

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH,(COURT-I), CHANDIGARH**

**IA(IBC) 1406(CH)2024
AND
IA(IBC)1408(CH)2024
IN
CP (IB) No. 98/Chd/Hry/2022
(Admitted)**

**Applications under Section 60(5) of
the Insolvency and Bankruptcy Code,
2016**

In the matter of I.A. No. 1406 of 2024

Seema Garg

Wife of Late Sanjeev Garg

Resident of H.No 61 Model Town

Ambala City-1340003

Email: Sanjeevgargmmu@Yahoo.In

...Applicant

Vs.

Rahul Jindal, Resolution Professional of Samar Estates Pvt Ltd

Regd No. Ibbi/Ipa-001/Ip-P-02649/2021/14048

Address 52/24, Ramjas Road Karol Bagh

New Delhi-110005

Email:Jindalrahul60@Gmail.Com

...Respondent No.1

Vinod Bagai, Erstwhile Director of Samar Estates Private Limited

Address H.No 87 Sector 7,

Panchkula-134109, Haryana

Email:cirp.samerestates@gmail.com

...Respondent No.2

SRV Investments Through Its Proprietor, Vinod Bagai

Address H.No 87 Sector 7,

Panchkula-134109 Haryana

Email:cirp.samarestates@gmail.com

...Respondent No.3

And in the matter of I.A. No. 1408 of 2024:

Late Sh. Sanjeev Garg (Died on 27.05.2022) Through its LR

a) Paras Garg, Son

b) Seema Garg, Wife

c) Santosh Garg, Mother

Through Authority Letter issued to Sh. Paras Garg

Resident at H.no 61, Model Town Ambala City, Haryana

...Applicant

Vs.

Rahul Jindal, Resolution Professional Of Samar Estates Pvt Ltd

Regd No Ibbi/Ipa-001/Ip-P-02649/2021/14048

Address 52/24, Ramjas Road Karol Bagh

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Address H.No 87 Sector 7,

Panchkula-134109 Haryana

Email:cirp.samarestates@gmail.com

...Respondent No.3

In the main matter of:

Punjab & Sind Bank

...Financial Creditor

Vs.

Samar Estate Private Limited

...Corporate Debtor

Order delivered on: 05.05.2026

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

Present:

For the Applicants
in both Applications: Mr. Arun Kumar, Advocate

For the RP: Mr. Aalok Jagga, Advocate
Mr. APS Madaan, Advocate
Mr. Sahil Lohan, Advocate
Mr. Madhav Singhal, Advocate
Mr. Aryaman Jagga, Advocate

For the Respondent No.2: Mr. Aarush Kashyap, Advocate
Mr. Aman Kashyap, Advocate

For the Respondent No.3: Mr. Animesh Sharma, Advocate

**PER: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

ORDER

It is observed that both the I.A. No. 1406 of 2024 and I.A. No. 1408 of 2024 seeks the same substantive reliefs against the same Respondents, the two Applications are being taken up and disposed of by a common Order, for the sake of convenience.

I.A. No. 1406 of 2024 and I.A. No. 1408 of 2024

The Application bearing I.A. No. 1406 of 2024 has been filed by a Home Buyer/allottee named Seema Garg (hereinafter referred to as the **Applicant**) and the I.A. No. 1408 of 2024 has been filed by a Home Buyer/allottee named Late Shri Sanjeev Garg, through its LR (hereinafter referred to as **Applicant**) (collectively both the Applicant are known as **the Applicants**) against the

Resolution Professional/Respondent No.1, namely Mr. Rahul Jindal of Samar Estates Private Limited (hereinafter referred to as the **Corporate Debtor/CD**) under section 60(5) of the Insolvency and Bankruptcy Code (hereinafter referred to as **the Code**). The Interlocutory Applications I.A. No. 1406 of 2024 and I.A. No. 1408 of 2024 are seeking similar reliefs arising from the same factual matrix relating to their claims.

