

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 3274 of 2026 & I.A. No. 5865 of 2026

In
CA (AT) (Ins) No. 518 of 2025

IN THE MATTER OF:

Santosh Kumar

...Appellant(s)

Versus

IDBI Trusteeship Services P. Ltd. & Anr.

...Respondent(s)

Present:

For Appellant : Mr. Aryansh Tripathi, Adv.

For Applicant : Mr Ramji Srinivasan, Sr. Adv. along with Ms. Shefali Munde, Ms. Eshna Kumar, Mr. Shashank Sekar Sharma & Mr. Sabari Kirubakaran. C.

For Respondents : Mr. Arun Kathpalia, Sr. Adv. along with Mr. Sanjeev Sharma, Ms. Divya Joshi, Ms. Anushree Poddar & Mr. Aditya Dhupar, for R-1.
 Mr. Rachit Ranjan for IRP

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

IA No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025- In view of the identical issues involved in both the applications the same are being disposed of by passing this common order.

2. IA No. 3274 of 2026 has been filed by One Rajinder Singh who is claiming himself to be the owner of 8.137 acres of land of Casa Espana Phase-II Project requesting to grant the following prayers:

“In light of the facts and law as stated in the present application, this Hon’ble Tribunal may kindly be pleased to:

(a) Allow the present application and permit the Applicant to intervene in the captioned proceedings, and upon such intervention, be pleased to grant the directions and reliefs

sought by the Applicant/Intervenor as set out herein below:

- (i) Exclude the property of 8.137 acres of CASA Espana Phase II belonging to CASA Espana Phase II from the asset of the Corporate Debtor;
- (ii) Exclude the project CASA Espana Phase II from the corporate insolvency resolution process;
- (iii) Set aside the order passed by the Hon'ble NCLT;
- (iv) Remand the matter to the Learned Adjudicating Authority for fresh consideration/review, with appropriate directions to ensure adequate safeguards and protection of the rights and interests of the land in question;
- (v) Direct restoration of the original title of the land in favour of the Applicant, as held prior to the passing of the impugned order;

(b) Pass any other and further orders as this Tribunal may deem fit and proper in the facts and circumstances of the case”.

3. The IA No. 5865 of 2026 has been moved by the RP of the CD i.e. ATS Infrabuild Pvt. Ltd. for grant of following prayers:

“● In light of the foregoing facts and circumstances, it is most respectfully prayed that this Hon'ble Appellate Tribunal may be pleased to:

- a) Pass an order directing the Respondent, Mr. Rajinder Singh, his agents, employees, contractors, associates, and any person acting for or on his behalf, to forthwith cease and desist from carrying out any and all construction, development, excavation, piling, or any other activity of any nature whatsoever on the project site “ATS Casa Espana Project,” Phase II, Sector 121, SAS Nagar, Mohali, Punjab;
- b) Pass an order directing the Respondent, his agents, employees, and contractors to forthwith vacate the Subject Property and remove all their labour, material, machinery, and belongings therefrom;
- c) Pass an order restraining the Respondent, his agents, employees, and associates from entering upon, interfering with, alienating, encumbering, transferring, or creating any third-party right, title, or interest in the Subject Property or any part thereof, during the pendency of the present appeal;
- d) Direct the Station House Officer of the concerned Police Station to provide all necessary assistance to the

Applicant/IRP in implementing the orders of this Hon'ble Tribunal and in preventing any further illegal activity on the Subject Property; and

• *e) Pass any other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case”.*

4. Shri Ramji Srinivasan, Ld. Sr. Counsel for the Applicant in IA No. 3274 of 2026 submits that aforesaid application was moved by the IRP namely IA No. 5865 of 2026 by suppressing the facts and by misleading the court the IRP has procured an order of status quo.

5. It is further submitted that by moving aforesaid IA No. 5865 of 2026 the IRP has sought stay on construction being carried out by the applicant/ land owner on his own land of 8.137 acres wrongly claiming that the said land is part of CD's asset and it was suppressed that the JDA dated 21.11.2017 as well as the POA dated 21.11.2017 has been revoked and terminated by the landowner long before the initiation of CIRP.

6. It is vehemently submitted that the land owner had entered into a JDA dated 21.11.2017 for proposed development of Phase-II of Project Casa Espana whereby the CD was given development rights over the subject land admeasuring 8.137 acres and the landowner also executed a power of attorney in favour of the CD, however when nothing was done over the subject land for over 6 years land owner revoked JDA vide letter dated 24.03.2023 and the POA was also cancelled by a registered cancellation deed of date 04.05.2023 and none of these documents have been challenged by the CD so far before any competent court.

7. It is vehemently submitted that the Suspended Board of CD has acknowledged the termination of the JDA and POA executed by the land

owner and has also given NOC to the land owner to develop the land with the help of any other entity.

8. It is further submitted that it is an admitted fact that not a single booking of any allottee has been made with regard to the land owned by the land owner and it is not a case where any third party rights has been created.

9. It is further submitted that the CD in utter violation of the agreement has mortgaged the land of the land owner and has secured loan from the financial creditor, without knowledge of the land owner and in this regard the financial creditor has initiated the proceedings before the DRT however DRT Chandigarh restrained financial creditor from taking possession of the subject land and the land owner is still in possession of the same.

10. It is further submitted that since the mortgage of subject land to the financial creditor (FC) was disputed, the FC filed a civil suit being civil suit no. 42 of 2023 against the CD and land owner seeking declaration that mortgage is valid and subsisting and also sought permanent injunction from creating third party interest, wherein the FC admits that the JDA dated 21.11.2017 has been terminated and also made a statement that they are not seeking stalling of the constructions made by the land owner but no third party right should be created.

11. It is further submitted that the land owner places the factum of MOU with 'Glencrest' dated 29.10.2023 and after noting the same the Ld. Civil Court has not passed any injunction against the Glencrest.

12. It is further submitted that since the land owner has terminated the JDA and POA well before the initiation of CIRP proceedings against the CD

he filed an intervention petition bearing IP No. 26 of 2024 before the Ld. Adjudicating Authority and produced all relevant documents, however the same was dismissed by passing the order of even date when the Section 7 petition was admitted against the CD.

13. It is further submitted that the Suspended Director of the CD has filed the instant appeal wherein the land owner has moved this application requesting to exclude the land of the land owner from the CIRP of the CD as the same is having no connection with the CIRP of the CD.

14. It is further submitted that this Appellate Tribunal was pleased to pass an interim order in the appeal on 27.03.2025 directing the RP not to take any further steps and to keep the CD as a going concern, however the IRP sent letter to the applicant land owner to seize construction activities over his land and on this the land owner filed instant application being IA No. 3274 of 2026 and requested to allow intervention and exclusion of the land owned by the applicant- land owner from the assets of the CD with other consequential prayers.

15. It is further submitted that an effort is being made by the FC to connect the CIRP of the CD with its security interest, however both are separate proceedings and the FC has already instituted DRT proceedings for the recovery of the money allegedly advanced to the CD by creating a charge over the land of the applicant however, the land in any case may not be treated as the property or assets of the CD when the JDA and POA has been cancelled by the applicant about two years prior to the initiation of the CIRP and when the NOC has also been granted by the CD to the applicant to develop his land with any other developer. Thus there was no occasion for

the IRP to have moved any application before this Appellate Tribunal for obtaining interim stay over the construction activities being undertaken by the applicant.

16. It is further submitted that against the order of the status quo passed by this appellate Tribunal the applicant immediately approached the Hon'ble Supreme Court and by passing the order dated 31.08.2026, Hon'ble Supreme Court directed that the application filed by applicants i.e. IA No. 3274-3275 of 2026 and by IRP IA No. 5865 of 2026 shall be taken up and disposed of together on or before 02.09.2026 or any other date at the earliest.

17. It is vehemently submitted that a party seeking equitable relief from court must come with clean hands however the IRP has concealed material facts from this Appellate Tribunal and therefore his application is liable to be dismissed on this ground alone.

