

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
COMPANY APPLICATION (MAIN) NO. 88/2016**

**In the matter of**

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Section 391(1) of the  
Companies Act, 1956**

Scheme of Compromise and Arrangement between:

Namit Malhotra & Others

Applicants/Home Buyers

Through: Mr. Ashwani Kumar, Sr. Advocate with  
Mr. Tanmaya Mehta and Ms. Gauri  
Rishi, Advocates

AND

Unitech Limited

Respondent

Through: Mr. Salman Khurshid, Sr. Advocate  
with Mr. Rajiv Virmani, Mr. Abhimanyu  
Bhandari, Mr. Chetan Lokur,  
Ms. Aanchal Mullick, Mr. Himanshu  
Bora, Ms. Shabeena Anjum, Ms. Gargi  
Srivastava and Mr. Arpit Shukla,  
Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**ORDER**

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**02.09.2016**

1. This is a first motion application filed under Section 391(1) of the Companies Act, 1956 by eleven applicants namely (i) Mr. Namit Malhotra; (ii) Ms. Priyanka Malhotra; (iii) Ms. Mukta Mittal, (iv) Mr. Rakesh

Yadav; (v) Ms. Priti Samtani; (vi) Mr. Pawan Samtani, (vii) Mr. Deepak Kumar; (viii) Ms. Vandana Kumar; (ix) Mr. Abhineet Malhotra; (x) Aastha Alumina Private Limited; and (xi) Karnika Marble Traders as unsecured creditors/home buyers of the respondent company viz. Unitech Limited seeking directions of this court to convene and hold the meetings of the home buyers/unsecured creditors of the respondent company to consider and approve, with or without modification, the proposed Scheme of Compromise and Arrangement floated by the applicants.

2. The registered office of the respondent company is situated at New Delhi, within the jurisdiction of this Court.

3. It is submitted by the applicants that the respondent along with its other subsidiaries and associate companies is engaged in the business of the real estate development, development of township and group housing schemes etc. The applicants are stated to be the home buyers and/or allottees of flats/units in the various residential projects undertaken by the respondent company and therefore fall in the category of the unsecured creditors of the respondent company. According to the applicants, they have provided advances to the respondent company and have been allotted a residential unit which needs to be constructed and developed by the respondent company; but the respondent has failed to deliver the residential units to them within the stipulated period provided

in the Agreement between the applicants and the respondent company. Copies of the Buyers Agreement/allotments letters issued by the respondent company in favour of the applicants have been placed on record.

4. It is further submitted that apart from the applicants, numerous other prospective buyers also approached the respondent company for purchase of residential units/flats in the various projects undertaken by the respondent company and a large number of buyers have already paid substantial parts of the agreed sale consideration towards the purchase of their respective residential flats/units from the respondent company. Although the respondent company assured these homebuyers that they would provide the complete residential units with promised amenities and facilities, within a period of 36 months from the period of entering into the Buyers Agreement with these homebuyers; with a grace period of maximum of 03 months; but it failed to complete the said project within the stipulated time, which now remain either in the partially developed or under-developed phase with delay in some projects running to over 04 years.

5. The non-exhaustive list, as provided by the applicants, of the held-up/stopped projects of the respondent company is stated to be as under:

S. No.	Location	Project name	Stage of development
1.	Gurgaon	The Close (South)	Handover/finishing
2.	Gurgaon	The Close (North)	Handover/finishing
3.	Gurgaon	Fresco	Handover/finishing
4.	Gurgaon	Escape	Handover/finishing
5.	Gurgaon	Harmony	Handover/finishing
6.	Gurgaon	UW Resorts Plots	Land development activities in progress
7.	Gurgaon	UW Resorts Villas	Internal work in progress
8.	Gurgaon	Nirvana Floors	Handover/finishing
9.	Gurgaon	UW Gardens-II	Handover/finishing
10.	Gurgaon	Residences	Handover/finishing
11.	Gurgaon	Sunbreeze	Internal work in progress
12.	Gurgaon	Vistas	Internal work in progress
13.	Gurgaon	Alder Grove	Internal work in progress
14.	Gurgaon	South City-II Independent Floors	Handover/finishing
15.	Gurgaon	Exquisite	Internal work in progress
16.	Gurgaon	Espace Premiere	Structure in progress
17.	Gurgaon	South Park	Structure in progress
18.	Gurgaon	The Willows	Land development activities in progress
19.	Gurgaon	Anthea Floors	Land development activities in progress
20.	Gurgaon	Crestview	Land development activities in progress
21.	Gurgaon	The One	Structure in progress
22.	Gurgaon	Ivy Terraces	Land development activities in progress
23.	G. Noida	Horizon	Internal work/ handover/ finishing in progress
24.	G. Noida	Heights	Internal work/ handover/ finishing in progress
25.	G. Noida	Cascades	Internal work/ handover/ finishing in progress