Prayer in I.A. No. 1406 of 2024 is to:

- a) Direct the Respondent No.1 to consider all payments made by the Applicant to the respondents and to consider all such amounts as recoverable from Respondent no. 2 & 3 on behalf of Corporate Debtor and to appropriately increase the admitted claim of the Applicant by sum of Rs 59,50,000/- along with Interest amount of Rs. 38,62,791/- as per details submitted by the Applicant.
- b) Direct the Respondent No.1 to recalculate the claim amount considering the delayed possession charges and rate of interest mentioned under the Buyer Agreement in the absence of a recovery certificate/court Order.

Prayer in I.A. No. 1408 of 2024 is:

- a) Direct the Respondent No.1 to consider all payments made by the Applicant to the respondents and to consider all such amounts as recoverable from Respondent no. 2 & 3 on behalf of Corporate Debtor and to appropriately increase the admitted claim of the Applicant by principal sum of Rs 59,50,000/- along with interest amount of Rs. 38,62,791/- as per details submitted by the Applicant.

b) Direct the Respondent No.1 to recalculate the claim amount considering the delay possession charges and rate of interest mentioned under the Buyer Agreement in the absence of a recovery certificate/court Order.

2. The Submissions made by the Applicants in their Applications collectively, are summarized hereunder:

(a) The Applicants submitted that in 2015, they were approached by Respondent No. 2 to purchase a flat in the project “Ess Vee Apartments” situated at Sector 20, Panchkula, to be developed by the Corporate Debtor. The total sale consideration was fixed at ₹94,00,000/- for a 3 BHK flat with servant room measuring approximately 1725 sq. ft. in Tower K, 9th floor, with an assurance of possession within 18 months. Relying upon the representations and assurances of the Respondents, the Applicants entered into an Agreement to Sell with Respondent No. 3, namely SRV Investments. It is further submitted that the Respondent No. 3 firm belongs to the erstwhile director of the Corporate Debtor, who is also Respondent No. 2, and the Applicants were assured that there was no distinction between booking directly with the Corporate Debtor or through Respondent No. 3, as the arrangement was only for accounting purposes and the ultimate beneficiary remained the Corporate Debtor.

(b) The Applicants further submitted that the claim in question of the Applicants with Respondent No.1 pertains to Apartment No. K-903 and Apartment No. K-904 and in the Project of Ess Vee Apartments Sector

20-Panchkula of the CD with total consideration of ₹94,00,000/-, out of which ₹83,00,400/- was paid, though no offer of possession has been made till date.

(c) The Applicants further submitted that at the time of booking, the Applicants paid ₹9,72,000/- to Respondent No. 3 through cheque dated 12.11.2015, and subsequently an Agreement to Sell dated 15.11.2015 was executed. The Applicants further submitted that they availed a loan of ₹75,00,000/- from Punjab and Sind Bank, and a tripartite agreement was executed between the Applicants, the Corporate Debtor, and the Bank, which was also signed on behalf of the Corporate Debtor by Respondent No. 2. Pursuant to disbursement of the loan, the total amount of ₹83,00,350/- was paid to the Respondents, receipts were issued, and a transfer letter in favour of the Applicants was also issued by the Corporate Debtor.

(d) The Applicants further submitted that despite receipt of substantial consideration, the Respondents neither handed over possession of the flat nor refunded the amount, and continued to give assurances without taking any concrete steps. Meanwhile, CIRP proceedings against the Corporate Debtor were initiated on a petition filed by Punjab and Sind Bank under Section 7 of the Insolvency and Bankruptcy Code, which was admitted by the Adjudicating Authority on 12.01.2024, and an Interim Resolution Professional was appointed. A public announcement was made on 15.01.2024 inviting claims from creditors.

(e) The Applicants submitted their respective claims in Form CA for a total amount of ₹1,36,91,146/-, comprising principal amount of ₹83,00,400/- and

interest of ₹53,90,746/- at 8% per annum. However, the Resolution Professional, after verification, admitted only a partial claim of ₹23,50,400/- towards principal and ₹15,27,955/- towards interest, while rejecting ₹59,50,000/- of principal and ₹38,62,791/- of interest.

(f) The Applicants further submitted that such partial admission of claim is arbitrary and causes grave prejudice, as it directly affects the rights of the Applicants as a homebuyer in the resolution process. It is further asserted that the entire amount paid by the Applicants ought to have been admitted. The Applicants further submitted that Respondent No. 2, being the director and agent of the Corporate Debtor, acted in a fiduciary capacity, and therefore, payments made to Respondent No. 3 cannot be treated as independent transactions but are binding upon the Corporate Debtor.