18. It is further submitted that once a contract has been terminated much prior to the commencement of CIRP then the adjudicating authority or this Appellate Tribunal have no jurisdiction over the said property as held by the Hon'ble Supreme Court in ***GUVNL vs. Amit Gupta (2021) 7 SCC 209 and TCS Ltd. vs. Vishal Ghisulal Jain (2022) 2 SCC 583.***

19. It is further submitted that the present proceedings are only concerned with the existence or non-existence of the development rights of the CD over the subject property however by cancellation of the JDA, well before the initiation of CIRP, the CD is not having any development rights and therefore the RP stepping into the shoes of the CD cannot claim any right over the subject land. In this regard the reliance has been placed on **A**

I.A. No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025.

A Estates Pvt. Ltd. vs. Kher Nagar Sukh Sadan Co-operative Housing Society Ltd., (2025) SCC Online Supreme Court 2579.

20. It is vehemently submitted that the land owners constitutional right to enjoy his property is being attempted to be defeated by the IRP of the CD and therefore the IA No. 3274 of 2026 deserves to be allowed and the IRP's IA No. 5865 of 2026 should be dismissed with exemplary cost.

21. In written submissions Ld. Counsel for the Appellant has relied on following case laws:

(i) Welcom Hotel and Ors. vs. State of Andhra Pradesh (1983) 4 SCC 575

(ii) SP Chengalvaraya Naidu vs. Jagannath (1994) 1 SCC 1

(iii) Prestige Lights Ltd. vs. SBI (2007) 8 SCC 449

(iv) KD Sharma vs. SAIL (2008) 12 SCC 481

(v) Amar Singh vs. UoI (2011) 7 SCC 69

(vi) Kishore Samrite vs. State of UP (2013) 2 SCC 398

(vii) Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta (2021) 7 SCC 209

(viii) Tata Consultancy Services Ltd. vs. SK Wheels Pvt. Ltd. (2022) 2 SCC 583

(ix) AA Estates Pvt. Ltd. through its (RP) Harshad Shamkant Deshpande and Anr. vs. Kher Nagar Sukhsadan Co-Operative Housing Society Ltd. and Ors., 2025 SCC OnLine SC 2579

(x) Municipal Staff Om Satlaj Co-Op Hsg. Sty. Ltd vs. State of Maharashtra and Ors. (2025) ibclaw.in 1780 HC

(xi) Uttar Pradesh Housing and Development Board vs. K.S.N Buildwell Pvt. Ltd. and Anr. (2026) SCC OnLine NCLAT 942.

(xii) *Krishnadevi Malchand Kamathia and Ors. vs. Bombay Environmental Action Group and Ors.* (2011) 3 SCC 363

(xiii) *I.S Sikandar vs. K. Subramani and Ors.* (2013) 15 SCC 27

(xiv) *Sangita Sinha vs. Bhawana Bhardwaj and Ors.* (2025) 11 SCC 98

(xv) *Chairman of SBI and Anr. vs. M.J. James.* (2022) 2 SCC 301

(xvi) *DLF Home Developers Ltd. vs. Shipra Estate Ltd. and Ors.* (2021) SCC OnLine Del 4902

(xvii) *Her Highness Maharani Shantidevi P. Gaikwad vs. Sayjibhai Haribhai Patel and ORs.* (2001) 5 SCC 101

(xviii) *Victory Iron Works Ltd. vs. Jitrendra Lohia and Anr.* (2023) 7 SCC 227.

(xix) *KS Manjunath and Ors. vs. Moorasavirappa and Ors.* 2025 SCC OnLine SC 2378

(xx) *Brajesh Kumar Tripathi and Anr. vs. Hasti Mal Kachhara and Ors.* 2026 SCC OnLine NCLAT 931

(xxi) *Padia Timber Company Pvt. Ltd. vs. Board of Trustees of Vishakapatnam.* (2021) 3 SCC 24.

22. It is submitted that as held in **Krishnadevi Malchand Kamathia and Ors. Vs Bombay Environmental Action Group and Ors., (2011) 3 SCC 363** and **I.S Sikandar Vs K. Subramani and Ors., (2013) 15 SCC 27** termination of an agreement must be specifically challenged before a court/tribunal to be treated as bad in law and an unchallenged termination cannot later be questioned and absence of prayer for declaratory relief that cancellation of the agreement is bad in law, a suit for specific performance is not maintainable (**Sangita Sinha Vs Bhawana Bhardwaj and Ors. (2025) 11 SCC 98**).

23. It is further submitted that not challenging the termination of an agreement coupled with conduct consistent with acceptance, amounts to deemed acceptance of that termination. **(Chairman of SBI and Anr. Vs M.J. James. (2022) 2 SCC 301) and** a construction/development contract requiring continuous day-to-day court supervision cannot, as a matter of law, be specifically enforced, and a party may terminate if the other side fails or refuses to perform its obligations. **(DLF Home Developers Limited Vs Shipra Estate Limited and Others. (2021) SCC OnLine Del 4902, Her Highness Maharani Shantidevi P. Gaikwad Vs Savjibhai Haribhai Patel and Ors. (2001) 5 SCC 101)**

24. It is further submitted that in **Victory Iron Works Ltd Vs Jitendra Lohia and Anr. (2023) 7 SCC 227** Hon'ble Supreme Court held as under: mortgage rights can amount to an ownership interest, making development rights an "asset" of the corporate debtor while in the case at hand the JDA/POA was terminated, unconditionally accepted by the CD, and an NOC was given to a new developer.

25. It is also submitted that in **KS Manjunath and Ors. Vs Moorasavirappa and Ors. 2025 SCC OnLine SC 2378**, Hon'ble Supreme Court held that where a contract is non-determinable, it cannot be terminated unilaterally, and the terminating party must approach a court for declaration however in the instant case the JDA was a determinable license, and substituted performance was already undertaken with a new developer and for the same reason the law laid down in **Brajesh Kumar Tripathi and Anr Vs Hasti Mal Kachhara and Ors. 2026 SCC OnLine NCLAT 931** by this Appellate Tribunal may be distinguished.

26. It is also submitted that in **Padia Timber Company Pvt Ltd Vs Board of Trustees of Vishakapatnam. (2021) 3 SCC 24** Hon'ble Supreme Court held that acceptance of a contract must be unconditional; a conditional acceptance means the offeree/party never actually revoked the contract but the case at hand is to be distinguished as there was no such conditional element in the present termination.

27. Shri Arun Kathpalia, Ld. Sr. Counsel appearing for the financial creditor/IDBI Trusteeship Services Ltd. and Ld. Counsel for the IRP submits that there is no merits in the submissions made by Ld. Counsel for the applicant-Rajinder Singh as the JDA entered between the Rajinder Singh and CD/Infrabuild (CD) could not be terminated as the same was non-determinable and the power of attorney which was executed by the applicant was also irrevocable and therefore both these agreements could not be terminated or revoked unilaterally.

28. Ld. Sr. Counsel have drawn our attention towards the clauses 2.1, 10.1.7, 10.1.10 of JDA and submits that these clauses clearly set out the grant of development rights as well as authority under the power of attorney as irrevocable and also that the disputes if any shall not affect the development on the land.

29. It is further submitted that clause 12 of the JDA clearly states that owner shall not revoke the development rights so granted to the developer nor shall it be entitled to terminate this agreement for any reasons whatsoever.

30. While relying on the law laid down by the Hon'ble Supreme Court in ***KS Manjunath and Ors. vs. Moorasavirappa Alias @ Muttanna Chennapa Batil, (2025) SCC On Line 2378*** precisely on para no. 8, 43, 55 and 62 to 65, it is submitted that the test of determinability of contract is that a contract cannot be terminated so long as the other party remains willing to perform its part and in the instant case the JDA does not give any right to land owner to terminate the JDA for any cause or at will

31. It is further submitted that in view of the Manjunath (supra) unilateral termination of a non-determinable contract is impermissible and where a party claims to have reasons for terminating such non-determinable contract the onus is on it to seek a declaration as to the validity of such termination. Reliance is also placed on para no. 42 and 43 ***of Brajesh Kumar Tripathi and Anr. vs. Hasti Mal Kachhara and Ors., (2026) SCC On Line NCLAT 931*** in order to show that when a contract contains a non-termination clause it cannot be terminated unilaterally, more so if third party rights have been created on the basis of such agreement.

