BIKRAM CHATTERJI & ORS
v.
UNION OF INDIA & ORS.

I.A. No.168186 of 2018, I.A. No. 109882 of 2020,
I.A. No.114865 of 2020, I.A. No.153341 of 2019,
I.A. No.120307 of 2020, I.A. No.123299 of 2020 And
I.A. No. 6397 of 2021
(IN RE.: LA-RESIDENTIA PROJECT)
In
(Writ Petition (Civil) No. 940 of 2017)

JUNE 29, 2021

[UDAY UMESH LALIT* AND ASHOK BHUSHAN, JJ.]

Housing: Residential project – Project to be developed by the Company concerned was widely advertised through brochures and advertisements as 'Amrapali La Residentia' project, promising delivery of apartments within 36 months – Claim of flat buyers – Writ Petition filed in Supreme Court submitting that amounts invested by the apartment holders were siphoned away by the Amrapali Group of Companies – While entertaining the writ petitions, Supreme Court directed audit by forensic auditors – Observations of forensic auditor quoted with approval by Supreme Court in its Judgment dated 23.07.2019 – Another order dated 14.10.2019 subsequently passed by Supreme Court – Prayer in interim applications either seeking recall of Supreme Court orders dated 23.07.2019 and 14.10.2019 or revisit of the issue whether the Company ought to be declared as part of the Amrapali Group of Companies – Tenability – Held: Not tenable, more particularly because of the developments with respect to the instant project – Unlike all the other projects of the Amrapali Group which were made over to the NBCC, the development with respect to the instant project has always been an on-going process – Further, if the instant project is now handed over to the NBCC, it would result in escalation in costs to the detriment of the flat buyers – That apart, the interest of the Amrapali Group of Companies and consequently that of the

* Author

flat buyers who had invested money in other Amrapali Projects already stood quantified at 19.75% by Orders dated 23.07.2019 and 14.10.2019 – Considering all the features of the matter, it would not be just and proper to hand over the development at this stage to the NBCC – It would not be appropriate to recall the orders dated 23.07.2019 and 14.10.2019 or to revisit the issue whether the Company could be declared to be part of the Amrapali Group of Companies – However, directions passed to secure the amounts receivable by Amrapali Group of Companies through the instant project – Applications under consideration accordingly disposed of.

CIVIL ORIGINAL JURISDICTION: I.A. No.168186 of 2018, I.A. No. 109882 of 2020, I.A. No.114865 of 2020, I.A. No.153341 of 2019, I.A. No.120307 of 2020, I.A. No.123299 of 2020 And I.A. No. 6397 of 2021.

(In Re.: La-residentia Project)

In

Writ Petition (Civil) No. 940 of 2017.

(Under Article 32 of The Constitution of India)

Vikramjit Banerjee, ASG., R. Venkataramani, Parag Tripathi, Joy Basu, Gopal Sankarnarayanan, Sr. Advs., Ravindra Kumar, M. L. Lahoty, Paban K Sharma, Anchit Sripat, Himanshu Shekhar, Mukul Singh, Vibhu Shankar Mishra, B. V. Balaram Das, Kanak Bose, Varun Sarin, Ms. Mishika Bajpai, Ashok Mathur, Raj Kamal, Maheen Pradhan, Aseem Atwal, Kartavya Batra, Avish Bhati, Mohit Chaudhary, Ms. Puja Sharma, Kunal Sachdeva, Chowdhary Zulfar Ali, Ms. Garima Sharma, Ms. Vardhan Gupta, Paras Mithal, Parveen Kumar for M/S. Kings And Alliance LLP, MS. Sunita Yadav, Abhigya Kushwah, Siddharth Rajkumar Murarka, Pradeep Kumar Dubey, Ms. Anamika Kushwaha, Ms. Nandita Rao, Shashank Shekhar, Mrs. Mahija Reddy, K. N. Agnihotri, Virender Arora, Sanjay Kapur, Ms. Megha Karnwal, V M Kannan, Arjun Bhatia, Lalit Rajput, Yajur Bhalla, Vijay Kumar Diwedi, Akhilesh Kumar Pandey, Ashish Bajpayee, Deepak Samota, Shubham Bhalla, R. K. Awasthi, Prashant Kumar,

Ms. Ritu Arora, Piyush Vatsa, Santosh Kumar-I, Vipul Ganda, Vishal Ganda, Satyajit A. Desai, Satya Kam Sharma, Saransh Kothari, Ms. Anagha S. Desai, Pradhuman Gohil, Ms. Taruna Singh Gohil, Ashish Kabra, Mohammad Kamran, Ms. Ranu Purohit, Ms. Tanya Srivastava, Ms. Jasleen Bindra, Divyakant Lahoti, Parikshit Ahuja, Ms. Praveena Bisht, Ms. Madhur Jhavar, Ms. Vindhya Mehra, Kartik Lahoti, Ms. Shivangi Malhotra, Dharmendra Kumar Sinha, Amit Sinha, Subodh Kr. Pathak, Sunil Rai, Ms. Richa Kapoor, Kunal Anand, Ms. Shalya Agarwal, Ms. Surabhi Katyal, Ms. Monoj V George, Ranjit Philip, Ms. Bhavika, Ms. Shilpa Liza George, Syed Mehdi Imam, Mohd Parvez Dabas, Uzmi Jameel Husain, Mohd. Aamir Dubas, Ms. Jasmine Damkewala, Pallav Mongia, Ms. Vaishali Sharma, Dinesh Chander Trehan, Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Manpreet Lamba, M/S. Cyril Amarchand Mangaldas, Janender Kumar Chumbak, Ms. Radhika, Ms. Amita Singh Kalkal, Niraj Gupta, Mohd. Fuzail Khan, Mrs. Anshu Gupta, Dheeraj Nair, Kislay Kumar, Ms. Vishrutyi Sahni, Vaibhav Luthra, Ms. Mithu Jain, Shreyan Das, Rajesh P., Rahul Malhotra, Ms. Himanshi Madan, Devendra Kumar Sing, Karunakar Mahalik, Ms. Sonam Gupta, Anurag Tandon, Ms. Anuj Bhandari, Ms. Disha Bhandari, Ms. Shobha Gupta, Ms. Medha Garg, Nirmal Kumar Ambastha, Ms. Ashmita Bisarya, Dr. Amardeep Gaur, for M/S. V. Maheshwari & Co., Manoj Singh, Sanjay Kumar Visen, Arpit Rai, Aviral Kashyap, Rohit Kumar Singh, Rahul Kumar Gupta, Rohit Amit Sthalekar, O. P. Gaggar, Himanshu Shekhar, Vishnu Sharma, Ms. Rakhi Ray, Ms. Garima Prashad, Mrs. Anil Katiyar, Mukesh Kumar Maroria, S. K. Verma, Kedar Nath Tripathy, Brijesh Kumar Tamber, Christopher Dsouza, M/S. Devasa & Co., Somesh Chandra Jha, Ramesh Babu M. R., Ms. Rajkumari Banju, Vipin Kumar Jai, Praveen Chaturvedi, Ms. Anannya Ghosh, Aakarshan Aditya, G. N. Reddy, Ms. Sneha Kalita, Mr. Prerna Mehta, B. K. Satija, D. S. Chauhan, Ashwarya Sinha, T. Mahipal, Badri Prasad Singh, Chandra Prakash, Alok Tripathi, Ms. Astha Sharma, Mishra Saurabh, Aneesh Mittal, Mrs. Niranjana Singh, Sureshan P., Anas Tanwir, Pawanshree Agrawal, Ms. Suruchii Aggarwal, M/S. Karanjawala & Co., Ms. Anindita Pujari, Kaushik Choudhury, Jasmeet Singh, Pradeep Misra, Raj Bahadur Yadav, Ms. Manisha Ambwani, Mushtaq Ahmad, M. T. George, Ms. Divya Roy, Sumit Sinha, Ms. Anubha Agrawal, Aditya Jain-1, Sonal Jain,

Gaurav, Rajat Mittal, Ms. Indra Sawhney, Ms. Bharti Tyagi, Umesh Kumar Khaitan, M/S. Shakil Ahmad Syed, Gaurav Goel, Anil Kumar Mishra-I, Shantwanu Singh, Rameshwar Prasad Goyal, Sanchit Garga, Pramod Dayal, Mrs. Swarupama Chaturvedi, Ms. Mayuri Raghuvanshi, Vishal Gupta, Ms. Charu Mathur, Aman Gupta, B. Krishna Prasad, Uddyam Mukherjee, Sanjai Kumar Pathak, Deepak Prakash, Ms. Kamakshi S. Mehlwal, Ms. T. Archana, Ashok Mathur, Rishi Matoliya, Mrs. Kirti Renu Mishra, Ms. Sujata Kurdukar, Abhinav Ramkrishna, Ms. Dharitry Phookan, Advs. for the appearing parties.

