby casting doubt on the genuineness of the Appellants' claim and their status as homebuyers.

41. It is necessary to reiterate the critical dates and events necessary for adjudication of the present dispute. The Corporate Debtor was admitted in CIRP by the order of Ld. Adjudicating Authority dated 22.09.2019. Initially Shri S. Gopalakrishnan was appointed as IRP and later on he was substituted by Mr. Arun Kapoor who is the Respondent No.1. The Appellants had filed their claim through email on 11.06.2024 to the tune of Rs.42,00,000/- which was rejected by the RP vide email dated 12.06.2024 on grounds of delay in filing claim. Aggrieved from the same Appellants filed an interlocutory Application bearing I.A. No. 3390/2024 before the Ld. Adjudicating Authority on 15.06.2024.

However, during the pendency of this I.A., Ld. Adjudicating Authority had approved the Resolution Plan submitted by RP on 27.08.2024 without disposing the I.A. filed by the Appellants. Subsequently IA 3390/2024 was dismissed by the Ld. Adjudicating Authority vide Order dated 21.11.2024 on the ground that no person can be held entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.

42. RP in his pleadings before the NCLT had stated that he is unable to trace any record evidencing receipt of the sale consideration under the Agreement to Sell in the account of the Corporate Debtor. The relevant extract of para-17 of the Impugned Order dated 21.11.2024, which records the submissions of the RP w.r.t the payments made by the Appellants is reproduced below: -

“...17. On the other hand, Respondent No. 1 contents that he has been unable to locate any record demonstrating the payment of sale consideration under the Agreement for sale into any account of the Corporate Debtor and there are apparent inconsistencies in the bank statements produced by the Applicants and the amounts stated in the Agreement for sale. Respondent No.1 also doubted whether the Corporate Debtor had maintained any bank account with HDFC Bank to which the Applicants are stated to have transferred the funds. Respondent No. 1 further submits that the Applicants submitted their claim on 11.06.2024 long after the date specified for submission of claims against the Corporate Debtor. By the time the Applicants submitted the claim, the Resolution Plan submitted by the Respondent No. 2 had already been voted upon by the CoC and the Application seeking approval of the Resolution Plan was heard by the

Tribunal and reserved for orders. Since the claim was rejected by Respondent No. 1 on account of undue delay, the Applicants have preferred the present application on the ground that said Flat does not form part of the assets of the Corporate Debtor and sought exclusion of the said Flat from the CIRP and Resolution Plan. The counsel for Respondent No. 1 further submitted that the Resolution Plan, which was reserved for approval before this Tribunal, was eventually approved on 27.08.2024. In the circumstances, the application filed by the applicants is liable to be dismissed.”

(Emphasis supplied)

43. This submission of RP that no such payments were made by the Appellant weighed heavily in the mind of the Ld. Adjudicating Authority. It was on the basis of the same that claim of the Appellant was dismissed by the Adjudicating Authority.

44. During the hearing before this Tribunal on 12.08.2025 we directed RP to file an affidavit giving comprehensive details of payment received from the appellant, the extract of the order is given below:

“4. Without getting into the merit of the preliminary submissions of the counsels for the RP, this Tribunal only requires the RP to file an affidavit as to what exactly he had done viz-a-viz a sale agreement dated 23.04.2012. He requires to get into the factual details which the appellant relies on such as bank remittance made by the appellant into the IDFC account of the CD from the HDFC account of the appellant as evidenced by bank statements available at Page No. 122 of the appeal. RP while submitting his affidavit, his attention is not limited to what the appellant has provided but he can go beyond.”

45. Pursuant to the same, the RP has filed an Affidavit dated 29.08.2025 The relevant paras 2,3 & 5 of the Affidavit are extracted below:

...2. I say that the erstwhile IRP, Mr. S. Gopalakrishnan had created a data room on the basis of information in his possession. From a perusal of the said data room it is reflected that the IRP was aware of the agreement to sell executed in favour of Mr. Raj Kumar Jhawar. A copy of the extract of the said data room is attached herewith as ANNEXURE – A...

....3. a. ATS dated 23.04.2012 records at para 1.4 that Rs. 6,75,625 had been paid as on the date of the agreement and the balance Rs. 35,24,375 was yet to be paid.