32. It is further submitted that the JDA and Power of Attorney (POA) were simultaneously executed and created an interest in the land in the form of development rights in favour of the CD, thus the POA vests the CD with agency coupled with interest and the POA executed for consideration is irrevocable in view of Section 202 of the Indian Contract Act, 1872. Reliance in this regard is placed on ***M.S. Ananthamurthi and Anr. vs. J Manjula etc., (2025) INSC 273.***

33. It is further submitted that the single reason which has been argued on behalf of the landowner for termination of JDA is gross breach and delay

allegedly committed by the CD in completing the construction however, this is not the ground stated in the termination letter and this ground is on the face of it fails. As per clause 19 of the JDA the CD was obliged to complete the construction over the land within 60 months from the date of sanction of building plans and from obtaining other applicable approvals. Thus the five-year period was to be reckoned from the date of sanction of building plans and necessary approvals and not from the date of JDA and admittedly the DTCP license was renewed on 24.08.2020 and building plans were sanctioned on 02.05.2022 and therefore on 07.06.2022 the land owner and CD executed another agreement in the nature of an addendum to the JDA, acknowledging that the necessary permission and approvals for carrying out constructions were received on 15.02.2022 and 22.05.2022 and therefore the five-year period for construction was required to be reckoned from 2022 and the same will extend up to 07.06.2026. However, in less than a year after execution of this agreement the land owner terminated the JDA, in May 2023 and therefore the whole narrative set up by the land owner is ex-facie false.

34. It is forcefully submitted that the CD has never consented or accepted the termination of JDA and the reliance of the land owner on three letters dated 24.03.2023, 24.05.2023 and 26.05.2023 to infer the termination of the JDA and acceptance of it by the CD is wrong. The letter dated 24.03.2023 was replied by the CD by letter 06.04.2023 wherein it is categorically stated that the CD is committed to complete the entire project therefore the termination was not accepted by the CD.

35. It is also submitted that in the letter dated 24.05.2023 there is no indication either of acceptance of termination and even the letter dated 26.05.2023 cannot be said to be an acceptance as the same was expressly provided a condition precedent i.e. post settlement with the NBFC/Lender as per letter dated 24.05.2023 and therefore the acceptance was not absolute as required under Section 7 of the Contract Act. Reliance in this regard has been placed on ***M/s Padia Timber Company Pvt. Ltd. vs. The Board of Trustees of Vishkhapatnam Port Trust, (2021) INSC Page 5.***

36. It is also submitted that the development rights acquired by the CD constitute an asset of the CD as held by the Hon'ble Supreme Court in ***Victory Iron Works Ltd. vs. Jitender Lohia and Anr., (2023) 7 SCC 227*** and therefore the IRP is duly empowered under Section 18 (1) of the IBC to include these developmental rights of the CD over the land as an asset of the CD.

37. It is also submitted that aforesaid applications are being disposed of under the orders of the Hon'ble Supreme Court within the stipulated timeline and therefore the financial creditor is arguing on the material which is already available on record and therefore the filing of any reply or objection to the IA No. 3274 of 2026 is not a condition precedent to oppose the application moved by the land owner.

38. It is also submitted that the reliance of the Ld. Counsel for the appellant on the condition of payment of Rs. 50 Crore as contained in letter dated 26.05.2023 is contrary to clause 3.4.1.2 of the JDA and the limited question present before this Appellate Tribunal is as to whether the land owner could terminate the JDA in May, 2023. It is further submitted that *I.A. No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025.*

the land owner cannot take any advantage of pleadings filed before the Civil Court at Mohali and a perusal of the facts recorded in the order dated 29.11.2023 passed by the Civil Court at Mohali are being misconstrued by the land owner and the order itself shows that the reasons for not passing any injunction against Glencrest was that it was not a party to the civil suit, however no comment was made by the Civil Court regarding the validity of the termination of the JDA. Thus the application moved by the land owner is liable to be rejected and the IRP is fully empowered to take possession of the land, in view of the development right created in favour of the CD which are its assets.

39. Having heard Ld. Counsel for the parties and having perused the record it is reflected that vide order dated 04.03.2025, passed by the Ld. Adjudicating Authority in CP IB No. 555 of 2023 the CD i.e. ATS Infrabuild Pvt. Ltd. was inducted into the CIRP on an application filed by the IDBI Trusteeship Services Pvt. Ltd. under Section 7 of the IBC. In the said petition land owner filed an intervention application being IP No. 26 of 2024, however by passing a separate order of date 04.03.2025 this application was dismissed on the ground that whether a particular assets form Part of the CD estate is an issue that can be examined at the appropriate stage, if necessary, during CIRP by IRP/RP and CoC however at the stage of admission of Section 7 petition the adjudicating authority has no role in determining whether a particular asset belongs to the CD or not.

40. The Suspended Director of the CD challenged the admission order of CIRP initiation before this Appellate Tribunal by filing CA (AT) (Ins) No. 518 of 2025 and by passing order dated 27.03.2025 this Appellate Tribunal *I.A. No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025.*

directed that in the facts of present case no further steps shall be taken in pursuance of the impugned order, however, the IRP shall see that CD is run as going concern.

41. During the pendency of the appeal IA No. 3274 of 2026 was filed by the land owner Rajinder Singh on 16.04.2026 with the prayers of this application have already been reproduced in paragraph no. 2 of this order. Subsequently IA No. 5865 of 2026 was also moved by the IRP on 13.08.2026 with the prayers reproduced in para no. 3 of this order.

42. This Appellate Tribunal in view of the urgency shown by the IRP and to preserve the property of the CD heard the application 5865 of 2026 on 20.08.2026 and directed the parties to maintain status quo on the subject property, till the next date of listing and further provided opportunity to the parties to complete pleadings with regard to the application no. 5865 of 2026 and applications no. 3274 and 3275 of 2026, moved by the land owner.

43. Feeling aggrieved by the order dated 20.08.2026, the land owner Rajinder Singh filed Civil Appeal No. 1203 of 2026 before the Apex Court and on 31.08.2026, the same was disposed of by passing the following order:

“1.Heard Mr. Dhruv Mehta, Ld. Sr. Counsel appearing for the appellant.

2.The only grievance of Ld. Sr. Counsel appearing for the appellant is that the National Company Law Appellate Tribunal, Principal Bench, New Delhi (for short, the NCLAT”) has taken up IA No. 5865 of 2026 filed on 25th July, 2026 first and passed the impugned order.

According to Ld. Sr. Counsel, the two interlocutory applications numbered as IA No. 3274 and 3275 of 2026 filed by the appellant on 16th April, 2026 ought to be taken

up first before any adjudication is made on IA No. 5865 of 2026.

3. We notice from the impugned order all the applications are coming on 2nd September, 2026.

4. We have no doubt that the NCLAT will take up all the three applications together and pass appropriate orders. Considering that interim order is operating against the appellant, an endeavour should be made to dispose of the applications on 2nd September, 2026 itself or on such earlier date that the NCLAT may keep the matter.

5. With the above observations, the appeal stands disposed of”.

44. In compliance of the aforesaid order passed by the Hon’ble Supreme Court we are disposing the IA No. 3274 and 5865 of 2026 filed by the land owner and IRP respectively.

45. Perusal of the record would reveal that earlier a JDA was entered into by the CD with one Shiwalik Site Planners Ltd. (Shiwalik) over 17 acres of land owned by Shiwalik for development of Phase-I and on 24.07.2014 a deed of full and final settlement was executed between Sardara Singh, Balbir Singh and Others as first party and Shiwalik as second party and Evergreen Infrastructure Pvt. Ltd. as third party/confirming party. The opening part of this agreement in recital 2 states that as only 25 acres project is got approved this settlement deed is only and primarily between Shri Sardara Singh (father of Applicant–Rajinder Singh) and Shiwalik with regard to land admeasuring 8 acres (owned by Sardara Singh) and 17 acres (owned by Shiwalik) and all other except Sardara Singh were excluded from any liability benefit claim or interest accruing from that agreement. Relevant clauses of this agreement are reproduced as under:

“3. AND WHEREAS all requisite approvals have been obtained, and the residential project has been launched on the said proposed land of 17 acres owned by the Second

party with the name of ATS-Casa Espana (hereinafter referred to as Said project). Based upon this, and receipt of CLU the second party had entered into a Collaboration agreement with ATS Infrabuild Private Limited, 711/92, Deepali, Nehru Place, New Delhi-110019(hereinafter referred to as Developer) for development of the said project. The parties have therefore now agreed to execute this settlement so that full and final allotment of areas may be processed by the Second party in favour of first party.