Pavan Aggarwal, Ravinder Bhatia, Forensic Auditors.

The Order of the Court was passed by

UDAY UMESH LALIT, J.

1. This Order shall dispose of following three sets of applications:-

   A) I.A. No.168186 of 2018 (Z-68*), I.A. No.109882 of 2020 (Z-309* and R-103*) and I.A. No.114865 of 2020 (Z-318*) filed by the Association[1] and by some applicants who have booked apartments in the project developed by the Company[2].

   B) I.A. No.153341 of 2019 (Z-233*), I.A. No.120307 of 2020 (I-155*) and I.A.No.123299 of 2020 (I-158*) filed by the Company; and

   C) I.A.No.6397 of 2021 (Z-342*) filed by Religare Finvest Limited, the creditor of the Company.

2. By lease deed dated 03.02.2011 executed between Greater Noida Industrial Development Authority ('GNIDA', for short) and the Company, plot bearing No.GH-06A SECTOR–TECH ZONE-IV, Greater Noida was permitted to be developed by the Company on certain conditions. It was specifically stated that the Company was a special purpose company incorporated by the consortium of following six entities against whose names the respective shareholding was mentioned. The relevant clauses of the lease deed were:-

   "…The registered consortium consists of following: -

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* Court Volume Number

1 Amrapali La Residentia Flat Buyers Association

2 La-Residentia Developers Private Limited

S.No.	Name of member	Shareholding	Status
1.	M/s. Vidhyashsree BuildconPvt. Ltd.	26%	Lead Member
2.	M/s. Nishant Creations Pvt.Ltd.	19%	Relevant Member
3.	M/s. Anjali Buildcon PrivateLimited	20%	Relevant Member
4.	M/s. Agarwal Associates(Promoters) Ltd.	5%	Relevant Member
5.	M/s. Elegant Infracon PrivateLimited	19%	Relevant Member
6.	M/s. Stunning ConstructionsPrivate Limited	11%	

Whereas the above-registered consortium who jointly qualify for the bid and secured the allotment of said plot being highest bidder. They through its lead member M/s. Vidhyashree Buildcon Pvt. Ltd. have approached the lessor in accordance with clause C-8 of the brochure/bid document of the scheme to sub-divide the said plot of land with the following status of holding lease rights:-

Sl. No.	Plot No.	Sector	Divided Area (in Sq.M.)	Name of member	Status
1.	GH-06A	Techzone-IV	80026.62	M/s. La Residentia Developers Pvt. Ltd. (SPC) (SPC of M/s. Vidhyashree Buildcon Pvt. Ltd., M/s. Nishant Creations Pvt. Ltd., M/s. Anjali Buildcon Private Limited, M/s. Agarwal Associates (Promoters) Ltd. And M/s. Stunning Constructions Private Limited	Special Purpose Company
2.	GH-06B	Techzone- IV	17700	M/s. Elegant Infracon Private Limited	Relevant Member

… … …

And it has been represented to the lessor that the CONSORTIUM members have agreed amongst themselves that M/s. Vidhyashree Buildcon Pvt. Ltd. having its registered office at H.No.195, 2nd Floor, Back Side, Ram Vihar, Delhi-110092 shall remain lead member of

the consortium and lessee shall solely develop the project on the demarcated Builders Residential/Group Housing Plot No.GH-06A, Sector Techzone-IV, Greater Noida measuring an area 80026.62 sqm."

3. The project to be developed by the Company was widely advertised through brochures and advertisements as '*Amrapali La Residentia'* project, promising delivery of apartments within 36 months. The relevant portion of the brochure was:-

"Amrapali has transformed the entire concept of living with its various value added residential projects. Once more living up to its reputation it is presenting a unique residential condominium which is identified as Terrace Homes for its novel concept. Terrace Homes are 2, 3 & 4 Bedroom Apartments with individual terraces assigned to them. Three side open terrace that is virtually ocean of fresh air is a star feature of every apartment of this modern and architecturally improved apartment housing. The terraces are just imitative of the lush green lawns in private villas and serves as the lungs of the apartments. This heart of the apartment can be used for multipurpose household occasions.

Where dedication is redefined

Real Estate and construction have been redefined by Amrapali Group to such a grand extent that it has become a brand name. Amrapali Group has successfully proved its forte in varied Real Estate verticals from Residential Housing solutions to Commercial edifices to IT parks and educational institutions. In the last couple of years Amrapali Group has contributed in the phenomenal growth of real estate and infrastructure industry with many turnkey solutions. The Group strives for quality and ensures the best of technology, planning, design and construction for all of its projects. This has resulted in star projects like Amrapali Green, Amrapali Royal, Amrapali Village, Amrapali Awadh, Amrapali Vaishali and Amrapali Exotica Apartments."

4. Relying on the promises made in the brochure and believing the representation that the project was of 'Amrapali Group', various interested parties booked apartments paying booking amount running into several crores. It appears that 3256 apartments were to be constructed and developed in three phases; 1408 apartments in the first phase, 996 apartments in the second phase and 852 apartments in the third phase.

5. Writ Petition (Civil) No.940 of 2017 (Bikram Chatterji and others vs. Union of India and others) and other connected matters filed in this Court sought to highlight acts of commission and omission on part of the Amrapali Group of Companies and persons in charge of the affairs and submitted that the amounts invested by the apartment holders were siphoned away by the Amrapali Group of Companies. While entertaining these Writ Petitions, by Order dated 06.09.2018[3] this Court directed that 46 companies including the Company be audited by forensic auditors. Accordingly, the forensic auditors considered various issues and submitted their reports in February and April 2019. With regard to the project *'Amrapali La-Residentia'*, the forensic auditors noted:-

"La Residentia

A big project having more than 3,200 dwelling units was launched in 2010-11 having an equity shareholding of 19.75% in the name of Stunning Construction Pvt. Ltd.

- Stunning Construction Private Limited ('Stunning'), an Amrapali Group Company, holds 19.75% shares in the company. Stunning has been a consortium partner since beginning and land was allotted by Noida Authorities to the 5 members consortium including Stunning. The project was launched as an Amrapali group project and was marketed accordingly. As per the discussion with directors of La Residentia Developers Private Limited, they broke up with Amrapali group in 2017. 2017 is the year when writ petition was filed before the Honorable Supreme Court. It is informed to us that a marketing agreement was entered into between La Residentia Developers Private Limited and Amrapali group (name of the company not known) that Amrapali group would market its project for a consideration of Rs.16 crore. It was informed by Mr. Sanjeev Kumar (director of La Residentia Developers Private Limited and a very old friend of Mr. Shiv Priya, director, Amrapali group) that though the agreement was signed but Amrapali group didn't provide a copy of the agreement. It proves that Amrapali director were having significant influence on La Residentia Developers Private Limited that they had an authority even not to give a copy of the agreement to a person/entity who has signed it.