....c. I say that the Appellant has also filed certain receipts along with the present appeal which are at page 123-127 of the appeal. As per the said receipts the following amounts were paid:

S.No.	Receipt No. & Date	Particulars	Amount
1.	Receipt No. 182 dated 03.05.2012	RTGS dated 13.04.2012	Rs.6,75,625/-
2.	Receipt No. 359 dated 04.01.2014	Cheque no.445599 dated 06.08.2012 drawn on SBI Vashi	Rs.20,96,375/-
3.	Receipt No. 360 dated 04.01.2014	Cheque/DD no. 716329 dated 12.04.2012 drawn on HDFC Vashi	Rs.5,00,000/-
4.	Receipt No. 361 dated 04.01.2014	RTGS dated 13.04.2012	Rs.3,00,000/-
5.	Receipt No. 362 dated 04.01.2014	RTGS dated 13.04.2012	Rs.30,00,000/-
Total			Rs.65,72,000/-

....d. I say that the cumulative total of all these receipts come out to Rs. 65,72,000/- (Rupees Sixty-Five Lacs Seventy-two Thousand Only) whereas the total claim of the Appellant is for Rs.

42,00,000/- (Rupees Forty-Two Lacs Only). The contradiction shows that the Appellant is trying to create the illusion of payment of money to the CD whereas from the documents it is not reflected that the said amount of money has been paid for the purchase of a flat from the CD. It seems that the amount has been paid for some extraneous reasons to the CD and the agreement for sale is merely an eyewash to siphon off the money from the CD...

...5. I say that the IRP had shared specific information with all such persons whose names and payments information were reflected in the books of accounts of the CD. The same is evident from the WhatsApp communications between Chandra Tahiliani, one of the alleged Homebuyers, and the IRP wherein the IRP had sought specific information from her regarding one flat. Similarly, a letter dated 23.06.2020 was sent to Mr. Jai Kumar Rai, one of the homebuyers, similar communications to all the other persons, including the Appellant herein, whose names and payments information were duly reflected in the books of accounts of the CD. However, since the Deponent herein was appointed as the substituted RP on 03.08.2021 and since it is not mandatory, under the applicable regulations, to keep the record of such communications, it has now become practically impossible for the Deponent to trace all such communications. The two specific communications mentioned hereinabove were also taken from the two separate appeals filed by those homebuyers, i.e., Ms. Chandra Tahiliani v. Planet Builders & Developers & Anr. (Comp. App. (AT) (Ins) No. 314 of 2025) and Jai Kumar Rai & Anr. v. Arun Kapoor (Comp. App. (AT) (Ins) No. 1179 of 2024 & I.A. No. 4211 of 2024). The copy of the WhatsApp communications between Chandra Tahiliani and IRP and the letter dated 23.06.2020 sent to Mr. Jai Kumar Rai are annexed herewith as ANNEXURE - B..."

46. We observe from the Affidavit of RP dated 29.08.2025, that there exists a material contradiction in the stand taken by Respondent No. 1/the Resolution Professional before the Ld. Adjudicating Authority and

before this Appellate Tribunal in relation to the payments made by the Appellants. Before this Appellate Tribunal, the RP has alleged a discrepancy in the payments made by the Appellants, but in contrast, before the Ld. Adjudicating Authority the RP categorically contended that he was unable to trace any record evidencing receipt of the sale consideration under the Agreement to Sell in the account of the Corporate Debtor. These are two entirely inconsistent positions and demonstrate clear inefficiency and negligence on the part of the Resolution Professional. Further, RP had stated that communications were sent to all homebuyers but he could not produce a single document showing any communication to Appellants.

47. In his affidavit the RP has also furnished the extract of Virtual Data Room (VDR) record relating to flat No. 1002 in Vermont Wing of the project. The relevant portion of the data room is extracted below: -

S.No.	Wing Name	Unit No.	Date of Registration	Registration Number	Name of the Flat Owner
36.	Vermont	1002	23.04.2012	4264	Rajkumar Anandaram Jhawar & Shobha Jhawar

48. From the virtual data room records, we note that Unit No. 1002 Vermont was registered in the name of Rajkumar Anandaram Jhawar & Shobha Jhawar, the Appellants herein and the said agreement to sale was registered on 23.04.2012 vide Registration No. 4264. So, it is clear from the records of the CD, which was provided to the SRA also, that Unit No. 1002 was allotted and agreement to sale was registered in favour of Appellants. RP has accepted in his affidavit that IRP was aware of the

aforesaid agreement to sell executed in favour of Mr. Rajkumar Jhawar. It is shocking to say the least that this fact was not brought before the Ld. Adjudicating Authority by the RP or the SRA. It is to be noted herein that VDR data forms the basis for preparation of Information Memorandum and it is shared with Prospective Resolution Applicants so that they could incorporate the Data in their Resolution Plan.