4. AND WHEREAS it may be noted that in between the period of agreement and settlement, Shri. Netarpal Singh and Shri. Surender Pal Singh have already sold their shares and transferred all their rights to Shr. Sardara Singh who is now the bonafided claimant of the share of Sh. Netarpal Singh and Sh. SurenderPal Singh (a copy of their duly registered agreement is attached herewith as Annexure 'A').

5. AND WHEREAS it may also be noted that in between the period of agreement and settlement Sh. Balbir Singh S/o Late Waryam Singh R/o Mallian Khurd, Jalandhar mentioned above as part of the **First Party** have already agreed to sell his shares and transfer all his rights to Sh. Sardara Singh S/o Late Sh. Babu Singh R/o Village Farid mentioned above in the **First Party**, who will be now the bonafide claimant of the share of Sh. Balbir Singh (a copy of the agreement is attached herewith as Annexure 'B')

NOW THIS DEED OF SETTLEMENT WITNESSETH AS FOLLOWS:

1. **THAT** the second party owns approx 17 acres of land in Sec 121, Mohali, near verka plant on NH-21. The second party had desired to make the said land usable and wanted to give it shape into a project by adding nearby land parcel of 8 acres on right side of road when approaching from Verka Plant to Kharar.

2. That the first party and third party successfully collaborated the said land parcel of 8 acres approx with the Second party enabling the Second party to obtain license on the said owned land parcel of 17 acres. Residential project in the name of ATS-Casa Espana has been launched on the said land parcel of 17 acre with duly approved plans and other Govt. approvals.”

46. Thus it is reflected that by entering into this agreement the 8 acres of land owned by Sardara Singh was added to the project which was being

constructed on 17 acre of land owned by Shiwalik and the Shiwalik with regard to the said land had already entered into a collaboration agreement with ATS Infrabuild Pvt. Ltd. (CD) which is being termed as the second Phase of the project by Ld. Counsel for the land owner. The settlement agreement also provides in Annexure B, C and D the amount which will be paid and apartments allotted to the first party i.e. Sardara Singh.

47. It is also reflected that an addendum to the above stated settlement deed was also executed between Shiwalik, Rajinder Singh and Sardara Singh on 21.11.2017, which provides that the parties have arrived at an understanding and entered into this addendum which provides that Shiwalik being the license holder is raising a group housing Casa Espana Project on 25 acres of land and consequent to collaboration agreement dated 20.06.2011 and pooling of approximately 8 acres of land by Sardara Singh would extend full support and allow use of license for the development of 8 acres of land pooled by Rajinder Singh being the new owner and he (Rajinder Singh) will get it developed by the same builder from whom the land of first party has been developed i.e. ATS Infrabuild Pvt. Ltd. and the first party Shiwalik agrees to allow the developer (CD) to use the license which is in the name of Shiwalik, only after the developer/ CD signs the agreement with Shiwalik. The terms and conditions of using license and other conditions were also stated in this addendum i.e. that land owner will give Super Build Up Area @ 26400/- per sq. ft. in terms of 8 apartments (four from its own share and four from allocated by ATS Infrabuild) in terms of development agreement dated 21.11.2017 to the Shiwalik, allotment of 17 apartments of 3300 sq. ft. each in favour of Rajinder Singh instead of

Sardara Singh in Tower 1 of Casa Espana and also that Rajinder Singh has stepped into the shoes of his father Sardara Singh.

48. On 21.11.2017, Joint Development Agreement i.e. JDA was also executed between Rajinder Singh land owner/first party, ATS Infrabuild Pvt. Ltd./CD/ second party and Shiwalik/confirming party/licensee. The relevant clauses of this agreement are reproduced as under:

“V. The Owner and Confirming Party' had also assured the Developer that The Director General of Town and Country Planning (“DTCP”) has granted a license bearing no. LDC- 14/2013 dated 8.07.2013 (the “License”) for development and construction of a group housing colony on the Project Land apart from other land parcels in favour of the Confirming Party. However, the said License was expired on 07.07.2016. The Owner and Confirming Party has confirmed that they have already filed the renewal application and are hopeful to get the same renewed at the earliest. The Confirming Party have assured to the Developer that he is not in breach of any term / condition of the License or related documents / agreements or the applicable law. Any penalty, expenses and other risks on account of breach of obligations of Confirming Party/Owner shall solely be on account of Owners and it shall keep indemnified the Developer from the same.”

2 ARRANGEMENT

2.1 Grant of the Development Rights

2.1.1 The Owner hereby irrevocably, absolutely and unconditionally grants, transfers and assigns to the Developer, the entire uninterrupted, exclusive, full and free right to construct, develop and market the Project on the Project Lands, in such manner as is deemed fit by the Developer, and the Developer hereby acquires the same from the Owner, on the terms and conditions contained hereunder. (All such rights to construct, develop and market the Project and all other rights and entitlements vested with the Developer on the Project and the Project Land under this Agreement including on Developer's Demarcated Area are hereinafter collectively referred to as the "Development Rights")

3. DEVELOPMENT RIGHTS

3.1 *The Owner has under this Agreement granted the entire Development Rights to the Developer. The Developer may undertake the development of the Project over the Project Land either by itself or through competent contractors, including these appointed as the Project Team, and subdivide the work or appoint sub-contractors as it may deem fit and proper.*

3.2 *The Developer shall be entitled to do all things, deeds and matters pertaining to all the development activities on the Project Land and develop the Project Land in any manner it may deem fit and proper and for that purpose approach any Governmental Authority' or any other body or in respect of any acts, deeds, matters and things which may be done or incurred by the Developer as also to sign all letters, applications, agreements, documents, court proceedings, affidavits, and such other papers as may be from time to time required in this behalf. The Developer shall also be entitled to appoint the Project Team of their choice, and also apply for quotas, of all controlled building material such as cement, steel etc. to the relevant authorities for construction and development and sale thereof and Owner shall render all possible assistance and do all acts and things as may be requested by the Developer in this regard to enable the Developer to undertake the development of the Project on the Project Land*

3.4 *Notwithstanding anything contained to the contrary,*

3.4.1 *The Developer shall be free and entitled to develop the Project Land in any manner that it may deem fit and proper and Owner shall not do any act or thing or omit to do any act or thing that may in any manner prejudice the right of the Developer to develop the Project Land in the manner it deems fit.*

3.4.12 *The Developer shall be entitled to create equitable mortgages / charges / encumbrances/ raising construction finances etc. of any nature whatsoever on the Project Land or any part thereof to be constructed on the Project Land and the Development Rights assigned hereunder, without making the Project Land Owner and Confirming Party liable for repayment. All Liabilities in this regard shall be discharged by the Developer alone and in case of default by the Developer. The Developer undertakes to indemnify the Project Land. The Owner undertakes and agrees to provide original title papers, chain, documents etc. required for the said purpose and also undertakes to sign and execute the necessary papers for creation of equitable mortgage/charge/ encumbrance etc. without being personally liable and responsible for repayment. Further, Owner will provide adequate*

authorization in favour of Developer by way of general power of attorney to execute all documents and undertakes all necessary steps, including deposit of original title deeds to effect such equitable mortgages / charges / encumbrances/ raising construction finances etc. of any nature whatsoever on the Project Land or any part thereof for the Project to be constructed on the Project Land.

6. AUTHORISATION TO THE DEVELOPER

Land Owner to safeguard the interest of the Developer shall execute the POA in favour of the Developer to enable the Developer to secure plans, licenses and/or other Approvals or permission(s) for the development of the Project Land and to enable the Developer to develop the same and exercise the Development Rights thereon on. In addition, Owner shall sign and execute such other documents, papers and other agreement(s). application(s), powers of attorney that may be required by the Developer for undertaking the Project.