3 (2020) 16 SCC 375

- Out of Rs.16 Crore, which were to be paid to Amrapali Group as per the agreement, Rs.4 crore were paid to Saffron Promart Consultancy Private Limited, owned and controlled by CFO Chander Wadhwa) under a verbal instruction of Mr. Adikhari, GM/DG accounts of Amrapali group. It is to be noted that directors of La Residentia Developers Private Limited were acting and working under the supervision of Mr. Adhikari who was a middle level management officer. It indicates that the project was conceived by Mr. Anil Kumar Sharma & Mr. Shiv Priya, directors of Amrapali group and Mr. Sanjeev Kumar, Mr. Mukesh Kumar Roy and Others were only a front.
- It is very clear that there was no contribution of funds from the consortium partners. Whatever funds contributed by the consortium partners were not only withdrawn within a very short period but over and above that extra funds were given to them in the name of interest free loans and advances.
- Amrapali group companies have transferred some of their buyers to the company. We found that the list of unsold inventory was sent to Mr. Anil Sharma and it was he who decided that the following buyers from Amrapali group companies be shifted to La Residentia. This proves that La Residentia was under the direct control of Mr. Anil Sharma and Mr. Shiv Priya and is an entity of Amrapali group.
- The company is also using the Brand name/trademark of Amrapali group on its letterheads.
- The website of the company is following www.amrapalilaresidentia.com.
- When we open the website of the company, advertisement page was hiding details and it is a project of Amrapali group."

It was also observed:-

"As per Statement of Mr. Sanjeev Kumar, Director of La Residentia Developers Private Limited recorded by us, he informed that a sum of Rs.4 crores approximately, was paid as fees for use of Amrapali Brand Name to Saffron Propmart Private Limited (This Company is controlled by Mr. Chander Wadhwa CFO). No Bills have been provided by him.

Statutory Auditor CA Anil Mittal and Shri Chander Wadhwa CFO were in connivance with each other and payments were made by Shri Anil Mittal to Chander Wadhwa CFO for sharing fees received from Amrapali group for the work awarded to Anil Mittal. Chander Wadhwa is one of the masterminds along with the other promoters, directors behind the whole scam. He facilitated movement of funds by creating a web of companies within and outside the group. His relatives were made partner investor in LA Residentia and Heartbeat City Projects. Funds were invested in Patel Advance JV (Neo Town Project Noida) and Euphoria Sports City."

6. The aforementioned observations of the forensic auditor were quoted with approval by this Court in its Judgment dated 23.07.2019[4].

6.1 It must also be noted here that with respect to another project of Amrapali Group of Companies namely "Heartbeat City Project", following observations were made in the aforesaid Judgment[4].

"**35. Heartbeat City Developers Private Limited**

The project is in the name of 3 companies namely Pebbles Prolease Private Limited, Three Platinum Softech Private Limited and Baseline Infradevelopers Private Limited. The Project is an Amrapali group's project which was carved out from Amrapali Group of Companies while case was pending before Honorable Supreme Court. Funds were invested in the project from Amrapali Group through Mr. Amit Wadhwa, Mr. Amit Wadhwa was a partner of 25% each in Pebbles Prolease Private Limited and Three Platinum Softech Private Limited. Amrapali Group launched and advertised the project as Amrapali Group project and the project was named as Amrapali Heartbeat City Developers Private Limited in the agreements. Corporate office was having the same address as Amrapali Corporate Tower in Sector 62, Noida. The purpose of carving out the project from Amrapali is not known. It is informed that Mr. Vaibhav Jain and Mr. Sankalp Shukla are the key managerial persons. In the absence of accounting records, we could not proceed further on the issue."

6.2 In paragraphs 61 and 62 of said Judgment[4] some of the observations pertaining to La-Residentia, Heartbeat City, Stunning Construction Private Limited were as under:-

4 (2019) 19 SCC 161 – *at pages 280 and 281*

"… … (i). The Directors along with trust partners discreetly divided the projects into two parts:

(i) Projects in which home buyers funds were received and funds were diverted from these projects;

(ii) Projects to which home funds were diverted. These projects were subsequently separated/demerged from Amrapali Group, e.g., Heartbeat City, La Residentia, Vinayaka Square.

(j). Several dummy companies were formed in the names of office boys and peons. Technically, the allotments at the initial stage were void ab-initio. The amount received by the Companies from home-buyers was more than the amount spent on construction and for payment of the land. The sole objective of taking a loan was to divert the funds to other ventures to create assets in the name of family members and to make movies. Villas were bought at tourist destination for fun at the expenses of the middle class and low-income group people.

(k). Several companies were created solely for the purpose of routing funds. These companies did not have any material transaction as per the main object for which they were incorporated and did not have a business since their incorporation.

62. As is apparent from the report, several companies were created only to route the funds and transactions consisting of office boys, persons with no income and dummy companies in which family members and relatives were inducted as members only for few transactions, which are as under:

(1) Jhamb Finance & Leasing Private Limited.

It was under the control of Mr. Chander Wadhwa, CFO. It has advanced loans amounting to Rs.875 crores to related and unrelated entities, which are recoverable.

(2) Gaurisuta Infrastructure Private Limited It was also created for diverted funds.

(3) Neelkanth Buildcraft Private Limited

Similarly it was formed for the purpose of buying shares from J.P. Morgan at exorbitant rates, consisiting of office boys and relatives of Mr. Anil Mittal, Statutory Auditor.

(4) Stunning Construction Private Limited

As per findings of the Forensic Auditors, they should either surrender 19.75 percent of land or 632 flats."

The observations in paragraph 153 and some of the conclusions in paragraph 154 were:

"153. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home buyers as money of home buyers has been diverted due to the inaction of Officials of Noida/ Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/ leased land/ projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in projects. Homebuyers money has been diverted fraudulently, thus, fraud cannot be perpetuated against them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida Authorities have to issue the Completion/ Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month.

154. Resultantly, we order as follows:

(i) The registration of Amrapali Group of Companies under RERA shall stand cancelled;

(ii) The various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question stand cancelled and rights henceforth, to vest in Court Receiver;

(iii) We hold that Noida and Greater Noida Authorities shall have no right to sell the flats of the home buyers or the land leased out for the realization of their dues. Their dues shall have to be recovered from the sale of other properties which have been attached. The direction holds good for the recovery of the dues of the various Banks also.

(iv) We have appointed the NBCC to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC is fixed at 8 percent....."

7. Thus, the project '*Amrapali La Residentia'* was found to be coming in the second category where the funds of the home buyers were diverted and where the projects were subsequently separated from the Amrapali group. It was also found that '*Stunning Construction Private Limited*' ("*Stunning*" for short), one of the members of the consortium which had set up the Company as a special purpose company, was part of the Amrapali Group. Commensurate with the shareholding of '*Stunning' in* the Company, the direction was issued by this Court that either 19.75 per cent of the land or 632 flats constituting about 19.40 per cent of the total number of flats be surrendered by the Company; as that would be equivalent to the contribution of flat buyers which was diverted.

8. In the subsequent order dated 14.10.2019 passed by this Court, the objections raised on behalf of the Company were noted and it was observed:-

"We have heard Mr. Rakesh Khanna, learned senior counsel appearing for La Residentia. The finding recorded in the Judgment delivered by this Court that 632 flats or value of 19.75 per cent of the share has to be recovered from La Residentia. It is also pointed out that some cost of construction has been incurred by the La Residentia. While handing over the flats or for selling them that amount has to be paid to La Residentia and the remaining amount has to come to the Amrapali Group. We direct the La Residentia to submit an affidavit how much expenditure has been undertaken in the construction of each of the flat and total amount invested in the construction of 600 flats which are available for sale at present. They are injuncted from selling flats which are available. Let the affidavit be filed within fifteen days."