49. The RP through Additional Documents dated 01.09.2025 had placed the Letter of Reservation of Mr. Amit Kriplani dated 24.10.2011. The letter of reservation is extracted below:

MONARCH BROOKEFIELDS LLP
419, Raheja Arcade, Plot no 01, Sec 11, CDD Prabhat, Navi Mumbai - 400614. Tel / Fax: 27574100 / 67126500
Email: info@monarchuniversity.com Website: www.monarchuniversal.com

MONARCH
UNIVERSAL
LIVING

Date: 24/10/2011

To,
Mr. Amit Kirpalani
Mrs. Mini Kirpalani
15015 BRIDGEWATER DR
SAVAGE MN 55378
U.S.A.

Subject: - Letter of Reservation for Flat No. 1002, on the 10th Floor in Residential cum Commercial Project "MONARCH BROOKEFIELDS" in its Wing known as "VERMONT" situated at Plot No.3 Sec- 20, Kalamboli, Navi Mumbai.

- The city and industrial Development Corporation of Maharashtra Limited, (hereinafter referred to as "CIDCO" allotted land bearing plot No. 3 , Sector-20, Kalamboli, Navi Mumbai admeasuring 10000 Sq. mtrs. or there about hereinafter referred to as the "said plot" on the terms and conditions contained in the Allotment letter.

This is to record that pursuant to the said letter of Allotment from CIDCO, the model Agreement for sale has to be entered into between you and us and you are satisfied as to our title to the property and marketability of the same. No further requisition regarding the same shall be entertained. Also you have seen the proposed plan of the said Building. The said plan is subject to approval from CIDCO at the time of submission as on the basis of G.D.C.R.

As per your request we have allotted a Flat on the 10th floor bearing No. 1002 (hereinafter referred to as "the said Unit") in the above mentioned building on the said plot, on an approximate Carpet Area 70.41 Sq. Mtrs. on the following terms and conditions.

Maya R Kirpalani
TRUE COPY

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MONARCH BROCKEFIELDS LLP
410, Rishiya Arcade, Plot no 61, Sec 15, CBD Belapur, New Mumbai - 400614. Tel / Fax: 27674100 / 87120500
Email: info@monarchuniversal.com | Website: www.monarchuniversal.com

MONARCH
UNIVERSAL

We acknowledge and admit the receipt of payment towards the said unit as per the details below :

Cheque no.	Dated	Bank	Branch	Amount
813163	22/10/2011	ICICI Bank Ltd.	Oshiwara, Andheri(W)	44,48,500/-

In addition to the lump sum price agreed, you have to bear following additional dues & charges which will be charged extra:

1. Floor rise expenses of Rs. 25/- PSF from 2nd flr onwards to be taken by the builder.
2. Expenses of Rs. 150 /- PSF towards Electrical Cable tying & Water resource development charges.
3. Club membership, stamp duty, registration and legal fees, outgoing and maintenance charges, society transfer, Car Parking ,ground rent or any tax or cess.

On completion of one year from the date of this allotment letter, the allottee shall have the option to receive effective the date of this letter, the premium @ 2% per month in lieu of the amount invested by him or may retain the said flat and pay the additional charges as agreed in this allotment letter.

You are hereby requested to personally come to our office and sign the Agreement for sale as required under section 4 of Maharashtra ownership flats (Regulation of the promotion of construction sale, management and transfer) Act, 1963 at your earliest, to enable us to present the same for the Register of Assurances.

Final cost of the premises will be calculated as per the final constructed super built up area of the premises. Due to modification and or amendment of G.D.C.R. for New Bombay 1975 and / or development control rules of the CIDCO/ Municipality, if any changes in the approved

Maya R Kirpalani

TRUE COPY

2

MONARCH BROOKEFIELDS LLP
415, Rishabh Arcade, Plot no 61, SFC 11, CBD Belapur, Navi Mumbai - 400614. Tel. / Fax: 27574100 / 67120500
Email: info@monarchuniversal.com Website: www.monarchuniversal.com

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building plans are made by the sanctioning authority or by Architects of the Builders, resulting in reduction or increase in the area as mentioned above, no claim, monetary or otherwise will be accepted, except that the lump sum price mentioned above will be reduced or increased on prorate basis.