(g) In these circumstances, the Applicants challenge the action of the Resolution Professional as illegal and arbitrary, submit that relevant documents have been ignored, and assert that such rejection adversely impacts their entitlement to possession or recovery under any resolution plan. Being aggrieved, the Applicants have filed the present Application.

3. Respondent No.1 filed the following reply to both the Applications:

(a) The Respondent No.1 submitted that the Applicants have filed the present Applications seeking enhancement of their admitted claim on the basis of alleged payments made towards the apartment and interest thereon. It is contended that the Agreement to Sell dated 15.11.2015 was executed between the Applicants and SRV Investments (Respondent No. 3), and not with the

Corporate Debtor. A sum of Rs. 9,72,900/- paid by the Applicants is reflected in the said agreement and corresponding receipt issued by Respondent No.3, thereby establishing that such payments were made to a separate legal entity.

(b) It is further submitted that SRV Investments is distinct from the Corporate Debtor, and payments made to it cannot be treated as payments to the Corporate Debtor. Although the Applicants relied upon a letter (Annexure A-4) issued by the Corporate Debtor acknowledging receipt of Rs. 9,72,900/-, no other documentary evidence has been produced to show that the Corporate Debtor received or acknowledged the total claimed amount of Rs. 83,00,400/- or any additional sums. Moreover, another receipt (Annexure A-5) for Rs. 58,56,000/- has also been issued by SRV Investments and not by the Corporate Debtor, and there is no evidence to show that such amount was ever transferred to the Corporate Debtor's account.

(c) The Respondent No.1 further submitted that the Applicants claim has been admitted only to the extent of Rs. 23,50,400/- as principal, along with interest of Rs. 15,27,955/-, totaling Rs. 38,78,355/-, based strictly on the books of accounts of the Corporate Debtor which reflect actual transfer of this amount. It is emphasized that under Regulation 12(1) and Regulation 8A(2) of the CIRP Regulations, the burden lies on the claimant to provide proof of payment and acknowledgment by the Corporate Debtor. The applicants have failed to discharge their burden either in the claim form or in the present Applications, rendering the Applications non-compliant and not maintainable.

(d) The Respondents No.1 further submitted that claims of creditors in a class must be verified on the basis of documents such as Agreement to sell, allotment letters, and receipts evidencing payment to the Corporate Debtor. Since the Applicants have not furnished sufficient documentary proof showing payment of the entire claimed amount to the Corporate Debtor, the full claim of Rs. 83,00,400/- along with interest cannot be admitted. The RP acted in accordance with Regulation 8A and Regulation 16A, and the Applicants were allotted voting shares based on the admitted claim, which they exercised without protest, indicating acceptance of the admitted amount.

(e) The RP further submitted that only Rs. 23,50,400/- is traceable in the Corporate Debtor's accounts as having been transferred (through Respondent No. 3), and interest has been calculated at 8% in compliance with applicable regulations. The request for enhancement of the claim is stated to be baseless, as the remaining amounts are unsupported by the Corporate Debtor's records or receipts. The RP asserts that he has acted strictly in accordance with law and discharged his duties diligently, and therefore the present Applications are misconceived, devoid of merit, and liable to be dismissed.

4. Respondent no. 2 filed the following reply to both the Applications:

(a) The Respondent No. 2 submitted that he is the suspended Director of the Corporate Debtor, M/s Samar Estates Private Limited, and pursuant to the admission Order dated 12.01.2024 passed by this Tribunal in C.P.(IB) No. 98/Chd/Hry/2022, the CIRP has been initiated. In terms of Section 17 of the

Code, the powers of the Board of Directors, including those of Respondent No. 2, stand suspended and are no longer exercisable.

(b) It is further submitted that the present Applications are not maintainable against Respondent No. 2, as upon commencement of CIRP, the management and control of the Corporate Debtor vest exclusively with the Interim Resolution Professional/Resolution Professional under Sections 17 and 23 of the Code. Consequently, all responsibilities and obligations relating to the project “Ess Vee Apartments,” including construction and delivery of possession, fall solely within the domain of the Resolution Professional.