10 OBLIGATION OF THE PARTIES

10.1.2 *The Owner has handed over the peaceful and vacant possession of the Project Land to the Developer*

10.1.7 *The Owner shall upon execution of the POA, nor do any act or deed that may have the effect of cancelling or revoking the same, or in any manner prejudicing or affecting the power/authority vested in the Developer.*

12 TERMINATION

12.1 *In the event of breach of any terms and conditions of this Agreement by any Party, the other Party shall be entitled to seek specific performance of this Agreement against the defaulting Party and neither Party shall be entitled to terminate this Agreement.*

12.2 *The Parties recognize and acknowledge that the Developer will be investing substantial sums of money and has entered into this Agreement on the specific understanding that the Project Land Owner shall not revoke the Development Rights so granted to the Developer hereunder nor shall it be entitled to terminate this Agreement for any reason whatsoever. Nothing shall prevent the Parties from enforcing their rights under this Agreement in accordance with Applicable Law.*

17 DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

17.1 *In the event of any dispute arising between the parties relating to this Agreement or any part thereof the*

same shall be referred to the sole arbitration of an arbitrator mutually appointed by both the parties. Upon the parties failing to agree to the appointment of a sole arbitrator the same shall be appointed through the Court in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 or any modification or re-enactment thereof for the time being in force. The venue of Arbitration shall be at Mohali only.

19 Construction:

Subject to (a) the provisions hereof and (b) the occurrence of a Force Majeure Event(s) the development and construction of the Project and bringing the same to the stage of completion and occupation will be completed by the Developer within the period Sixty (60) months from the date of sanction of building plans and from obtaining other Applicable approvals, Permits including registration with RERA with a further grace period of 6 (six) months, provided that the development, construction and Completion of the Project is not in any way adversely affected by breach of any representation warranties or covenants of Owner and/ or Confirming Parties or of Encumbrances, if any on the title of the Land and/ or the Project Land.

49. It is also reflected that an irrevocable POA was also executed on 21.11.2017 by land owner Rajinder Singh in favour of CD/ATS Infrabuild Pvt. Ltd. 21.11.2017 the relevant clauses of the same are also reproduced as under:

A. I am the sole and exclusive Owner and is in possession of the immovable property admeasuring approximately 58 Kanal 4 Marla (7.275 acres) located at Village Badmajra. Distt. Mohali, Punjab (hereinafter referred to as the "Project Land"), the details of which are contained in Schedule A hereto ("Schedule Land").

B. We have entered into a Development Agreement dated [•] (hereinafter referred to as the "Agreement") with ATS Infrabuild Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at 711/92, Deepali, Nehru Place, New Delhi -110019 represented herein by (*) (hereinafter referred to as the "Developer" which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) in terms of which the entire

Development Rights over Schedule Land has been, granted exclusively to the Developer. The Schedule Land is the Project Land (as defined in the Agreement).

C. *We recognize that the Developer has invested substantial money for the development of the Project on the Schedule Land contemplated under and requires enabling powers to perform its functions and/or obligations under the Agreement.*

D. *Accordingly, I am desirous of executing in favour of the Developer this irrevocable power of attorney in consideration of the obligations undertaken by the Developer under the Agreement authorizing the Developer to deal with the Schedule Land and exercise all rights in respect thereof which we hereby do in the manner hereinafter appearing.*

9. *To develop the Schedule Land on such terms and conditions as may be deemed fit and to take steps in this regard to alienate, encumber, convey, sell, exploit, transfer, mortgage, charge, lease, license or otherwise deal with the building/ units therein together with proportionate land in any manner as it may deem fit in order to give effect to the provisions of the Agreement.*

10. *To sign on my behalf and create mortgage over the Schedule Land or any portion thereof by way of English Mortgage/ deposit of title deeds/ simple mortgage or in any other manner as it may deem fit. The Owner shall not be liable for the repayment or any financial obligation on the same.*

17. *To borrow money (s) from any financial and banking institutions and / or institutions and / or private parties by offering the Schedule Land as security to pay loans, other financial facilities and assistance from such persons and/or institutions and on such terms as the Developer may deem fit”.*

50. It is also relevant to mention here that a registered agreement was also executed between the land owner Rajinder Singh and CD ATS Infrabuild on 07.06.2022. Relevant Clauses of the same are also reproduced as under:

“WHEREAS the license dated 08.07.2013 bearing reference no. 14/2013 is granted to M/s Shiwalik Site

Planners Pvt. Ltd. (License Holder) for developing a residential group housing project namely "CASA ESPANA" at village Badmajra, Sector 121 District S.A.S. Nagar on land which also includes the Project Land of the Owner. Further, license dated 08.07.2013 bearing reference no. 14/2013 has been renewed by Greater Mohali Area Development Authority on 24.08.2020 vide reference no. STP/2020/1847 (hereinafter referred to as "Development License").

WHEREAS now the revised layout plan has been approved by Competent Authority vide Memo Number GMADA/DTP/A-2/ 2022/345 dated 15.02.2022 and the building plans of the project have been sanctioned vide Letter Number GMADA/SDO(B)/ 2022/8339 dated 02.05.2022. Wherein the Second Phase of the project comprises of 6 residential towers of 54 flats, each and 4 shops along with upper and lower basement comprising parkings, community center, sports center and common areas. The total saleable area of the 324 residential apartments is 11,80,320 sq. ft and total saleable area of 4 shops is 1012 sq. ft. The Second Phase of Project shall be known as 'Casa Espana Phase-II'.

WHEREAS the Owner and the Developer, by executing this Agreement in continuation to the Development Agreement dated 21.11.2017, are further agreeing as follows:

A. This Agreement shall be read in continuation of the Development Agreement dated 21.11.2017 and the terms thereof shall remain same and binding on the parties herein, except in so far they have been modified herein.

B. Words defined in the Development Agreement shall have the same meaning as used in present Agreement.

C. Unless agreed between the parties in writing, this Agreement shall remain in force indefinitely until such time as the termination procedures in the Development Agreement are invoked, upon which the Agreement shall cease.

Now, the Owner has transferred his entire share of 35% saleable area referred above to the Developer m/s ATS Infrabuild Pvt. Ltd. on the mutually agreed below mentioned terms and conditions: -

1.1 In consideration of transfer of 35% share saleable area by Owner to the Developer, amount payable to the Owner Sh. Rajinder Singh by Developer M/s ATS Infrabuild Pvt. Ltd. shall be as follows:

On Sale Price of Rs.	5000/- per sq.ft.	5500/- per sq.ft.	6000/- per sq.ft.	6500/- per sq.ft.
Landowner Share Guaranteed	Rs.150 Crores	Rs.150 Crores	Rs.150 Crores	Rs.150 Crores
Landowner Incremental Share	Rs.12 Crores	Rs.20 Crores	Rs.20 Crores	Rs.50 Crores

Note: Sale price means average sale price achieved inclusive of BSP; Parking, Power Back-up and PLC (if any) but excluding EDC, GST & IFMS.

The guaranteed landowner's share of Rs. 150 Crores shall remain unaffected irrespective of the sale prices at different rates and the same shall be supplemented by incremental share, as projected in the table above.

1.4 The planned construction time frame for project is 4 years 6 months with a grace period of 3 months except for any force majeure as defined in clause number 18 of the Development Agreement dated 21.11.2017. In case of delay beyond this stipulated period of construction an interest of 12% per annum will be paid to the Owner on due amount.

5. TERMINATION

The parties recognize and acknowledge that the Developer has invested substantial sums of money and has entered into Development Agreement and this agreement on the specific understanding that the Owner shall not revoke the Development Rights so granted to the Developer in Development Agreement and under this agreement and shall not be entitled to terminate Development Agreement or present agreement for any reason whatsoever. Nothing shall prevent the parties from enforcing their rights under this Agreement or in Development Agreement in accordance with Applicable Law.

51. Having heard Ld. Counsel for the parties and having perused the record it is reflected that the case of land owner Rajinder Singh is that when the construction was not started by the CD on his land admeasuring approx. 8 acres, he cancelled the JDA on 24.03.2023 and POA was also cancelled vide registered cancellation deed dated 04.05.2023. There is no booking from any homebuyer in respect to the project which was to be constructed over the land of the land owner and also that the CD had already granted no objection certificate to the land owner to get his land developed through some other developer (Glencrest) through letter dated 26.05.2023. Thus the land owner retains complete ownership title and possession over the land and since it had cancelled the JDA and POA well before the initiation of CIRP, the CD was not having any right over the subject land and the land owned by the applicant could not be included in the CIRP of the CD.