The allotment of the unit will stand only after you sign the duplicate copy of this letter and send it to us within 15 days from the date of this letter. If you do not agree to any terms and conditions mentioned herein above, you will write to us within 15 days from the date of this letter. If we do not receive any such letter from you it is automatically given to understand that you have agreed to all the terms and conditions of this allotment mentioned hereinabove.

On non-compliance of the terms and conditions mentioned herein above, the amount paid by you will be forfeited and this letter of allotment will stand cancelled.

For M/S Monarch Brookefields LLP

[Authorised Signatory]

I/WE ACCEPT

Mr. Amit Kirpalani

Mrs. Mini Kirpalani

Witness:

1. _____

Date: _____

Place: Navi Mumbai

Maya R Kirpalani

TRUE COPY

50. We note from the aforesaid letter of reservation that Flat No. 1002 in Vermont Wing of the project Monarch Brookefields was reserved in favour of Mr. Amit Kriplani and Mrs. Mini Kriplani, who are Non-Resident Indians residing in USA, on 24.10.2011. The details of payments are given in the said letter. More importantly, the letter clearly mentions that on completion of one year from the date of this allotment letter, the allottee shall have option to receive effective the date of this letter, the premium @ 2% per month in lieu of the amount invested by him or may retain the said flat and pay the additional charges as agreed in this allotment letter. We further note that the Kriplanis' had no agreement to sale registered in their favour; they only had a letter of reservation for the aforesaid flat. This makes them investors in the project and not genuine home buyers.

51. We now take notice of the claim filed by Kriplanis in the CIRP of the CD vide Form CA dated 24.11.2019 submitted by Mr. Amit Kriplani. The Form CA is extracted below:

DOCUMENT-3

9

FORM CA
SUBMISSION OF CLAIM BY FINANCIAL CREDITORS IN A CLASS
 (Under Regulation 8A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

24 Nov, 2019

From MR. AMIT RANJIT KIRPALANI & MRS. MINI KIRPALANI, residing at 4225 Old Oak Trce, Cumming, GA 30014, USA

Mr. S Gopalkrishnan,
 The Interim Resolution Professional / Resolution Professional
 IBBI/IPA-002/IP-N00151/2017-18/10398,
 Kanchansobha Debt Resolution Advisors, 1507-wing, One BKC, Plot No C-66, G - Block
 Bandra Kurla Complex, Bandra East, Mumbai 400051
 Mob -9870705437

Subject: Submission of claim and proof of claim.

Madam/Sir,

MR. AMIT RANJIT KIRPALANI & MRS. MINI KIRPALANI, hereby submits this claim in respect of the corporate insolvency resolution process of MONARCH BROOKFIELD LLP. The details for the same are set out below:

RELEVANT PARTICULARS	
1. Name of the financial creditor	Mr. Amit Ranjit Kirpalani and Mrs. Mini Kirpalani
2. Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual, provide identification records of all the partners or the individual)	PANs- Amit Kirpalani – BSOPK6468H Mini Kirpalani – BSOPK6463N
3. Address and e-mail address of the financial creditor for correspondence.	Address: C5-201 Bramba Sun City, Wadgaonsheri, Pune, Maharashtra 411014 E-mail: amitkrip@gmail.com
4. Total amount of claim (in Rs.)	Principal actually paid – Rs. 88,97,000/- Interest – Rs. 1,69,30,137/- Total – Rs. 2,58,27,137/-
5. Details of documents by reference to which the debt can be substantiated	1. Allotment Letters 2. Copy of Cheques and Payment Receipts 3. Bank Statements showing Cheque Clearance
6. Details of how and when debt incurred	In the year 2010, Monarch Brookfield launched the project for luxury flats by advertising in newspapers & electronic media, etc. I, being in requirement of accommodation approached them directly. After deliberations, showing of sample flats, negotiations and payment of token money, allotment letters were provided as confirmation of the deal.
7. Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	Not Applicable
8. Details of any security held, the value of the security, and the date it was given	All that piece or parcel of the Flats No.1002 and 1003 on the 10 th floor, and measuring 70.41 Sq.Mtrs each, in the project known as 'MONARCH BROOKEFIELDS LLP' in its Wing known as 'Vermont' to be constructed on Plot No.3, Sector 20, Kamboli, Navi Mumbai.
9. Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	Savings Bank A/c. No.026301076465 with ICICI Bank, Andheri West, Mumbai Branch IFSC Code - ICIC0000011