(c) The Respondent No. 2 further submitted that the Applicants, having voluntarily entered into an Agreement to Sell dated 15.11.2015 with Respondent No. 3 for purchase of Apartment No. K-903 and K-904, and having been substituted as allottee through Transfer Letter dated 11.12.2015, is entitled only to possession of the unit and not to refund of the sale consideration. The contractual arrangement clearly establishes the Applicant’s status as an allottee whose primary remedy lies in seeking possession.

(d) It is also contended that under the scheme of RERA and settled legal principles, an allottee who has paid consideration is ordinarily entitled to possession, and refund is an exceptional remedy available only upon specific conditions, which are not applicable in the present case. The claim for refund of Rs. 59,50,000/-, paid to Respondent No. 3, is therefore misconceived. Further, Respondent No. 2 cannot be held personally liable for any such amount, as the transaction was a voluntary commercial decision taken by the

Applicants after due diligence. It is emphasized that the Corporate Debtor had duly recognized the transfer by issuing the Transfer Letter and executing a Tripartite Agreement dated 11.12.2015 with Punjab & Sind Bank, thereby vesting all rights, title, and interest in the apartment in favour of the Applicants. In such circumstances, any claim for refund is unjustified.

(e) The Respondent No. 2 further submitted that in view of the settled principle that a company is a separate legal entity distinct from its directors, no personal liability can be fastened upon him in the absence of any allegations or evidence of preferential, undervalued, fraudulent, or extortionate transactions. Accordingly, the present Applications qua Respondent No. 2 is liable to be dismissed.

5. Respondent No. 3 filed the following reply to both the Applications:

(a) The Respondent No. 3 submitted that the present Applications itself substantiates its earlier stand taken in I.A. Nos. 1172 of 2024, 1551 of 2024, and 1431 of 2025, wherein it has consistently maintained that it is a valid financial creditor of the Corporate Debtor. It is stated that Respondent No. 3 was allotted a saleable built-up area in the project, out of which the subject flat (K-903 and K-904) formed part of its share and was validly transferred to the Applicants for consideration.

(b) The Respondent No. 3 further submitted the Applicants are wrongly seeking refund of an amount which was validly paid as sale consideration to Respondent No. 3 for transfer of rights in the apartment. The Resolution Professional has rightly rejected the claim of Rs. 59,50,000/- (along with

interest), as the said amount was paid directly to Respondent No. 3 and constitutes consideration for transfer of its independent share. It is emphasized that the Corporate Debtor and Respondent No. 3 are distinct legal entities, and Respondent No. 3 itself is a financial creditor. Therefore, the Applicant's remedy lies in seeking possession of the flat from the Corporate Debtor and not refund from Respondent No. 3.

(c) The Respondent No. 3 further submitted that its entitlement arises from a valid business arrangement with the Corporate Debtor, evidenced by MOU dated 05.04.2003, Allotment Letter dated 01.06.2006, and subsequent agreements, whereby it was allotted substantial saleable area (8,05,000 sq. ft.) in lieu of financial investments exceeding Rs. 67 crores and other contributions. The flat in question was part of this allotted inventory, and Respondent No. 3 was fully entitled to sell the same. It is clarified that no claim is raised by Respondent No. 3 in respect of this flat, and its overall entitlement is already under adjudication in pending IAs.

(d) The Respondent No. 3 submitted that the Applicants entered into an Agreement to Sell directly with it as the original allottee, and not as a representative of the Corporate Debtor. It denies any agency relationship or assurance on behalf of the Corporate Debtor. The arrangement between Respondent No. 3 and the Corporate Debtor is stated to be a substantive commercial agreement involving capital infusion and not merely an accounting arrangement. It is further highlighted that the consideration paid by the Applicants were received by Respondent No. 3 as rightful sale consideration,

and even the lending bank (Punjab & Sind Bank) disbursed funds directly to Respondent No. 3, demonstrating acknowledgment of its independent rights.

(e) It is also submitted that the Agreement to sell between the Applicants and Respondent No. 3 was executed independently for the transfer of two flats out of Respondent No. 3's own share, and not on behalf of the Corporate Debtor. Payments made and agreements executed, including initial payments and subsequent documentation, reinforce that the transaction was solely between the Applicant and Respondent No. 3.