52. While the case of the IRP and the financial creditor is that irrevocable JDA and POA were executed by the land owner in favour of the CD and development rights were transferred in favour of the CD by the land owner and in pursuance of which the CD mortgaged the land and took loan facility from the financial creditor for the development of the project. Thus according to them when the JDA and POA were irrevocable and could not be terminated on the happening of any event, the cancellation of the JDA unilaterally by the land owner will not affect the development rights owned by the CD and since the development rights are the assets of the CD the RP is having right to take possession of this land under Section 18 (2) of the IBC.

53. It is also the case of the financial creditor and IRP that CIRP has been stayed by this Appellate Tribunal and RP could not take possession of the land himself and therefore to stop the construction activities being illegally done by the land owner an application was moved before this Appellate Tribunal whereon a status quo order has been passed. Similar application was also moved before the Ld. Adjudicating Authority.

54. It is also the case of the FC that a fresh agreement was executed between CD and land owner on 07.06.2022 whereby the land owner transferred his entire share of 35% saleable area and guarantee share of land owner was stipulated as 150 Crore and now the land owner now could only claim this amount in the CIRP of the CD.

55. It is also the case of the RP and FC that by executing agreement dated 07.06.2022 the construction time frame was stipulated as four years and six months with a grace period of three more months and in case of delay the interest @ 12% was to be paid to the land owner by the CD and thus the time up to four and a half years was available to the CD to complete the construction which falls till the end of the year 2026 as the agreement was executed in June, 2022. Thus the JDA could not be terminated by the owner.

56. Ld. Counsel for the land owner however submits that even irrevocable contracts could be terminated for the default of the other party. He also submits that this Appellate Tribunal has been misled by the IRP in not informing that the JDA has already been terminated before the commencement of the CIRP.

57. Having considered and perused the JDA and POA executed by the land owner, it is revealed that JDA as well as POA, both were irrevocable and could not be unilaterally revoked. By executing JDA dated 21.11.2017 development rights were given to the CD and it is also reflected that when this JDA was being executed on 21.11.2017, the license granted to the Shiwalik for development and construction of group housing colony on the project land apart from the other land parcel, in favour of the Shiwalik had already expired on 07.07.2016. This license was granted on 08.07.2013 and the renewal of the same has already been applied by the Shiwalik. Thus the license prima facie appears to have been obtained for development of 25 acre of land i.e. 8 acre land owned by the Sardara Singh (Father of Rajinder Singh) and 17 acres owned by Shiwalik. JDA dated 21.11.2017 would further reveal that wide powers were granted therein to the CD to do all required for the development of the project land.

58. Clause 3.4.1 of the JDA restrains the owner of land not to do or omit to do anything that may be prejudicial to the rights of the development and the developer was also entitled to create equitable mortgage/charge etc. raising, construction finances on the project land. Owners were also obliged to provide the title deeds of the land for this purpose. The owner was also directed to execute POA.

59. Clause 12.2 of the JDA specifically stipulates that as the developer shall invest substantial sum, the land owner shall not revoke the development rights granted to the developer nor it shall be entitled to terminate the agreement for any reason whatsoever.

60. Clause 12.1 also states that though there may be dispute between the parties for breach of the terms and conditions of the agreement and damages can be levied against the defaulting parties but neither party shall be entitled to terminate the agreement. Significantly in clause 19 of the JDA time period for completion of the project was stipulated as 60 months from the date of sanction of building plans and from obtaining other applicable approvals.

61. Thus it was clearly stipulated that the completion of work would be done within 60 months with a further grace period of 6 months, but this period is to be reckoned from the date of sanction of building plans and other approvals.

62. Ld. Counsel for the FC and RP has drawn our attention towards the agreement dated 07.06.2022 executed between land owner Rajinder Singh and M/s ATS Infrabuild Pvt. Ltd. (CD), which has been brought on record by none other than the land owner himself with the reply filed in IA No. 5865 of 2026 and the initial two recitals of this agreement stated in paragraph no. 50 of this judgment would evidently show that on 24.08.2020 the license of Shiwalik with regard to the subject land was approved by the competent authority and the revised lay out plan was also approved by the competent authority on 15.02.2022. Thus it is evident that before 15.02.2022 no construction over the subject land could be done by the CD and this fact was also known to the land owner. This agreement of date 07.06.2022 has one more clause i.e. clause no. 1.4 which provides that plan construction time frame for the completion of the project was provided as four years six months with a further grace period of six months. Thus according to Ld. Counsels for the FC and IRP the time up to the last of the year 2026 was

I.A. No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025.

available with the CD to complete the work. Therefore, there was no occasion for the land owner to have unilaterally terminated the JDA on the ground that no work has been done by the CD till 2023.

63. We also notice that in JDA dated 21.11.2017, 60 months (5 years) time period was granted which was to expire on 21.11.2022 and the agreement dated 07.06.2022 was executed within the period of 5 years provided by JDA dated 21.11.2017 and agreement dated 07.06.2022 also acknowledges the JDA dated 21.11.2017.

64. Therefore, we prima facie are in agreement with the submissions of Ld. Counsel for the FC and RP that the ground of non-execution of work by the CD, which has been taken as a ground for termination of the JDA was not available to the applicant-Rajinder Singh and it could not be said that the CD was at default on the day when the JDA is claimed to have been revoked.

65. It is also evident that by agreement dated 07.06.2022 the time up to the end of the year 2026 was available with the CD to complete the work, failing which consequences has been given in the agreement itself. Significantly, in agreement dated 07.06.2022 it is also stipulated that owner shall not revoke JDA or agreement dated 07.06.2022 for any reason whatsoever and nothing shall prevent the parties from enforcing their rights under the agreement or JDA as per applicable laws.

66. Now we should have a look on Power of Attorney which will suggest that it is also irrevocable and recital C and D of it reveals that as the developer has invested substantial money for the development of the project

it requires enabling powers to perform its functions and obligations and the irrevocable power of attorney has been executed for this purpose.

67. It is further revealed that by this irrevocable POA blanket powers have been given to the CD. Therefore, it is crystal clear that the JDA and POA were absolutely irrevocable and could not be terminated by any party to these agreements. Ld. Counsel for the F.C. has relied on K S Manjunath (supra) on the issue as to whether an irrevocable agreement could be terminated.

68. In the facts of Manjunath (supra) the original vendors executed an unregistered Agreement to Sell (ATS) on 28 April 2000 for 354 acres of land in Basavanakoppa for ₹26,95,501/- receiving earnest money of ₹2,00,000/- and further payments totalling ₹8,12,500. A related partition suit filed in 2001 led to a status-quo order that delayed completion; the vendees completed the required tenure conversion and tenant relocation, but the vendors later issued a termination notice in March 2003 citing the pending litigation and a vendor's death. After the 2001 suit was withdrawn in 2007, the vendors sold the land to subsequent purchasers for ₹71,00,000/- prompting the original vendees to file a suit for specific performance. The Trial Court held that the ATS and payment of earnest money were proved, the vendees were ready and willing to perform, and the suit was within limitation and maintainable without seeking cancellation of the later sale deeds. However, it found the subsequent purchasers to be bona fide buyers without notice of the ATS, denied specific performance on the ground that it would cause hardship, and instead awarded the vendees a refund of ₹8,12,500/- with 9% interest. On appeal the Hon'ble High Court reversed

this finding. It held that the subsequent purchasers had knowledge of the earlier ATS and of the termination notice, so their purchase was deliberate and not bona fide. The Court further ruled that the vendors' unilateral termination was incomplete and ineffective because they never refunded the advance. Consequently, the Hon'ble High Court decreed specific performance and the subsequent purchasers were directed to execute sale deeds in favour of the original vendees and put them in possession upon payment of the balance consideration, to be completed within three months.