TRUE COPY

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10.	List of documents attached to this claim in order to prove the existence and non-payment of claim due	1. Allotment Letters dated Oct 24 th , 2011 2. Payment Receipts 3. Bank Statements with Cheque Clearance
11.	Name of the insolvency professional who will act as the Authorised representative of creditors of the class	Mr. Indrajit Mukherjee

Signature of financial creditor or person authorised to act on its behalf *Maya R Kirpalani*
 (Please enclose the authority if this is being submitted on behalf of the financial creditor)

Name in BLOCK LETTERS – MAYA RANJIT KIRPALANI

Position with or in relation to creditor - MOTHER

Address of person signing - C5-201 Bramha Sun City, Wadgaonsberi, Pune, Maharashtra 411014
 *PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

DECLARATION

I, Mr. Amit Ranjit Kirpalani and Mrs. Mini Kirpalani, currently residing at 4225 Old Oak Tree, Cumming, GA 30041, USA, do hereby declare and state as follows: -

1. Monarch Brookfields L.L.P., Panvel, Raigad, Navi Mumbai- PIN 410206, the corporate debtor was, at the insolvency commencement date, being the...22.....day of...Nov.....2019....., actually indebted to me for a sum of Rs. 2,58,27,137]Rs.2 Crore Fifty Eight Lacs, Twenty Seven Thousand, One Hundred Thirty Seven only (Principal + Interest)
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below: [Copy of Allotment Letter, Cheques issued and Receipts obtained, bank statements showing cheque clearance etc)
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:
 [Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim]... NOT APPLICABLE
5. I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
6. I am eligible to give voting instruction to the authorized representative by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.

Date: 24 Nov, 2019
 Place: Pune

Maya R Kirpalani
 (Signature of the claimant)

VERIFICATION

I, [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at Pune... on this 24th day of November., 2019.

Maya R Kirpalani
 (Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorized for the purpose by the entity.]

TRUE COPY

52. We note from the above claim form, that the Kriplanis filed a claim for two flats for which they had deposited the money and sought the claim amount along with interest, the total claim being Rs.2,58,27,137/-. It is absolutely clear from the above that Kriplanis never sought the possession of the flat for which they had made reservation. They only made a claim for refund of their payment with interest. On the contrary the Appellants have only insisted upon the possession of their allotted flat.

53. From the above, we note that Mr. Kriplani holds only an allotment letter for two units including Unit No. 1002, Vermont. Whereas the Appellants possess a registered Agreement to Sell in their favour for the Unit 1002, Vermont placing them on a higher pedestal as a homebuyer. The Kriplanis status on the other hand appears to be that of a speculative investor, who is only seeking return of money with interest and claims only “security” in the flat.

54. In this regard we also take note of the judgement of Hon’ble Supreme Court in the **Mansi Brar Fernandes Vs. Shubha Sharma & Anr. [CIVIL APPEAL NO. 3826 OF 2020] (2025 INSC 1110)**, wherein Hon’ble SC defined the meaning of Speculative Investor as follows:

“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.

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.”

55. Intention to possess a dwelling unit remains the sine qua non of a genuine homebuyer's intent. Based on the criteria laid down by the Mansi Brar (Supra) and the documents on record, we are of the view that the deposit made by the Kriplanis for Flat No. 1002, Vermont Wing of the Monarch Brookefields Project can be classified as made for investment purpose.

56. In the present case the Information Memorandum was prepared based on the books of accounts, records and information available in the Virtual Data Room (VDR) with the Interim Resolution Professional and constituted the basis upon which prospective resolution applicants formulated their resolution plans. All Prospective Resolution Applicants have full access to the VDR, as the Resolution plans are based on data made available in the VDR and Information Memorandum. We have seen from the affidavit of the RP that the VDR did have the details of the allocation of the flat in favour of the Appellants, still the same was not considered for inclusion in the Resolution plan. Non-inclusion of such claim reflected in CD's Records is due to lapse on the part of RP and SRA. The Appellants cannot be held responsible for the same.