26.	G. Noida	Habitat	Internal work/ handover/ finishing in progress
27.	G. Noida	Verve	Internal work/ handover/ finishing in progress
28.	G. Noida	Unihomes Plots	Land development activities in progress
29.	Noida	Amber	Internal work in progress
30.	Noida	The Willows	Land development activities in progress
31.	Noida	Burgundy	Structure in progress
32.	Noida	Unihomes Ph-1	Internal work/ handover/ finishing in progress
33.	Noida	Unihomes Ph-2	Internal work in progress
34.	Noida	UW Gardens	Structure in progress
35.	Noida	Unihomes 3	Structure in progress
36.	Noida	The Residences	Structure in progress
37.	Noida	Exquisite	Structure in progress
38.	Noida	Unihomes Superb	Yet to start
39.	Noida	Other Sites	Handover/finishing
40.	Kolkata	Gardens	Handover/finishing
41.	Kolkata	Horizons	Handover/finishing
42.	Kolkata	Heights	Handover/finishing
43.	Kolkata	Air	Internal work in progress
44.	Kolkata	Cascades	Handover/finishing
45.	Kolkata	Harmony	Internal work in progress
46.	Kolkata	Vistas	Handover/finishing
47.	Kolkata	Gateway Cluster I	Handover/finishing
48.	Kolkata	Gateway Cluster II	Structure in progress
49.	Kolkata	Fresco	Internal work in progress
50.	Chennai	Ananda	Internal work/ handover/ finishing in progress
51.	Chennai	Brahma	Internal work/ handover/ finishing in progress
52.	Chennai	Gulmohur Avenue	Internal work/ handover/ finishing in progress

53.	Chennai	Unihomes	Internal work/ handover/ finishing in progress
54.	Chennai	Aspen	Handover/finishing
55.	Chennai	Palm Villas	Internal work/ handover/ finishing in progress
56.	Chennai	Gardens	Structure in progress
57.	Chennai	Unihomes 2	Handover/finishing
58.	Chennai	Greenwood City	Handover/finishing
59.	Chennai	Chaitanya	Structure in progress
60.	Chennai	Ekanta Phase-1	Structure in progress
61.	Chennai	Birch Court	Handover/finishing
62.	Bangalore	UW Resorts	Structure in progress
63.	Bhopal	Unihomes	Internal work/ handover/ finishing in progress
64.	Mohali	Singletons Floors	Internal work in progress
65.	Mohali	Executive Floors	Internal work in progress
66.	Mohali	Plotted Development	Handover/finishing
67.	Mohali	Unihomes	Internal work in progress
68.	Mohali	UW Gardens	Internal work in progress
69.	Mohali	Aspen Greens	Land development activities in progress
70.	Rewari	Unihomes	Land development activities in progress
71.	Rewari	Ananda	Land development activities in progress
72.	Ambala	Unihomes	Land development activities in progress
73.	Ambala	Ananda	Land development activities in progress
74.	Dehradun	The Residences	Structure in progress.

6. Since the respondent company has not been able to complete these projects; and most of its projects being either under-developed or partially developed, therefore, a large number of homebuyers, whose

residential units/flats were not delivered by the respondent company as promised, have filed cases against the respondent company or its directors/officers in various forums like District Consumer Courts, State Commission, the National Consumer Disputes Redressal Commission (NCDRC) as well as in this Court under Section 433 & 434 of the Companies Act, 1956 for winding up of the respondent company.