69. In the background of the aforesaid facts on an appeal preferred by the subsequent purchasers the Hon'ble Supreme Court in para no. 43,62,65 and 66 opined as under:

"43. Thus, in view of the above discussion, the following principles of law are discernible:

(i). Unilateral termination of the agreement to sell by one party is impermissible in law except in cases where the agreement itself is determinable in nature in terms of Section 14 of the Act of 1963;

(ii). If such unilateral termination of a non-determinable agreement to sell is permitted as a defence, then virtually every suit for specific performance can be frustrated by the defendant by placing an unfair burden on the plaintiff, who despite performing his part of the obligations and having showcased readiness and willingness, would require to also seek a separate declaration that the termination was bad in law. In such cases, the burden cannot be casted upon the plaintiff to challenge the alleged termination of agreement;

(iii). Where a party claims to have valid reasons to terminate or rescind a non-determinable agreement to sell, with a view to err on the side of caution, it should be such terminating party, if at all, who ideally should approach the court and obtain a declaration as to the validity of such termination or rescission, and not the non-terminating party. However, this must not mean that the defendant (the terminating party) in such cases would mandatorily be required to seek a declaration because Sections 27 and 31 of the Act of 1963 respectively, while using the phrase

“may sue” merely give an option to any person to have the contract rescinded or adjudged as void or voidable;

(iv). Once the alleged termination of a non-determinable agreement in question is found to be not for bona fide reasons and being done in a unilateral manner on part of the defendant, it cannot be said that any declaration challenging the alleged termination was required on part of plaintiff;

(v). If a contract itself gives no right to unilaterally terminate the contract, or such right has been waived, and a party still terminates the contract unilaterally then that termination would amount to a breach by reputation, and the non-terminating party can directly seek specific performance without first seeking a declaration; and

(vi). In the event it is found that the termination of agreement to sell by the defendant was not valid, then such an agreement to sell will remain subsisting and executable”.

62. Since in principle unilateral termination of the contract is impermissible except where the agreement is determinable within the meaning of Section 14 of Act of 1963, it also becomes necessary, at this juncture, to examine whether the ATS dated 28.04.2000 was in its nature determinable. This question requires to be answered on a scrutiny of the terms of the ATS and the nature of the rights and obligations flowing therefrom.

65. Further, as laid down in DLF Home (supra), the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed in Affordable Infrastructure (supra), where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.

66. Applying these principles, the ATS in the present case cannot be said to be a determinable contract. Viewed in light of the classification as set out in A. Murugan(supra), the ATS would squarely fall within category (v) as mentioned above. The ATS was devoid of any clause enabling termination for convenience or otherwise empowering either party to terminate unilaterally. The only

conceivable circumstance in which ATS could be brought to an end in the present case was upon a breach of a condition by either of the parties. Thus, the original vendors did not possess any contractual right to terminate the ATS in the absence of default by the original vendees. The grounds cited in the notice of termination dated 10.03.2003, namely, the subsistence of a status quo order and the death of one of the original vendors cannot be said to be based on any default or breach by the original vendees. The original vendees had performed their part by paying a substantial amount and were also ready and willing to perform the terms of ATS.

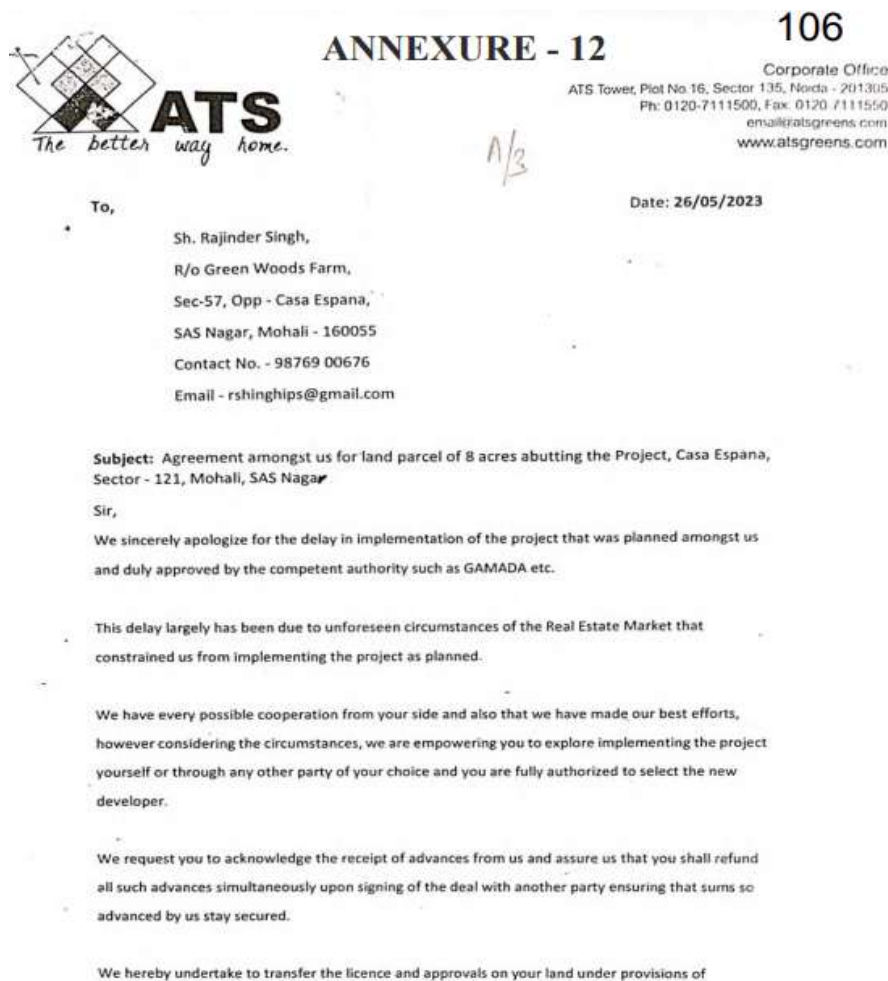
70. Thus it is clear that when the other party is willing to perform the contract it would not be open for the other party to the contract to unilaterally terminate the same and such contract could only be terminated if the other party is at default. Prima Facie vide contract dated 07.06.2022 the time to complete construction was available to the CD till the end of the year 2026 and therefore, in our considered opinion the land owner could not unilaterally terminate the JDA in the year 2023.

71. Now we peruse the communications which have taken place between the land owner and the CD, on which much emphasize has been laid by Ld. Counsel for the land owner.

72. It was on 24.03.2023, land owner, according to him, has revoked JDA by allegedly sending a letter by post. We notice that the grievance which has been shown therein is not with regard to the non-construction of work. In fact, the ground taken therein is with regard to the dispute pertaining to payment and creation of charge on the land of the land owner. A reply to this letter has been sent by the CD wherein the termination has not been consented and it is informed that project loan is Rs. 145.85 Crore and also that they are launching Casa Espana Project –II soon. Thereafter

on 04.05.2023, the POA appears to have been cancelled by registered deed. On 24.05.2023, it is replied by the CD that out of the loan taken on the project, Rs. 50 Crore loan is apportionable to the land parcel owned by the land owner and also that it shall be appreciable if this amount is returned to NBFC by the land owner on behalf of the CD, which will render the land absolutely encumbrance free from CD and NBFC. Thus it was a conditional acceptance or a counter proposal which was given by the CD which was required to be accepted by the land owner.

73. By letter dated 26.05.2023 the CD has replied and relevant part of this communication is reproduced as under:



legislations relevant and in vogue, post settlement with the existing dues of NBFC/ lender.

We admit and undertake that except for the amount mentioned in letter no 1/52023 dated on 24th May 2023, we have no claim on the land and the project thereon that was due to be implemented on the land of your good - self. This letter of confirmation is sufficient for you to proceed for a deal by yourself or in an association with any third party. This letter of confirmation is self-explanatory, expressing our gesture of sincerity towards you and it may be taken as sufficient as our endorsement and confirmation of our acceptance of your arrangements with any other third party for the same project.

We are hereby giving consent cum confirmation of post settlement with the NBFC/Lender as per letter no.1/52023 dated 24th May 2023 our relinquishing our right that existed in any whichever way on the project proposed on your owned land giving irrevocable NOC for your entering into a deal with third party or implementing the project directly by yourself:

Date:

Thanks & Regards

Yours Sincerely

(Geetamber Anand)

Director

ATS Infrabuild Pvt. Ltd.