57. The appellants had stated that they did not come to know of the insolvency due to Covid period and old age-related ailments. As soon as they came to know of the CIRP, they filed their claim. However, the RP rejected their claim very next day on account of delay. As the period of CIRP was almost entirely during Covid, we find merit in the submission of the Appellants. The Respondents in spite of the claim of Appellants figuring in the records of the CD, did not perform due diligence and treat the same in Resolution plan.

58. An important point to be noted here is that in a real estate insolvency involving homebuyers, the status of housing every unit is the key decision point as to whether the unit is already sold by CD. If already sold, then is it fully paid up; or partly paid up. The other category would be unsold units. Based on this information a PRA would prepare his resolution plan.

59. The Resolution Plan has categorized the treatment of different categories of homebuyers on the basis of documents. The relevant extract of the Resolution Plan is produced below:

Category A	
Payments received towards flat with valid CC and approvals and having registered agreements.	These home buyers have to pay Escalation Charges as mentioned in Annexure 'I' with the schedule of payment as described in Annexure 'J'. The Home buyers who have paid up to 70% of their agreement value will have to pay the balance amount as per the construction linked schedule.

	The home buyers, who have paid below 70% of their agreement value shall have to complete up to 70% of their agreement value within 30 days from the approval date and balance as per construction-linked schedule.
Category B	
<p>i) Payments received towards the flats with CC and approvals and having verified allotment letters.</p> <p>ii) Payments received towards the flats which were approved and registered during the validity of the initial CC but later got removed in the amended CC.</p> <p>iii) Payments received towards shops which were approved & registered during the validity of the initial CC but later got removed in the amended CC.</p>	<p>These home buyers and shop buyers are proposed to be paid 60% of the admitted principal at the end of the plan ie. T+ 730 days.</p> <p>The flat buyers and shop buyers can also opt to purchase new flats from the RA at prevailing or current market rates in case of which 100% of their admitted principal will be adjusted towards the new deal.</p> <p>The buyers opting to buy new flats need to pay 70% of the new deal value within T+ 90 days and the balance as per the construction linked schedule.</p>
Category C	
<p>i) Payments received towards the flat which had valid CC at the time of purchase but registered after the amended CC.</p> <p>ii) Payments received towards flats with invalid CC irrespective of being registered or unregistered.</p>	<p>After receiving approvals for balance/additional or future FSI, these flats buyers will be paid 25% of their admitted principal at the end of the plan ie., T+730 days.</p> <p>The flat buyers can also opt to purchase new flats after approvals for balance/additional or future FSI from the RA at prevailing or current market rates in case of which 50% of their admitted principal will be adjusted towards the new deal.</p> <p>The buyers opting to buy new flats need to pay 70% of the new deal value within 30 days of getting approvals for the concerned FSI and the balance as per the construction-linked schedule.</p>

60. As we have noted earlier the claim of the Appellants to the Flat No. 1002, Vermont was figuring in the Virtual Data Room along with details of agreement to sale which was duly registered. We have also seen from the affidavit of the RP that the Appellants have made full payment for the property, in addition they have made extra payment of around Rs.23 Lakhs which was disbursed by the SBI directly to the CD, on account of a sanctioned housing loan. The Appellants are only claiming right of his allocated flat No.1002 towards which the total consideration of 42 lakhs stands duly paid by them. The appellants have also stated that they are not raising any claim for the balance amount of approximately 23 lakhs. Based on these facts, the Appellants should have been treated as a claimant within category A of the resolution plan as shown in the above table. It is due to the lack of due diligence on part of RP and SRA that the claim of Appellants was rejected without proper treatment in the Resolution Plan.

61. The Appellants being aged persons and heart patients and suffered deterioration in their health during the Covid-19 pandemic were not aware of the initiation of CIRP against the Corporate Debtor. So, they could not file their claim on time. They filed their claim belatedly in June 2024, nearly five years after commencement of CIRP. We have also noted from the records that IRP/RP did not send any communication to the Appellants regarding the initiation of CIRP. In spite of our clear directions to produce any evidence of communication to the appellant through any means, the RP failed to produce any document on records of CD. In such

circumstances, delay cannot be attributed solely to the Appellants, when the RP failed in his duty to identify and notify stakeholders.