7. According to the applicants, the NCDRC has awarded decrees in favour of various homebuyers and in some cases, also directed the respondent company to refund the amount of the homebuyers along with an interest @ 18% p.a. The applicants apprehend that if such refunds are forced on the company and continue to be paid by the company, the construction activity of the company will completely halt and the company very soon will be in a situation of zero liquidity and may go into winding up at the instance of a few homebuyers and in that event the collective dreams of all the homebuyers of getting their residential units/flats will never materialize. They further apprehend that the properties of the respondent company may also get attached and auctioned to pay the debts/loans of the banks and the financial institutions, who have advanced huge loans to the company, thus, leaving the applicants herein along with other homebuyers without any substantive remedy since all the homebuyers fall in the category of unsecured creditors of the respondent company. The applicants have submitted that they are solely

keen to get the delivery and possession to their respective homes rather than wasting their valuable time and resources in pursuing litigation against the company. Thus, the applicants have proposed the draft Scheme of Compromise and Arrangement with the respondent which, according to the applicants, if approved by the respondent company and the class of homebuyers, who are unsecured creditors of the company, will ensure that the company will be able to complete the development of its projects, and eventually handover the residential units to its homebuyers including the applicants herein.

8. A copy of the draft Scheme of Compromise and Arrangement has been placed on record by the applicants. The salient features of the Scheme are as under:

**2. Overview of the Scheme**

**A. Legal Proceedings**

**i. Current**

It is proposed that after this Scheme of Arrangement comes in to effect, all legal proceedings initiated by the Unit Holders against the company and against the director-promoter or any officer of the company before any Court, Tribunal or before any Authority under the provisions of the Consumer Protection Act, 1986 and/or under any other legislation, code, law in force, if any, shall be withdrawn by the Unit Holders.



ii. Future

No homebuyer/unsecured creditor shall institute any fresh proceedings in any Court, Tribunal or before any authority against the company and its directors/officers under the Consumer Protection Act, 1986 and/or under any other legislation, code, law in force, in any respect.

The proceedings in the above clauses mean and include any legal proceedings initiated against the company or any director/officer of the company, which arise directly or indirectly from non-payment of refunds by the company, and/or not being able to complete the undertaken projects within the stipulated time period or any other related aspects.

The options forming part of the draft Scheme of Compromise and Arrangement between the respondent and the homebuyers is as under:

**CATEGORY I:**

**Possession to the home buyers where delay is more than 2 years from date of scheduled delivery:**

- i) Such homebuyer shall get enhanced compensation equal to 2 times of the present delay penalty clause effective from the date of approval of the Scheme, prospectively;
- ii) Such enhanced penalty shall be adjusted from the final payment made/to be made by the homebuyers or by way of adjustment from the maintenance

charges/advance payable by the homebuyer to the company or its associate maintenance company;

- iii) The company shall complete construction of the houses of the estranged homebuyers (who are presently delayed for a period more than 2 years from the date of their scheduled delivery) within a period of 2 years from the date of approval of the Scheme.

**CATEGORY II:**

**Possession to the home buyers where delay is upto 2 years from date of scheduled delivery:**

- i) Such homebuyer shall get enhanced compensation equal to 1.5 times of the present delay penalty clause effective from the date of approval of the Scheme, prospectively until such homebuyer falls in Category I when he will be compensated in terms of that category and such compensation will be effective from the date of such change of category;
- ii) Such enhanced penalty shall be adjusted from the final payment made/to be made by the homebuyers or by way of adjustment from the maintenance charges/advance payable by the homebuyer to the company or its associate maintenance company;
- iii) The company shall complete construction of the houses of the estranged homebuyers (who are presently delayed for a period up to 2 years from the date of their scheduled delivery date) within a period of 3 years from the date of approval of the Scheme.

**Other Conditions for Categories I and II:**

- i) All the proceeds from the Customers shall be kept in the separate account and shall be utilized for the purposes of construction only subject to prior charge or encumbrance of banks and financial institutions etc.;
- ii) One representative from the Home Buyers from each project shall monitor the construction activities on the Project and shall become a coordinator and shall have access to accounts on a weekly basis;
- iii) Representative of Home Buyers to monitor and assist in collecting installments dues from the defaulting customers to speed up the process of construction.

**CATEGORY III:**

**Phased Manner Exit and Refund to the homebuyers who wish to exit:**

To ensure that construction of Project is not jeopardized and at the same time, those of the home buyers who do not wish to continue in the project, may be given the following option:-

i) **Designated Refund Account**

A Designated Refund Account be formed for each Project in which 10% of the proceeds from the customers of each project are transferred. The amounts in this Account shall be used exclusively for the purpose of refunds to these customers in 12 equal installments

after zero period of 12 months from the date of approval of Scheme.

ii) Hardship Cases

In the hardship cases, where the homebuyers need urgent refund can approach the Hardship Committee for such refund and in such cases, after the approval of hardship committee, which will comprise of one representative of home buyers, one official from company and one officer from the Hon'ble High Court of Delhi, payments upto Rs.5 lacs may be released from the Designated Refund Account on the basis of priority decided by Hardship Committee.