9. The present sets of applications are required to be considered in the backdrop of the aforesaid orders passed by this Court on 23.07.2019 and 14.10.2019.

Pertinently, when said orders were passed, an application submitted by 45 applicants being I.A. No. 168186 of 2018 (Z-68*) was already on record of this Court. This application was filed on 19.11.2018

and after referring to the brochures circulated and advertised by the Company, the application had asserted that the flat buyers had booked their apartments believing their project to be Amrapali group project. It was stated:-

"6. It is of lot of significance to state that the Coloured Brochure bears the caption "Amrapali La-Residentia" and that the project is not only designed and propagated by Amrapali Group but also bears the reference of all other Amrapali Group Projects which include "Amrapali Eden Park", "Amrapali Leisure Valley", "Amrapali Sapphire" and "Amrapali Centurion Park". Further the Allotment-cum-Flat Buyer's Agreement bears the registered address too at Amrapali Corporate Tower C-56/40, Sector-62 NOIDA, which is the corporate office of the Amrapali Group. The Demand Letters to the Home Buyers from time to time have also been issued and the name and bears the logo of "Amrapali La-Residentia" and further the payment receipts have also been issued under the same logo and head of Amrapali. Moreover, the website also indicates that it is a Amrapali Project as the web is titled as www.amrapali.in."

The application had principally prayed:-

"……

(b) pass appropriate order or direction directing delivery of the dream homes of the Applicants in Amrapali La-Residentia situated at GH-06A, Tech Zone-4, Noida Extension at the earliest;

(c) pass appropriate order fixing liabilities of the Directors of M/s. La-Residentia Developers Pvt. Ltd. for delaying the project;

(d) pass appropriate order to attach the movable/ immovable properties and bank accounts of M/s. La- Residentia Developers Pvt. Ltd. as well as its all Directors……."

However, the prayers made in this application were not granted by this Court either in its order dated 23.07.2019 or in the order dated 14.10.2019.

10. On or about 01.10.2019, IA No.153341 of 2019 (Z-233*) was filed by the Company submitting that though *Stunning* had 19.75 per cent shareholding in the Company, the Company had always maintained an independent legal existence and there was no

direct or indirect financial dependence on the Amrapali Group. As regards the arrangements entered into with the Amrapali Group, it was stated:

"The Applicant has not received any money from any group company of the Amrapali Group, save and except paid up capital of Rs. 13,580/- (Rupees Thirteen Thousand Five Hundred and Eighty Only) in the nature of contribution towards paid-up capital, received from Stunning. The said amount was received against issue of 13.85% shares in the Applicant company at the time of its inception. It is pertinent to state that even though Stunning is Amrapali Group company, there has been no inflow of funds from Stunning into the Applicant company other than the above-said amount received by the Applicant against subscription of shares.

The Applicant company had entered into a marketing arrangement with Amrapali Group where it was agreed between the parties that Applicant company would be allowed to use the name 'Amrapali' for marketing the Project. The brand 'Amrapali' at such time was well established in the real estate sector and since the Applicant was a new entrant in the business of real estate development, management of the Applicant company was of the opinion that the Project would benefit, from marketing/branding perspective, if the name 'Amrapali' could be used for marketing/branding the Project.

In light of above, for allowing the use of name Amrapali and extending branding/marketing support, the Applicant company had agreed to pay to Amrapali Group Rs.75/- per sq. ft. booked/sold in the Project, as consideration."

The basic submissions in the application were:

> "It is known to the Forensic Auditor that the Applicant is a Private limited company and Stunning being a shareholder, is only entitled to profits of Applicant company (if any) in form of distributable dividend, which would be proportionate to it shareholding in the Applicant company. Profits as such, by way of cash or otherwise, cannot be legally distributed amongst the shareholder.
>
> Accordingly, Stunning as a shareholder would only be eligible to 19.75% share in distributable dividend declared by the Applicant company after profits (if any), which are determined at the end of the Project.

> Indulgence of this Hon'ble Court is also necessary to validate the fact that the Project land cannot be apportioned/segregated to the extent of 19.75% at this stage of the Project.
>
> The Applicant would like to state that the rationale applied to arrive at 632 flats is not just and proper and if the Applicant was to comply to direction to surrender 632 flats, the number of flats would vary for the same should be arrived at, if at all, after apportioning 19.75% of the total built up space. The flats forming part of unsold inventory may not confirm to the 19.75% of the total built up space.
>
> Even otherwise, this should be subject to settlement of accounts between Applicant and Amrapali Group, wherein the Applicant is to receive amounts from Amrapali Group.
>
> Also, it is submitted that 632 flats of unsold inventory are under various stages of construction and are situated in different towers within the Project. While some form part of the inventory which is ready for handover, some are under construction and some are yet to be constructed. Accordingly, for material and actual handover of these 632 flats, complete in all respects, it is necessary to maintain continuity in construction through regular flow of funds, which will come from sale of this unsold inventory. Further, so as to facilitate overall development of the Project and handover of the units to homebuyers, it is imperative that these flats be sold and the amounts received from such sale be first utilized for construction and completion of the Project.
>
> The only viable option for the Applicant could be to offer 19.75% in profits and loss of the Applicant company (arrived at the stage of Project completion)."

Finally, the application prayed that the order dated 23.07.2019 passed by this Court be recalled or in the alternative the Company be directed to deposit 19.75 per cent of the projected profits after making due adjustments in respect of cost of construction and proportionate costs towards the development of the entire project and other amounts receivable from the Amrapali Group.

10.1 Similar submissions were thereafter made by the Company in IA No.120307 of 2020 (I-155*), filed on 11.11.2020 and in IA No.123299 of 2020 (I-158*) filed on 25.11.2020. In both these

applications, it was submitted that the Company be allowed to raise funds through sale of 632 flats, without which it would not be possible for the Company to raise finances and complete the project. In addition, certain directions which according to the Company were necessary to be passed for overall completion of the project, were also prayed for. It was submitted:

"56. That in addition to passing necessary directions to allow the Applicant to raise funds through sale of unsold inventory and also raise finance through bank/financial institution, the Applicant would request for kind intervention of this Hon'ble Court to consider passing necessary directions, as under, which would be critical in intervening circumstances, and beneficial for overall completion of the Project:

A. To begin with, this Hon'ble Court may direct the receiver appointed by this Hon'ble Court to set up, operate and be in-charge of an escrow account wherein all receivables to the account of Applicant company are deposited, whether received from sold and/or unsold inventory, in addition to funds receivable other sources (such as fresh finance raised from banks/financial institutions).

B. Further, since during the pendency of present proceedings validity of statutory approvals issued by the GNIDA has lapsed. A copy of the last validated sanction plan, which expired during November 2019, has been annexed herewith and marked as Annexure L. To facilitate overall completion of the Project, intervention of this Hon'ble Court is necessary to issue necessary directions to GNIDA to extend validity of such license/permission till anticipated date of completion of the Project i.e., December 2022.

C. Similarly, the proposed date of completion of the Project under RERA registration has lapsed as of 15.06.2019. A copy of the RERA registration has been annexed herewith and marked as Annexure M. To facilitate overall completion of the Project, intervention of this Hon'ble Court is necessary to issue necessary directions to UP RERA to extend validity of such license/permission till anticipated date of completion of the Project i.e., December 2022.

D. Intervention of this Hon'ble Court is also required in as much as to issue appropriate directions to the UP RERA Authority to recall its orders, not take any coercive measures against the applicant and refrain from passing any such orders till the disposal of the present proceedings before this Hon'ble Court.