Attested
Rajinder Singh

74. On 26.05.2023, another communication was written by the CD which is also reproduced as under:

Letter No. 2/52023

Date 26/05/2023

To

Sh. Rajinder Singh,
R/o Green Woods Farm,
Sec - 57, Opp - Casa Espana,
SAS Nagar, Mohali - 160055
Contact No. - 98769 00676
Email - rshinghps@gmail.com

Subject : Agreement amongst us for land parcel of 8 acres abutting the Project, Casa Espana, Sector - 121, Mohali, SAS Nagar.

Sir,

We sincerely apologize for the delay in implementation of the project that was planned amongst us and duly approved by the competent authority such as GAMADA etc.

This delay largely has been due to unforeseen circumstances of the Real Estate Market that constrained us from implementing the project as planned.

We have every possible cooperation from your side and also that we have made our best efforts; however considering the circumstances, we are empowering you to explore implementing the project yourself or through any other party of your choice and you are fully authorized to select the new developer.

We request you to acknowledge the receipt of advances from us and assure us that you shall refund all such advances simultaneously upon signing of the deal with another party ensuring that sums so advanced by us stay secured.

We hereby undertake to transfer the license and approvals on your land under provisions of relevant legislations.

Kindly note that a loan is outstanding, apportionable to the project on this land of 8 acres, and the same needs to be closed with the concerned NBFC. Upon the repayment of the same there would be no claim on the land and the said land will be encumbrance free.

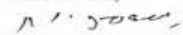
This letter of confirmation is sufficient for you to proceed for a deal by yourself or in an association with any third party. This letter of confirmation is self explanatory, expressing our gesture of sincerity towards you and it may be taken as sufficient as our endorsement and confirmation of our acceptance of your arrangements with any other third party for the same project.

We are hereby giving consent cum confirmation and relinquishing our right that existed in any whichever way on the land of the proposed project on your owned land giving irrevocable NOC for your entering into a deal with third party or implementing the project directly by yourself.

Date:

Thanks & Regards

Yours Sincerely



Director
ATS Infrabuild Pvt. Ltd.

75. Even if these letters are taken on their face value, the same may not be taken to have granted NOC without any pre-condition, rather the NOC was granted to the land owner subject to the condition that proportionate amount of loan shall be paid by the land owner to the NBFC on behalf of the CD and therefore in our considered view it was in the form of a counter proposal/counter offer which is not shown to have been accepted by the land owner.

76. We also notice that these letters are alleged to have been written by the CD, however it is not clear as to in reply of which communication sent by the land owner, these letters have been written. We also notice that much emphasis has been given by the land owner on the fact that no homebuyers or allottees interest has been created on the subject land. We however notice that in the agreement dated 24.07.2014 the land owned by the Shiwalik of 17 acres and land owned by the Sardara Singh and Ors. of 8 acres was simultaneously included in the project. Thus it was a collaboration

agreement to include the land of Shiwalik and Sardara Singh in the said project.

77. It was specifically written in recital 2 of settlement agreement dated 24.07.2014 that this deed is only primarily between Sardara Singh and Shiwalik with regard to land pieces admeasuring 8 acres and 17 acres. Clause 1 and 2 of this agreement also shows that Shiwalik own 17 acre and has desired to make the said land usable and wanted to give it a shape of a project by adding nearby land parcel of 8 acres land and Sardara Singh and Shiwalik collaborated the said land parcel of 8 acre with the 2nd party to obtain license on the said land parcel of 17 acre in the residential project ATS-Casa Espana which was launched on the said land parcel of 17 acre. Thus it is reflected that the land of land owner Sardara/Rajinder Singh was also required to take/renew license by Shiwalik.

78. Ld. Counsel for the RP at this stage has drawn our attention to Memorandum No. 17/17/011-511G2/1640 of date 18.06.2009 issued by the Govt. of Punjab which is reproduced as under:

*Government of Punjab
Department of Housing and Urban Development
(Housing Branch-II)*

To

*The Chief Town Planner,
Punjab, Chandigarh*

*Memo No. 17/17/01-511G2/1640
Dated: 18-06-2009*

Subject: Minimum area requirement for setting of Residential/ Commercial colony.

Ref: Please refer to this office previous Memo No. 17/17/01-511G2/7655 dated 19-09-2007.

In partial modification of policy of minimum requirement for setting Residential/Commercial colonies issued vide memos referred to above, henceforth, the following norms shall be followed:

1)In GMADA area, High Potential Zone category 1 and 2 and Medium Potential Zone category 1 and 2 where zonal/sector plan has been notified, the minimum area for residential colony shall be 25 acres provided that such chunk of land is compact and contiguous, of regular shape and having proper connectivity (existing and proposed) to civic amenities.

2)In Low Potential Zone category 1 & 2 the minimum area for residential colony shall be 10 acres.

3)In case of left out pocket i.e. where on all the sides the construction has already taken place, that left out area, without any minimum stipulation can be developed as residential colony.

4)In case of Group Housing projects outside GMADA area the minimum area for projects shall be 5 acres. In case of housing for financially weaker sections, as notified by the Housing and Urban Development Department, Government of Punjab, notification dated 07-11-2008, the minimum area shall be 2.5 acres.

This issues with the approval of Chief Minister, Punjab.

Joint Secretary

Endst No.17/17/01-511 G2/1641---47

Dated:18-06-2009

79. It is submitted by RP that the project Casa Espana includes both the lands owned by Shiwalik and Rajinder Singh and the first phase of this project is also not complete.

80. A comprehensive perusal of all the documents available on record would reveal that under JDA, CD has created third party rights over the subject land of financial creditor to whom the land has been mortgaged and the creation of the third party rights pertaining to the homebuyers or allottees could also not be ruled out at this stage.

81. We notice that the Appellant-Suspended Director of the CA (AT) (Ins) No. 518 of 2025 wherein the application has been moved by the applicant has refused to advance any submissions before us. We also notice that the CIRP against the CD was initiated on 04.03.2025 and the appeal was filed by the Suspended Director on 11.03.2025 and stay order was passed by this Appellate Tribunal on 27.03.2025. Thus there would have been no opportunity to the IRP to have collected the record of the CD and therefore he may not be in a position to collect information with regard to creation of any third party rights over the subject land, so far as the homebuyers and allottees are concerned and once the appeal is decided the factual matrix would be more clear. As in case the appeal filed by the Suspended Director of the CD is allowed, in that case the *lis* would remain between the CD and the land owner Rajinder Singh, however, in case the appeal is dismissed the CIRP would continue and RP would have access to the record of the CD and would be in a better position to assess as to whether any third party rights have been created on the subject land by the CD under the JDA and POA executed by the land owner Rajinder Singh by creation of charge of the FC which is being disputed by the land owner. However as of now in our considered opinion subject property could not be excluded from the CIRP and is required to be preserved by directing the parties to maintain status quo till the disposal of this appeal. We assure that if necessary cooperation is extended by the parties we would be able to dispose of the appeal itself at the earliest.

82. In view of above Mr. Rajinder Singh is permitted to intervene in this appeal. Ld. Counsel for the appellant is directed to provide Ld. Counsel for I.A. No. 3274, 5865 of 2026 in CA (AT) (Ins) No. 518 of 2025.

the intervenor copy of memo of appeal along with all enclosures today itself. The intervenor thereafter may file any response within 7 days from today with an advance copy to the appellant who may also file rejoinder within 5 days thereafter.

83. Ld. Counsel for the Appellant shall also file the amended memo of parties incorporating the intervenor as Respondent in CA (AT) (Ins) No. 518 of 2025.

84. In the meantime, the parties including their agents/servants shall maintain status quo with regard to the subject land.

85. Both the applications are **disposed of** in above terms.

86. As we have granted 7 days' time to intervenor to file Reply and 5 days' time to Appellant to file rejoinder, the CA (AT) (Ins) No. 518 of 2025 along with CA (AT) (Ins) No. 517 of 2025, which are listed on 07.10.2026 shall now be listed on **28.10.2026** 'For Hearing' under the caption "Matter Expedited by Hon'ble Supreme Court"). We clarify that no further time shall be granted to the parties to complete the pleadings and all the parties shall complete pleadings till the next date of listing.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
05.10.2026
sr