CATEGORY IV:

In the event, Company is not in position to offer houses to certain home buyers for any reason whatsoever after the lapse of period mentioned in Category I and II, Company shall be obligated to refund the amount in terms of the Buyers Agreement after the expiry of period (2 years or 3 years as the case may be) provided in the category to which home buyer belonged, from the date of approval of the Scheme.

Further the proposed Scheme *inter-alia* envisages that if the Options under the proposed Scheme as afore-stated, are accepted by the Respondent Company along with other homebuyers/unsecured creditors, and consequently if the Scheme comes into effect, in such case, no homebuyer category of unsecured creditor shall institute any fresh proceedings in any Court, Tribunal or before any Authority

against the Respondent Companies and its director/officers under the Consumer Protection Act, 1986 and/or under any other statutory legislation, code or law in force in respect of alleged past or current defaults in clearing their outstanding dues.

Furthermore, in the meanwhile all the present and future litigation as instituted by the homebuyers/allottees of residential flats/units against the Respondent Company under the Consumer Protect Act, 1986 including any other law, code, enactment for the time being in force, and including any decree/ final order and judgment in favour of such homebuyers and/or allottees of residential units shall be kept in abeyance.

9. In view of the aforesaid, the applicants made the following prayers to this Court:-

- a) Order the circulation of the Scheme of Compromise and Arrangement, annexed as *ANNEXURE – "G"* to the present Company Application, to the Respondent Company and/or other homebuyers/unsecured creditors of the Respondent Company, so as to consider if the scheme proposed by the Applicants is acceptable to them;
- b) Pass an order thereby appointing a Chairman of the Meeting and direct the Chairman to hold and convene a meeting of the Respondent Company on such date and time as this Hon'ble Court may deem fit and proper for the purpose of considering, and if, thought fit approving with or without modification(s), the proposed scheme of Arrangement and Compromise between

the Applicants herein and the Respondent Company amongst other homebuyers/class of unsecured creditors;

c) Pass an order thereby keeping in abeyance all present and future litigation as instituted by the homebuyers/allottees of residential flats /units against the Respondent Company under the Consumer Protect Act, 1986 including any other law, code, enactment for the time being in force, including any decree/final order and judgment in favour of such homebuyers and/or allottees of residential units;

d) Pass any such further order(s) as this Hon'ble Court may deem if and proper.

10. In response to the aforesaid application, the respondent company initially filed its short preliminary submissions vide affidavit dated 31<sup>st</sup> May, 2016 of Mr. Ajay Chandra, Managing Director of the respondent company, stating that the respondent company has been in the business of real estate development for 35 years and is listed on the stock exchange since 1986. It is further submitted that the respondent company has so far developed six townships covering an area of 1,382 acres and over 20 million square feet of residential, commercial and retail space; and is home to more than 19000 home buyers; and that the respondent company has a positive net worth of Rs.9852.15 crores as on 31<sup>st</sup> March, 2015. It is further submitted by the respondent that the real estate industry has been witnessing an unprecedented slow down and volume reduction in last 4-5 years. This has caused a squeeze in the

working capital for the respondent company and lack of bank financing availability coupled with various regulatory delays due to issues pertaining to NGT, land acquisition matters for infrastructure around the development etc. due to the above, delivery challenges have been high though the respondent company has made all efforts to generate liquidity in increasing working capital and to also collect from customers who have not paid the dues. The status of the various projects held-up/stopped was provided in the affidavit dated 31<sup>st</sup> May, 2016, which were subsequently amended vide affidavits dated 2<sup>nd</sup> August, 2016 and 22<sup>nd</sup> August, 2016. The reasons stated for the revised figures in the subsequent affidavits are that the earlier affidavits erroneously included the projects being developed by the associates/subsidiary companies. Vide affidavit dated 22<sup>nd</sup> August, 2016, the held-up/stopped projects are claimed to be as under:

S. No	Project Name	Location	No. of units sold till 31.7.16	No. of units offered for possession till 31.7.16	No. of units yet to be offered for possession
1	Exquisite	Sector 117, Noida	56	0	56
2	Gardens	Sector 117, Noida	324	0	324
3	Residences	Sector 117, Noida	443	0	443
4	Unihomes 1	Sector 117, Noida	1030	224	806
5	Unihomes 2	Sector 117, Noida	1497	83	1414
6	Unihomes 3	Sector 113, Noida	1627	0	1627
7	Habitat	Sector Pi II, Greater Noida	807	419	388
8	Heights	Sector Chi III, Greater Noida	318	318	0