E. In addition to foregoing, it is also imperative that directions are issued to the relevant authorities like GNIDA, UP RERA etc. not issue adverse rulings/orders/impositions against the Applicant company till anticipated date of completion of the Project i.e., December 2022.

F. It is necessary that GNIDA be directed to revalidate statement of land dues after causing reduction in the penal interest levied on land dues over last so many years. The Applicant considers itself eligible for such respite since similar benefit has been extended by this Hon'ble Court to other projects/developers as well. The Applicant also considers itself to be eligible for such relaxation since the case of Applicant company is much different from other projects of Amrapali Group where GNIDA has not been paid any amount after the initial 10% payment for the project land paid at the time of allotment. The Applicant is all the more eligible for such rebate/relaxation for the reason that the Applicant company has repaid more than the principal amount that it originally owed to GNIDA as land dues. The amount being claimed by GNIDA as on date is highly inflated, as already elaborated upon in the present application.

G. It is further submitted that GNIDA be directed to continue registering sub-lease deeds in the name of home buyers as GNIDA has paused further registrations on account of non-payment of land dues by the Applicant. Since land dues payable to GNIDA would require revalidation due to undue imposition of interest (as per directions of this Hon'ble Court), it becomes necessary registration of sale continues in favour of homebuyers of the Project, who should not be made to suffer on this account. The Applicant seeks necessary directions in this regard since

the position of Applicant before GNIDA is' not, in any way, similar to other allottees/projects/developers who are before this Hon'ble Court.

H. Intervention of this Hon'ble Court is also required particularly to the issue of other impositions made by the GNIDA on land dues payable by GNIDA. Other than the extending relaxation on penal interest imposed by the GNIDA, the GNIDA should also be issued necessary directions to withdraw certain undue impositions upon the Applicant company. Many such undue and arbitrary impositions in the name of land dues, are the reason for Applicant company being a defaulter before GNIDA despite having paid more than the principle amount originally payable to GNIDA.

In this regard, it is most important to note that the Project in question remained adversely affected between July 2011 till May 2015, for reasons which were directly attributable to GNIDA and absolutely beyond the control of the Applicant company.

The issues which hampered the Project during such period included the issue of cancellation of land allotment, farmer protests and agitation on land acquisition by GNIDA/UP State Government, issue' regarding payment of enhanced compensation to the farmers, and other related legal issues.

These issues practically detailed the progress of the Project on more than one occasion and consequently penal obligations were forcefully imposed by GNIDA upon the Applicant company for such period of disruption, rather than adequately compensating the Applicant company for stoppage of construction at the Project, for causes which were directly attributable to GNIDA.

At such time, even the burden of payment of enhanced compensation payable to farmers to end the dispute between farmers and GNIDA/State Government in respect of land acquisition, was conveniently passed onto allottees of project land like the Applicant company, which was neither anticipated nor accounted for by the Applicant company.

With respect to this issue, the Applicant company had filed a representation before the GNIDA and subsequently, Applicant company had to move a Writ Petition before the Hon'ble High

Court of Uttar Pradesh at Allahabad, for claiming benefits under the 'Zero Period Policy'. However, for lack of action on part of GNIDA, no benefit has been extended to the Applicant company on this account till date, by the GNIDA.

It is therefore necessary that such benefit is now extended to the Applicant company, firstly for the reason that such benefit is long due to come from GNIDA who has been avoiding to settle this issue with Applicant company, and also for the reason that in absence of such relaxation/respite/adjustment from GNIDA, the Project is unlikely to be net positive at the time of its completion.

I. Further, necessary directions are required for the homebuyers who should be directed to strictly pay their dues regularly. The ongoing state of affairs has resulted in homebuyers withholding release of their dues to the Applicant company, such inflow of funds being critical and necessary for overall completion of the Project. It is a matter of record that such non-payment has had a direct impact on flow of funds and pace of construction of the Project.

J. That another aspect, which if given due consideration, may lead to better profitability in the Project is in respect of loan facility availed by the Applicant Company from Religare (NBFC). The Applicant Company has already repaid an Amount of Rs. 52,61,51,242/- as against principle loan amount of Rs. 50,00,00,000/-. The situation as on date is such that the said financial institution in created lien over bank account of the Applicant Company so as to recover loan repayment (which as on date stands at Rs. 15,29,61,019/- as per demand of Religare), which has also led to immobilization of funds for utilization towards completion of Project."

10.2 IA No.123299 of 2020 referred to the arrangements arrived at by the Company and the association of Home Buyers as under:-

"38. It is also relevant to highlight here that before any homebuyer or association of homebuyers approached this Hon'ble Court with intent to deliver the project and in relation to management of funds and bring transparency and objectivity necessary to inspire confidence

of homebuyers with respect to fairness and effective management of affairs of applicant company *qua* the project, the Applicant company entered into several MOU's with representatives/ core committees of flat buyers of various towers. As per the said MOU's the home buyers have committed to contribute their dues to a designated bank account bearing no.510101004328980 being maintained by the applicant company with the Corporation Bank, Ramprastha, Ghaziabad, UP (for tower 20, 24, 25), in bank account bearing No.510341000674084 (for tower 28 and 29) and 510341000674092 (for tower 22) being maintained by the applicant company with the Corporation Bank, Sector 62, NOIDA, UP. The designated representatives of allottees/ homebuyers are joint signatories in the bank accounts, which further enables the homebuyers to keep a strict check on the source of funds and utilisation of such funds towards construction of the project. Copy of the Memorandum of Understanding entered into between the Applicant company and the homebuyers has been enclosed herewith and marked as Annexure P-4.

39. That for the foregoing paragraph, it is imperative to mention here that the homebuyers who have entered into MOU's with the respondent company have contributed to a sum of Rs.3,04,66,795/-. Likewise, if all the allottees of the project come forward and gather resources with the respondent company, the construction status shall have a significant boost. The summary with details of funds received in such designated bank accounts and amounts spent on construction and related activities in terms of the said MOU's, computation of the figure of Rs.3,04,66,795/- (1,63,74,372/- + 1,40,92,423/-) which have been deposited by the homebuyers after entering into MOU's is annexed herewith as Annexure-P/5."

11. On the other hand, IA No.109882 of 2020 (Z-309*) was filed by the Association submitting that "*Amrapali La Residentia Project*" was in every sense a project of the Amrapali Group of Companies and, therefore, the flat buyers were entitled to similar protection as was extended to the other home buyers vide order dated 23.07.2019 passed by this Court. In the additional affidavit filed on 16.11.2020 (R-103*), the Association also asserted that as many as three members of the consortium including *Stunning* were Amrapali Group of Companies and between themselves they were holding more than 65 per cent of the share capital in the Company. The details in the form of a Chart given in the additional affidavit were:-

"

S. No.	Company Name	Directors	Shareholding in Project	Comments
1	M/s Vidhya Shree Buildcon Pvt. Ltd.	i.Pankaj Jain ii.Vaibhav Jain iii. Naresh Chand Jain	Lead member 26%	Held to be Amrapali Group [Pages 40, 97, 169 of 23.07.2019] [Pages 3, 16, 21, 22 of 28.07.2020]
2	Anjali Buildcon Pvt. Ltd.	i. Mukesh Kumar Roy ii. Sanjeev Kumar	20%	Held to be front of Amrapali [Pages 40, 99, 118 of 23.07.2019]
3	Stunning Constructions Pvt. Ltd.	i. Amit Vikram ii. Amresh Kumar iii. Suvash Chandra Kumar	11%-(Amrapali) *19.75%-according to FA Report and the Main Judgment dated 23.07.2019	Held to be Amrapali Group Co., [Pages 21, 41, 188119 of 23.07.2019]
4	Nishant Creations Pvt. Ltd.	i. Sushma Bajaj ii. Kulbhushan Rai Bajaj iii. Nishant Bajaj	19%	Also Directors of Amrapali Group [Page 40 of 23.07.2019]
5	Agarwal Associates (Promoters Ltd.)	i. HarkishanKumar ii. AadityaAgarwal iii. AshishAgarwal	5%	[Taken over by Stunning]
6	Elegant Infracton Pvt. Ltd.	i. Uma Agarwal ii Abhay Kumar iii Amit Kumar Sharma	19%	Sb-Lessee of Amrapali Centurian [Page 40 of 23.07.2019]