(f) The Respondent No. 3 further relies on the execution of a Tripartite Agreement and issuance of a Transfer Letter by the Corporate Debtor to show that the transfer was duly recognized, and the Applicant was substituted as allottee. It is reiterated that the portion of the loan amount corresponding to Respondent No. 3's share was paid to it, while the remaining was paid to the Corporate Debtor. Thus, the amount of Rs. 59,50,000/- rightfully belongs to Respondent No. 3 and does not form part of the Corporate Debtor's liability.

(g) It is submitted that any obligation to deliver possession of the flat lies solely upon the Corporate Debtor after transfer, and disputes relating to possession are between the Applicants and the Corporate Debtor. Respondent No. 3 denies allegations of prejudice and asserts that the Applicant's claim for refund is legally untenable, as the consideration paid to Respondent No. 3 was for valid transfer of its independent rights. The distinction between Respondent No. 3 and the Corporate Debtor is reiterated throughout.

h) The Respondent No. 3 denies allegations of fiduciary capacity, illegality, or arbitrariness, and supports the actions of the Interim Resolution Professional as being based on correct appreciation of facts and documents. It is maintained that the rejected amount pertains to consideration paid to Respondent No. 3, while only the amount paid to the Corporate Debtor has been rightly admitted.

6. Rejoinder has been filed by the Applicants which is summarized as under:

(a) The Applicants submitted that Respondent No. 2, being Director of the Corporate Debtor, received payments from the Applicants and allotted Flat No. K-903 and K-904 in Ess Vee Apartments, Panchkula. Respondents No. 2 and 3 have admitted both the allotment and receipt of money. Any inter se dispute between the Corporate Debtor and Respondents No. 2 & 3 cannot defeat the Applicant's rights as a third-party allottee. The Applicants asserts entitlement to both the flat and the claim amount, and contends that such allotment must not be transferred to any third party under the Resolution Plan.

(b) The Applicants further submitted that the Respondent No. 3 (SRV Investment), an associate concern owned by Respondent No. 2, has also acknowledged receipt of the Applicants funds. Rejection of the claim of the Applicants would render the allotment void and deprive the Applicants of consideration paid. Internal arrangements like joint ventures cannot be used during CIRP to cancel the allotment on the pretext of non-payment to the

Corporate Debtor. Hence, the claims of the Applicants and allotment should be protected.

(c) The Applicants furthermore submitted that the payments routed through Respondent No. 3 ultimately reached the Corporate Debtor under an MOU, reflecting indirect receipt by it. The allotment was never cancelled prior to CIRP. Since Respondent No. 2 was both Director of the Corporate Debtor and proprietor of Respondent No. 3, and payments are admitted, it establishes that the Corporate Debtor effectively received the funds.

(d) The Applicants, as a bona fide third party, cannot be denied rights after making payments (including bank-financed payments through Punjab & Sind Bank). Invoking the doctrine of agency, payment to an authorized agent amounts to valid payment to the principal, discharging the Applicants liability.

(e) The Applicants further submitted that the Corporate Debtor cannot escape liability for acts of its erstwhile management. Disputes with Respondents No. 2 & 3 cannot prejudice the Applicants rights. While the Corporate Debtor may recover amounts from erring directors or initiate avoidance proceedings under IBC, bona fide third-party claims like that of the applicants must be protected and cannot be arbitrarily rejected.

ANALYSIS AND FINDINGS:

7. We have heard the Learned Counsel appearing on behalf of the Applicants as well as Respondent and have perused the relevant material available on record.

8. Upon consideration of the pleadings, documents, and submissions made by the parties, it is evident that the dispute revolves around the admissibility of the entire claim amount of ₹83,00,400/- (along with interest) against the Corporate Debtor, particularly the portion of ₹59,50,000/- admittedly paid to Respondent No.2 and Respondent No.3. The determination of this issue necessarily depends upon whether such payments can be legally attributed to the Corporate Debtor for the purpose of claim verification under the CIRP.