62. The Appellants hold a registered Agreement to Sell, vis-a-vis unregistered allotment letters held by Mr. Amit Kriplani who appear to be speculative investors. The RP himself has admitted receipt Rs. 65.72 Lakhs from the Appellants. The Appellants have restricted their claim to Rs.42,00,000/- being the contractual value, thereby establishing bona fides. Therefore, we have no doubt that the Appellants are genuine homebuyers and their claim should have been categorised within Category A of the Resolution Plan.

63. The Adjudicating Authority approved the Resolution Plan while the Appellants' application was pending. This resulted in denial of an opportunity to adjudicate their rights before finalisation of the plan. Such action has caused serious prejudice and undermines principles of natural justice. However, we also note that entire facts of the case were not brought before the Ld. Adjudicating Authority. It is only in the present proceedings the facts about registered agreement to sale, and payment by the Appellants could be brought on record after we insisted upon the RP to file a comprehensive affidavit.

64. The Appellant has relied upon the judgment of this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 63 of 2024. In para 9 and 41 of Judgment this Tribunal has observed as follows:

“9. In the CIRP, Resolution Plans were submitted, including Resolution Plan by Ashdan Properties Pvt. Ltd.; Classic

Promoters and Builders Pvt. Ltd. and Atul Builders India Pvt. Ltd. (in Consortium), which Resolution Plans were approved by the Committee of Creditors (“CoC”) on 13.08.2021. On 24.08.2021, RP filed an Application before the Adjudicating Authority for approval of the Resolution Plan. Certain homebuyers, including two of the Appellants filed their claims in March 2023, which claim was rejected and communication was issued by the RP, informing them that their claim has been filed with delay, cannot be entertained. Some of the homebuyers filed their Application, whose claim was rejected before the Adjudicating Authority in the year 2023, which Applications remained pending for consideration. The Adjudicating Authority heard the IA No. 1950 of 2021 filed by the RP for approval of the Plan and approved the Resolution Plan by order dated 23.06.2023. IAs filed by some of the homebuyers, challenging the rejection of their claims, remained pending, on the date when the Resolution Plan was approved. The homebuyers, who are in Group No. II, have filed these Appeal(s), challenging the order dated 23.06.2023 approving the Resolution Plan. Some of the Homebuyers have challenged subsequent orders dated 01.08.2023. We have already noticed above that Promoters as well as their Group Entities, Operational Creditors and employees have also filed the Appeal(s), as noted above, challenging the approval of Resolution Plan dated 23.06.2023.

Comp. App. (AT) (Ins) No. 1051/2023

41. *The Appellant No. 2 Suresh Sanghwi has advanced certain money in the year 2015 to DS Kulkarni and Company registered Agreement dated 30.06.2017 for Flat bearing No 601, G Wing on 6th Floor of Project DSK Vishwa Ph-VI, Anandghan was executed in favour of the Appellant.*

The registered Tripartite Agreement was executed with the Appellant as purchaser wherein DSK Global Education & Research Ltd. as land owners and Corporate Debtor as developer. By a general entry dated 30.06.2017, the loan advanced by Appellant to DS Kulkarni and Company was adjusted. The Appellant further made payment of VAT and service tax as well as Stamp Duty on registration charge. In the application filed by the Corporate Debtor through the Maharashtra RERA in July 2017, details of Flats sold in G Wing including the name of the Appellant was also mentioned. After admission of CIRP on 26.09.2023, when the Appellant came to know about the CIRP, they filed their claim on 31.03.2023, which was rejected by RP on the ground of delay. I.A. No. 2114/2023 was filed by the Appellant before the Adjudicating Authority which claimed to be dismissed on 22.11.2023 against which Comp. App. (AT) (Ins) No. 192/2024, was filed by the Appellant which was dismissed by this Tribunal on 21.02.2024. The present appeal has been filed by the Appellant challenging the order dated 23.06.2023, approving the Resolution Plan by which Resolution Plan, the Appellant have not been recognised as Homebuyers.

223.5. Company Appeal (AT) Insolvency Nos. 1050 and 1051 of 2023. • The Appellant(s) having successfully proved the allotment by Registered Deed executed on 30.06.2017 and their payments also reflected in the ledger of the Corporate Debtor, they are also entitled to claim treatment as has been given to the claims of the other Homebuyers. They are entitled to be treated in the same manner as other Homebuyers, whose claims have been admitted in the Resolution Plan. The SRA is directed to treat the Appellant(s) also allottees of their respective units and they shall also be given the units as per the Resolution Plan.”