The affidavit also gave the status of construction with regard to each of the three phases as under:

"Furthermore, the chart reveals that out of the total 3256 units to be provided by the Developer, out of which 632 units are offered by the Developer towards 19.75% of Amrapali group. However, out of the

proposed 632 units, the developer is handing over 181 units from Phase II which is 70% complete and 415 units are being offered from Phase III which is a camouflage as only 40% of the same is completed according to the developer. It is submitted that Phase III is not even anywhere near 40% completion and is actually deserted with the competition activity of both Phase II and III are at a standstill and the Developer has siphoned off all the monies collected by the home buyers and washed off his hands from the construction activity. The builder has totally failed and buyers have totally lost faith and builder in past 10 years was able to complete only approx. 30% of works in total project."

11.1 One more application being IA No.114865 of 2020 (Z-318*) was filed on 15.11.2020 by 14 applicants. This application referred to the communication dated 18.01.2020 addressed by the Company to all the flat buyers of "*Amrapali La Residentia*" Project. The text of said communication was as under:

"As you are aware of the ongoing Supreme Court on Amrapali, the Honourable Court has imposed certain restrictions on us (La Residentia Developers Private Limited). As per the injunction we have to surrender 632 flats to the Honourable Court, we are also not allowed to sell any new inventory, which has led to an extreme crunch in operational funds required to complete your flat. As a result of this ongoing case we are unable to raise funds from market either due to lack of trustworthiness."

The applicants then submitted:-

"5. That the above statement has put the applicants in a serious quandary and they are faced with a peculiar problem inasmuch as to say that vide its judgment dated 23.07.2019 in Bikram Chatterjee and Ors. vs. Union of India and Ors. (Writ Petition No.940 of 2017), the Hon'ble Court has arrived at a finding that it is Amrapali that has ownership of 19.75% of the share in the properties being built and developed by La Residentia, numbering a total of 632 flats. However, there is a great deal of uncertainty and a complete lack of clarity with respect to the remaining 80.25% of the flats/ apartments that are part of Amrapali La Residentia and a responsibility of the Respondent-builder. However, the Respondent-builder is conveniently trying to hide under the garb of and claim the cover of the Hon'ble Court's

judgment to wash its hands off the future of 80% of the home buyers who have also spent all their life savings and taken huge loans to invest in the apartments that were proposed to be built. Such homeowners as the Applicants are totally stranded and are faced with complete uncertainty with regard to the future of their homes that were being developed by the Respondent-builder.

… … …

11. That the Applicants fear that as bonafide purchasers/ home buyers whose property does not fall in the 19.75% of the share in the entire La Residentia Project, they are likely to be short-shifted as the burden upon the NBCC is colossal and it is likely that projects that have a 100 per cent involvement of Amrapali are likely to get the first preference unless a proper orders are passed by this Hon'ble Court. The promoters role, scope, responsibility, liability etc. need to be fixed as they say that 632 flats are dispersed in all the three Phases of the project and unless proper directions be issued by the Hon'ble Court the home buyers are put in severe inconveniences without a room over their head.

… … …

15. ….

r. It is further submitted that the 632 units in La Residentia surrendered to the Amrapali group are incomplete and scattered in various towers, on different floors many of which are not even completed. The situation is used by the builder to stall the progress of the construction citing the injunction orders of this Hon'ble Court."

12. Lastly, IA No.6397 of 2021 was filed on 13.01.2021 by Religare Finvest Ltd. stating that said applicant had extended financial accommodation to the Company and that the Company had mortgaged the project land and 939 flats/units with the applicant and therefore the interest of the applicant be protected.

13. Since reference was made to the order dated 28.07.2020 passed by this Court, the observations concerning Vidhya Shree Buildcon Pvt. Ltd. and those dealing with "Heartbeat City" another project of the second category[5] are extracted here for ready reference:-

5 Ref: paragraph 61 of the order dated 23.07.2019

"1. We have heard the Forensic Auditor as well as the learned counsel appearing for the parties at length. The first question arises whether the Heartbeat City Projects are of Amrapali Group, and the second question is as to the agreement entered into by M/s. Mahagun Real Estate Private Limited with M/s. Baseline Infradevelopers Private Limited.

2. It is apparent that Heartbeat City Projects were launched in the name of the 'Amrapali Heartbeat' project in 2011-2012 with Mr. M. S. Dhoni, the Brand Ambassador. The Home Buyers' agreement was entered into in the name style of Amrapali Group with the assurance that flats will be delivered within 36 months. Most of the buyers paid their dues on time, but the construction was delayed.

3. Heartbeat City Projects comprise Heartbeat City 1 (for short, HBC 1) and Heartbeat City 2 (for short, HBC 2) and Hanging Gardens in Noida. 2 The land for the respective projects was allotted in the name of Three Platinum Softech Private Limited, Pebbles Prolease Private Limited, and Baseline Infradevelopers Private Limited. The projects were launched and advertised in the name of the Amrapali Group. Phase 3 project was started in 2011-2012 in the name of Hanging Garden; however, later on, Hanging Garden project was scrapped, and the home buyers were admittedly shifted to HBC 1 and HBC 2 or refunded the amount.

4. HBC 1 comprises 759 units, and HBC 2 consists of 1217 units + shops, but construction could not progress for one reason or the other.

5. In the Audit Report, it has been found that the land in Baseline was part and parcel of HBC 1 and HBC 2 projects and in general, under the control of the Directors of HBC 1 and HBC 2 and was purchased from the funds of the customers of HBC 1 and HBC 2 and, is an integral part of HBC 1 and HBC 2 and, therefore, customers of HBC 1 and HBC 2 have the first and the full right over the land rights and on the proceeds to be received from the sale of the land can be utilised for the construction of HBC 1 and HBC 2 projects. HBC 1 has nine towers and 785 units, of which, 675 units were sold and Rs. 147 crores recoverable from sold units. HBC 2 has 12 towers

and 1282 units, out of which, 936 units were sold and Rs. 301 crores recoverable from sold units. The cost to complete HBC 1 is approximately Rs. 167.19 crores and HBC 2 is Rs. 375.64 crores, which is recoverable from unsold units.

6. Mr. Amit Wadhwa, Director of Amrapali Homes, has 25% shareholding. Mr. Akhil Kumar Surekha, who is the Director of Bihariji 3 Ispat Udyog Ltd. and JST Engineering Services Limited, has 13% and 12% shareholding respectively, total 25%. Mr. Vaibhav Jain and Mr. Pankaj Jain, Directors, are holding 10% and 15%, total 25% of the shareholding, whereas Cozi Habitat Builders Private Limited, Maa Sharda Holding Private Limited, through its Director Mr. Sankalp Shukla is also holding 25% shares. Similarly, in HBC Phase II, the shareholding pattern is similar to 25% of the group mentioned above of Mr. Amit Wadhwa, Mr. Akhil Kumar Surekha Vaibhav Jain, Mr. Pankaj Jain, and Mr. Sankalp Shukla.