9. The facts of the case clearly reveal that the Applicants entered into an Agreement to Sell dated 15.11.2015 with Respondent No. 3 and not with the Corporate Debtor. The initial payment of ₹9,72,900/- made on 12.11.2015 is duly reflected in the said agreement and corresponding receipt issued by Respondent No. 3. Although the Applicants have relied upon a letter issued by the Corporate Debtor acknowledging receipt of ₹9,72,900/- towards booking of Flat No. K-903 and Flat No. K-904, no further documentary evidence has been placed on record to demonstrate that the remaining amounts forming part of the total claim- particularly ₹58,56,000/- and other sums aggregating to ₹59,50,000/- were ever received, credited, or acknowledged by the Corporate Debtor. On the contrary, receipts for these amounts have been issued exclusively by Respondent No. 3.

10. It is further borne out from the record that the Applicants availed a housing loan of ₹75,00,000/- from Punjab & Sind Bank pursuant to a Tripartite Agreement dated 11.12.2015 executed between the Applicants, the

Corporate Debtor, and the Bank. However, even this arrangement does not conclusively establish that the entire disbursed loan amount was credited to the account of the Corporate Debtor. The material on record, including the books of accounts of the Corporate Debtor as relied upon by the Resolution Professional, indicates that only a sum of ₹23,50,400/- is traceable as having been transferred into the account of the Corporate Debtor (including amounts routed through Respondent No. 3). This amount has accordingly been admitted by the Resolution Professional as the principal claim, along with interest of ₹15,27,955/- calculated at 8%, aggregating to ₹38,78,355/-.

11. The contention of the Applicants that Respondent No. 3 acted merely as an agent or conduit of the Corporate Debtor is not substantiated by cogent documentary evidence. The Agreement to Sell, receipts, and payments demonstrate that Respondent No. 3 functioned as an independent entity having its own share in the project inventory, which it was entitled to transfer. The consistent stand of the Resolution Professional and Respondent No. 3 that the amount of ₹59,50,000/- represents consideration paid directly to Respondent No. 3 for transfer of its independent rights finds support from the documents on record. Mere commonality of management or allegations of fiduciary capacity on the part of Respondent No. 2 do not suffice to disregard the separate legal personality of Respondent No. 3 and the Corporate Debtor.

12. Under Regulation 12(1) and Regulation 8A(2) of the CIRP Regulations, 2016, the burden lies squarely upon the claimant to establish the existence of

debt through reliable documentary evidence, including receipts and proof of payment to the Corporate Debtor. In the present case, except for the limited acknowledgment of ₹9,72,900/- and the traceable amount of ₹23,50,400/- in the books of accounts of the Corporate Debtor, the Applicants have failed to discharge this burden. The absence of receipts issued by the Corporate Debtor or any corroborative evidence showing transfer of the disputed amount into its accounts renders the claim for the remaining sum unsubstantiated.

13. The conduct of the Applicants is also of relevance. The Applicants were allotted voting share in accordance with the admitted claim of ₹23,50,400/- and exercised the same without protest. This conduct lends credence to the stand of the Resolution Professional that the admitted amount was accepted at the relevant stage, and the present challenge appears to be an afterthought.

14. The Resolution Professional is duty-bound to admit only those claims which are duly substantiated and reflected in the records of the Corporate Debtor. Any deviation from this principle would disturb the sanctity of the CIRP process and prejudice other stakeholders.

15. In view of the foregoing discussion, this Tribunal finds that the Resolution Professional has acted in strict compliance with the provisions of the Code and the Rules and Regulations made thereunder. The rejection of the claim to the extent of ₹59,50,000/- (along with corresponding interest of ₹38,62,791/-) cannot be faulted with, as the same is neither supported by the

books of accounts of the Corporate Debtor nor by any credible document evidencing payment to or acknowledgment by the Corporate Debtor.

16. Accordingly, the prayers seeking enhancement of the admitted claim and recalculation of the claim amount are devoid of merit and cannot be sustained. The present Applications, being misconceived and unsupported by sufficient evidence, are liable to be dismissed

17. In the result, the **I.A.(IBC) No. 1406 of 2024 and I.A.(IBC) No. 1408 of 2024** are hereby **dismissed and disposed of** .

Sd/-

**(SHISHIR AGARWAL)
MEMBER (TECHNICAL)**

Sd/-

**(KHETRABASI BISWAL)
MEMBER (JUDICIAL)
Sudesh**