65. The case of the appellant is identical to homebuyers in *Ashdan (supra)*. The Appellants herein are also homebuyers, who had filed a belated claim after the approval of the Resolution Plan by the CoC, but before the same was approved by the Adjudicating Authority and they are squarely covered by the *Ashdan Properties (supra)* judgment of This Tribunal.

66. The Appellant placed reliance on the Judgement of this Tribunal in the case of **“Puneet Kaur v. K.V. Developers Private Limited” [2022 SCC Online NCLAT 245]** particularly para 27 of the judgment which is extracted below:

“27. In the present case there is no denial that details of the appellant(s) and other homebuyers, who could not file their claims, have not been reflected in the information memorandum. There being no detail of claims of the appellant(s), the resolution applicant could not have taken any consideration of the claim of the appellant(s), hence, the resolution plan as submitted by the resolution applicant cannot be faulted. However, we are of the view that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the corporate debtor, ought to have been included in the information memorandum and resolution applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the resolution plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case.

67. We note that in this case the information about the allotment of Unit and Registered Agreement to Sale was available with IRP in VDR. The information and access to VDR was available to PRAs. No information was

shared with the Appellants about initiation of CRP. The claim of the appellant should have been automatically dealt with by the SRA in the Resolution Plan. Non-consideration of such claims which are part of record would be inequitable and lead to unfair resolution, as in present case. The case of the Appellant is fully covered by the ratio of *Puneet Kaur* (Supra).

68. The Respondents have cited the following cases in support of their contention that belated claims cannot be entertained after the approval of Resolution Plan by the CoC, which was subsequently approved by the Adjudicating Authority.

- i. Judgement of Hon'ble Supreme Court in "**CoC of Essar Steel Vs. Satish Kumar (2020) 8 SCC 531**" wherein it was observed that the SRA cannot be faced with 'undecided' claims after the resolution plan has been approved and/or accepted as this would amount to a hydra head popping up which would cause a flurry to the implementation of the Resolution Plan. This ratio is not applicable in the present case as the RP/Committee of Creditors (CoC) ignored the claim of a homebuyer whose allotment was already on record and now they cannot take shelter under the "Hydra-head" argument to unjustly enrich the SRA at the cost of a bona fide Homebuyer.
- ii. The Respondent No. 1/RP's reliance on the judgment of the Hon'ble Supreme Court in "**RPS Infrastructure Ltd. Vs. Mukul Kumar (2023)10 SCC 718**", regarding the absolute bar against belated claims. However, *this case* applies strictly to cases where the

creditor was sleeping over its rights despite having active knowledge of the CIRP proceedings. It cannot be extended to a bona fide homebuyer whose claim is deeply rooted in the existing financial records of the Corporate Debtor as shown by the Appellant in the present case.

- iii. Reliance was placed on the judgment of this Tribunal in “***Sneha Kore & Anr. vs. Arun Kapoor & Anr . Resolution Professional of Monarch Brookefields LLP [Comp. App. (AT) (Ins) No. 2109 of 2024]***”. However, The "Clean Slate" doctrine and the principle of absolute extinguishment under Section 31 are designed to protect SRA from unforeseen liabilities. They cannot be used as a legal eraser to escape accountability for debts that were documented and active within ongoing judicial proceedings during the CIRP.

69. We note that in the present case the Appellants who are homebuyers had a registered agreement to sell; they have made full consideration for the Unit No. 1002; the information about the allotment and agreement to sell was available in the virtual data room with IRP; the IRP did not send any communication to the Appellants about the CIRP. Further, the claim of the Appellants was rejected solely on the ground of delay without any due diligence by the RP. On the other hand, the claim of Mr. Amit Kriplani and his wife who are NRIs based in USA was admitted. The non-acceptance of claim of a genuine home buyer leads to inequitable and unfair resolution as is seen in the present case. The Appellants’ case is squarely covered by existing judicial precedent noted earlier.

70. In view of the findings above, the impugned order is set aside. The appeal is allowed and the claim of the Appellants is admitted in Category A of claims in the Resolution Plan as an addendum. Pending I.A.s if any, are closed. No order as to costs.

**[Justice N. Seshasayee]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**[Indevar Pandey]
Member (Technical)**

Place: New Delhi

Harleen