7. In Baseline Infradevelopers Pvt. Ltd., it is stated that shareholding of Mr. Amresh Kumar is 8.25%, Bihariji Ispat Udyog Limited through Mr. Akhil Kumar Surekha is 8.25%, B2C Realtors Pvt. Ltd. through Mr. Vaibhav Jain and Ms. Swati Jain is 8.25%, Cozy Habitat Builders Pvt. Ltd. through Mr. Sankalp Shukla is 8.25%. Mr. Nishant Choubey and Mr. Santosh Choubey are holding 34% and 33% respectively. Mr. Nishant Choubey and Mr. Santosh Choubey did not provide documents to the Forensic Auditors; however, they possess 67% shares.

8. The following findings were recorded concerning Heartbeat City in our Judgment and Order dated 23.7.2019:-

> "35. **Heartbeat City Developers Private Limited -** The project is in the name of 3 companies namely Pebbles Prolease Private Limited, Three Platinum Softech Private Limited and Baseline Infradevelopers Private Limited. The project is an Amrapali group's project which was carved out from Amrapali Group of companies while case was pending before Honorable Supreme Court. Funds were invested in the project from Amrapali Group through Mr. Amit Wadhwa, Mr. Amit Wadhwa was a partner of 25% each in Pebbles Prolease Private Limited and Three Platinum Softech Private Limited. Amrapali Group launched and

> advertised the project as Amrapali Group project and the project was named as Amrapali Heartbeat City Developers Private Limited in the agreements. Corporate office was having the same address as Amrapali Corporate Tower in Sector 62, Noida. The purpose of carving out the project from Amrapali is not known. It is informed that Mr. Vaibhav Jain and Mr. Sankalp Shukla are the key managerial persons. In the absence of accounting records we could not proceed further on the issue."

9. Mr. Vaibhav Jain admittedly was the architect of Amrapali Group who was holding 25% shares. Mr. Akhil Kumar Surekha was also holding 25% shares in each of the projects.

... ...

14. With respect to Vidhya Shree Buildcon Private Limited, Rs.4,00,00,000/- (Rupees Four Crores) is the debit balance in the books of accounts of the Amrapali Group.

15. It is apparent that a sum of Rs.242.38 crores was handed over to Mr. Pankaj Jain (current Director of Amrapali Group & brother of Mr. Vaibhav Jain), the Director of Vidhya Shree Buildcon Pvt. Ltd.

... ...

18. The project was launched in the name of Amrapali Heartbeat City, and the agreement was entered into with the Amrapali Group by the home buyers. Cheques were issued in the name of Amrapali Heartbeat City. Letterheads of Amrapali were used for the Builder-Buyer Agreement, and the project was mentioned as Amrapali Heartbeat City. It is true canvass to suggest that the project was an independent project. We are unable to accept the aforesaid findings recorded in the Report of the Forensic Auditors. Probably, it was due to the fact that certain accounts were not made available, however, in view of the findings recorded earlier with respect to relationship and inter se transactions of the groups and parties, there is no iota of doubt that HBC 1 and HBC 2 are to be treated as the projects of Amrapali Group only and not independent projects. As per the finding, the land was agreed to be sold by Baseline as per the findings recorded in the Forensic Auditors' Report itself. The same is out of the money generated by HBC 1, and HBC 2 projects and Baseline

Infradevelopers Pvt. Ltd. is part and parcel of HBC 1, and HBC 2 projects and the buyers have the rights over the land and on the proceeds to be received from the sale of the land. We accept the said finding recorded in the Forensic Auditors Report."

14. We heard Mr. Gopal Sankaranarayanan, learned Senior Advocate for the Association, Mr. M.L. Lahoty and Mr. Manoj V. George, learned Advocates for the applicants in the first set of applications; Mr. V. Giri, learned Senior Advocate for the Company in the second set of applications; and Mr. Janendra Kumar Chumbak, learned Advocate for the applicant in the third set.

15. It was submitted by Mr. Gopal Sankaranarayanan, learned Senior Advocate:-

    a) The shareholding pattern in the tabular chart in I.A. No. 109882 of 2020 (Z-309*) disclosed that the Company was one of the Amrapali Group of Companies.

    b) Consequently, the entire project land would be part of the assets of Amrapali Group of Companies rather than restricting the share of Amrapali Group of Companies to the extent of 19.75%.

    c) If the benefit as granted in the order dated 23.07.2019 was extended, all the flat buyers would stand relieved substantially as the dues of GNIDA would stand reduced to a considerable extent in terms of the order dated 23.07.2019.

    d) The entire project ought to be directly under the control of the Court Receiver and the construction be undertaken through the NBCC[6] as was directed to be done in the other projects of the Amrapali Companies.

    Mr. M. L. Lahoty, learned Advocate appearing for the applicants supported the submissions advanced by Mr. Gopal Sankaranarayanan, learned Senior Advocate. He invited our attention to the reports of the forensic auditors and so also to the order dated 28.07.2020 passed by this Court in the matter concerning "Heartbeat City". It was submitted that the instant project and "Heartbeat City" Project stood on the same parameters and therefore similar benefits be extended to the instant project.

6 NBCC (India) Limited, formerly National Buildings Construction Corporation Limited

Mr. Manoj V. George, learned Advocate appearing for the applicants in I.A. No.114865 of 2020 (Z-318*) highlighted the predicament faced by the applicants and particularly the stand taken by the Company in its communication dated 18.01.2020.

16. Mr. V. Giri, learned Senior Advocate for the Company submitted:-

a) *Stunning* was merely a shareholder in the Company and that by itself would not make the Company a part of the Amrapali Group of Companies.

b) Beyond the amounts put in towards share capital, nothing was invested by the Amrapali Group of Companies; nor any part of money belonging to the flat buyers of Amrapali Group of Companies was used or utilized in the instant project.

c) Though the Company was not a part of Amrapali Group of Companies, the benefit in terms of order dated 23.07.2019 ought however be extended as indicated in I.A. No.120307 of 2020 (I- 155*) and I.A.No.123299 of 2020 (I-158*).

16.1 In the written note filed on behalf of the Company, following assertions were made with respect to the construction status and the escalation in costs if the project was to be handed over to the NBCC as prayed for by the Association and the applicants :-

"5. **CONSTRUCTION STATUS**

a. Unit-wise construction status of the project: Please refer: Para 35 @ Pg. 26-27 of I-158;

Total Flats in Project	3256
Total Flats sold	2642
Flats constructed	1484
Flats delivered	1143
Occupancy Certificate received	872
Occupancy Certificate applied for	612
Sub-Lease Deeds Registered	658
Unsold Inventory (comprising of 614 unsold flats and 18 cancelled allotments)	632

***It is to be noted that a sum of Rs. 145 Cr. Approx. of the current homebuyers is stuck in the unsold inventory.**

b. Phase-wise status of project: Please refer: Para 34 @ Pg. 25-26 of I-158

i. Phase-I (Comprising of 18 towers; T1- T-18, 1408 Flats): 1127 Flats/units complete in all respects have been delivered to the homebuyers and balance inventory of 313 Flats/units are at the final stage of 'finishing' work.

ii. Phase-II (Comprising 11 towers, T-19 to T-29, 996 Flats): All Flats that comprise of Phase-II inventory are also at the initial stage of 'finishing' work and delivery of units has started. Handing over of the units in Phase II of the project has also started. It is also relevant to state here that handing over of units has also started in Tower-22 in which the unit of Ms. Savita Tyagi is also situate, who is also an applicant in one of the applications on behalf of the homebuyers.

iii. Phase-III (Comprising 10 towers; T-30 to T-39 with about 852 Flats): Structuring work for 704 units out of 852 units in ten towers (Tower 30 to 39) has been completed and 'slab work; for about 37 stories/floors in these ten towers is yet to be casted."

"6. COST ESCALATION IN CASE THE PROJECT HANDED OVER TO NBCC OR THIRD PARTY: Please refer: Para 12 at Pg. 6-7 of I-155

Certain homebuyers have been seeking directions from this Hon'ble court to get the project handed over to a third party or NBCC for completion of construction. However, for the reasons stated herein below, the same ought not to be done:

a. The per square foot construction cost that LA RESIDENTIA has incurred till date works out to be Rs.1657/- which included the interest on money infused and admin expenses. Only land cost is separate from this.

b. The per square foot costing that NBCC or any third-party contractor may apply would not be less that Rs.2,550/- per sq. ft. along with 8% consultation charges of NBCC and interest of 12% on capital infused.

c. The sale price of the unsold units has been taken at Rs.2852 per sq. feet. The amount thus available from sold and unsold inventory plus amount recoverable would be Rs. 354 Crores.

d. Introduction of a third party at this stage will not only increase the timeline of the project, but also escalate the cost of completion of the project by at least 40-45%."

"The effect if the construction is complete by La Residentia Developers would be:

- The construction of the project would be completed in a fixed period of time
- The dues of GNIDA will be paid
- The bank dues shall be paid
- Pending dues of suppliers and contractors would be cleared.
- There would be money available in the kitty.

In case construction is carried out by NBCC, the effect would be:

- All the incoming monies, after deduction of the interest and consultation charges and other charges as may be applicable in favour of NBCC, would be put in Amrapali's kitty
- Additional cost of land dues to be paid to GNIDA
- No surplus funds left to pay out the various dues
- No payments to GNIDA
- No payments to the banks"

17. Mr. Janender Kumar Chumbak, learned Advocate appearing for Religare Finvest Ltd. reiterated the submissions made in I.A.No.6397 of 2021 (Z-342*).

18. The first two sets of applications principally prayed that the orders dated 23.07.2019 and 14.10.2019 be recalled or revisited. The Association and the applicants supporting the Association submitted that the Company be declared to be part of the Amrapali Group of Companies and consequently the entire project be developed by the NBCC under the control and supervision of the Court Receiver. On

the other hand, according to the Company, it was never part of the Amrapali Group of Companies and at best one of the companies of the Amrapali Group could be said to be a shareholder to the extent of 19.75% and that beyond such share capital no other amount was invested by the Amrapali Group of Companies. Thus, according to the Company it could not be directed to surrender 19.75% of the project land or 632 flats as was directed in the order dated 23.07.2019. However, both the sets of applications desired that the same benefits as given to all the flat buyers from Amrapali Group of Companies be extended and the project be relieved of the requirement of paying the dues of GNIDA like other Amrapali projects.

19. When the order dated 23.07.2019 was passed by this Court, I.A. No. 168186 of 2018 (Z-68*) was pending on the file of this Court. Similarly, I.A. No. 153341 of 2019 (Z-233*) was filed on 01.10.2019 i.e. before the subsequent order dated 14.10.2019 was passed by this Court. The prayer made in the latter application that the order dated 23.07.2019 be recalled was not favourably considered on 14.10.2019. On the contrary, after noting the submission made on its behalf, the Company was directed to file an appropriate affidavit indicating the expenditure required for constructing 632 flats so that appropriate adjustments could be effected.

    In the face of these developments, it would not be possible for us to entertain the prayer made in the concerned interim applications either seeking recall of the orders dated 23.07.2019 and 14.10.2019 or revisit of the issue whether the Company ought to be declared as part of the Amrapali Group of Companies, more particularly because of the developments that have taken place with respect to the instant project.

20. As indicated in the tabular charts which were part of the written note filed on behalf of the Company, out of 3256 flats to be constructed, 1484 flats have been fully constructed and possession of 1143 flats has already been given to the concerned flat buyers. As per said charts, the work of construction with respect to phases one and two is at an advanced stage. Further, according to the figures indicated therein, per sq. ft. cost of construction incurred by the Company has been to the tune of Rs.1657 per sq. ft. whereas the per sq. ft. cost of construction by the NBCC, if at this juncture the project is handed over to the NBCC, would be in the region of Rs.2550 per

sq. ft. along with 8% consultation charges of the NBCC. Thus, if the instant project is now handed over to the NBCC, it would result in escalation in costs to the detriment of the flat buyers. The figures also show that as against the original liability of Rs.155.10 crores, the Company has already discharged the liability towards the dues of GNIDA to the extent of Rs.117.10 crores.

21. It is true that the "Heartbeat City" Project coming from the second category[5] was dealt with by this Court in its Order dated 28.07.2020 and was directed to be taken over by the NBCC like other Amrapali Projects. However, the distinguishing feature as noticed in paragraph 4 of the Order dated 28.07.2020 was that there was absolutely no progress with respect to said project. In contradistinction, the instant project has progressed to a considerable extent. At least 1143 flat buyers have received possession while the work of construction with respect to phases one and two is at an advanced level. Further, the interest of the Amrapali Group of Companies and consequently that of the flat buyers who had invested money in other Amrapali Projects already stands quantified at 19.75% *vide* Orders dated 23.07.2019 and 14.10.2019. Therefore, even if there could be some similarity with regard to the status of the instant project as against "Heartbeat City" Project, considering the fact situation on record, that by itself would not afford sufficient reason to entertain the submissions on behalf of the Association and the applicants supporting the Association.

22. Even if the entire project cannot be made over to the NBCC for the reasons stated above, another aspect of the matter that may require consideration is whether the component representing 632 flats could still be made over to the NBCC. However, that course would also not be feasible as those 632 unsold flats are spread over in various towers; some of them are in Phase one while the others are in Phases two and three.

23. An important aspect of the matter is that unlike all the other projects of the Amrapali Group which were made over to the NBCC, the development with respect to the instant project has always been an on-going process. In all the other projects of the Amrapali Group, either there was no development right from the inception or even if some development had been initiated, the same was completely at a standstill when the matters were taken up for consideration by this Court.

24. Considering all these features of the matter, in our considered view, it would not be just and proper to hand over the development at this stage to the NBCC as prayed for by the Association and the applicants supporting the Association. We, therefore, do not deem it appropriate to recall the orders dated 23.07.2019 and 14.10.2019 or to revisit the issue whether the Company could be declared to be part of the Amrapali Group of Companies. Similarly, we also do not deem it appropriate to extend the benefits as prayed for either by the Association or by the Company. We, therefore, reject the first two sets of applications. No separate orders are called for in the third set.

25. However, certain directions must be passed to secure the amounts receivable by the Amrapali Group of Companies through the instant project.

26. It is therefore directed:-

    a) The Company shall be entitled to continue with the construction and development of the instant project;

    b) 632 flats which were subject matter of Orders dated 23.07.2019 and 14.10.2019 shall be allowed to be sold by the Company to the interested persons or parties at a fair price or value, provided :-

        i) all the concerned transactions including the execution of appropriate documents or deeds are counter-signed by the Court Receiver or his nominee;

        ii) The price or value at which said flats are to be sold is certified by the Court Receiver to be fair and appropriate.

        iii) all the amounts received by way of such transactions of sale are credited to a separate account completely under the control of the Receiver and/or his nominee;

        iv) the cost of construction with respect to those 632 flats, upon due certification by the Chartered Accountants of the Company and to the satisfaction of the Receiver, shall be made over to the Company; and

v) it shall however be open to the Receiver to give such advances towards the construction of these 632 flats from and out of the amounts deposited in the account as specified hereinabove, depending upon the stage and progress of construction.

c) The injunction with respect said 632 flats, as directed in the Orders dated 23.07.2019 and 14.10.2019, shall stand modified to the extent indicated hereinabove.

d) The difference between the amounts received from the concerned flat buyers for purchase of said 632 flats and the expenditure incurred on cost of construction shall finally be credited to the general account maintained for the benefit of the flat buyers of the Amrapali Group of Companies.

27. Thus, all the applications under consideration stand disposed of in aforesaid terms but without any order as to costs.

Headnotes prepared by: Devika Gujral

Result of the case:
Applications disposed of.