9	Horizon	Sector Pi II, Greater Noida	1134	966	168
10	Cascades	Sector Pi II, Greater Noida	353	214	139
11	Unihomes Plot	Sector Mu, Greater Noida	352	0	352
12	Alder Grove	Nirvana Country 2, Sector 71/72, Gurgaon	239	0	239
13	Anthea Floor	Wildflower Country Sector 70, Gurgaon	544	0	544
14	Crest View	Wildflower Country Sector 70, Gurgaon	377	0	377
15	Espace Premier	Nirvana Country 2, Sector 71/72, Gurgaon	82	0	82
16	Exquisite	Nirvana Country 2, Sector 71/72, Gurgaon	226	0	226
17	Nirvana Plots	Nirvana Country, Sector 50, Gurgaon	5	0	5
18	Residences	Uniworld Resorts, Sector-33, Gurgaon	1338	370	968
19	Uniworld Resorts Plot	Uniworld Resorts, Sector 33 & 48, Gurgaon	182	11	171
20	Uniworld Resorts Villas	Uniworld Resorts, Sector-33, Gurgaon	100	1	99
21	Sunbreeze	Sector-69, Gurgaon	685	0	685
22	The Willows Plots	Nirvana Country 2, Sector 71/72, Gurgaon	12	0	12
23	South Park	Sector 70, Gurgaon	711	0	711
24	Vistas	Sector 70, Gurgaon	1265	0	1265
25	The Spruce	Wildflower Country Sector 70, Gurgaon	55	0	55
26	Uniworld City Plots	Uniworld City, Sector 97, 106 & 107, Mohali, Punjab	657	207	450
27	Executive Floors	Uniworld City, Sector 97, Mohali Punjab	141	44	97
28	Gardens Villa	Uniworld City, Sector 97, Mohali Punjab	1	0	1
29	Ananda	Sector 15, Rewari	49	0	49
30	Unihomes	Sector 15, Rewari	244	0	244
31	Unihomes	Sector 16, Ambala	233	0	233
32	Ananda	Sector 16, Ambala	38	0	38
33	Unihomes 1	Uniworld City, Nallambakkam, Chennai	868	480	388
34	Unihomes 2	Uniworld City, Nallambakkam, Chennai	491	112	379



35	Gardens	Uniworld City, Nallambakkam, Chennai	84	0	84
36	Birch Court	Uniworld City, Nallambakkam, Chennai	47	47	0
37	Aspen Greens	Uniworld City, Nallambakkam, Chennai	149	149	0
38	Palm Villas	Uniworld City, Nallambakkam, Chennai	71	71	0
39	The Terraces	Uniworld City, Nallambakkam, Chennai	3	0	3
40	Palm Premiere	Uniworld City, Nallambakkam, Chennai	24	0	24
41	Uniworld Resorts	Electronic City, Bengaluru	191	0	191
	<b>Total</b>		<b>17,053</b>	<b>3,716</b>	<b>13,337</b>

It is submitted that the company has positive net worth of Rs.9852.15 crores, as can be seen from its balance sheet as at 31<sup>st</sup> March, 2015, which is placed on record and further that the respondent company is expecting a net positive cash flows of Rs.4079.00 cores (before taxes) post development of the above said projects; which exhibits capability of respondent company to deliver all the undelivered units; and that the respondent company will be able to turn the prevailing situation around; and to provide expeditious delivery to their customers/homebuyers; if the existing customers pay up the outstanding amounts as due from them towards the purchase of flats/units.

11. In another affidavit dated 1<sup>st</sup> June, 2016 of Mr. Ajay Chandra, the Managing Director, the respondent company has submitted that its management has perused the draft Scheme suggested by the applicants and fully supports the said scheme with such modifications as may be approved by the Hon'ble Court. It is further submitted that the respondent

company shall take all the necessary steps to take this proposed scheme forward in terms of and in compliance with the applicable laws including submitting the same for consideration and approval of requisite majority as required by Section 391 of the Companies Act, 1956.

12. I have been taken through the Scheme in detail and also the affidavits filed by the respondent company. On the face of it, it is obvious that the petition filed by a group of home buyers may also serve the interests of the company which is clearly beset by serious financial difficulties that could result in its liquidation. However, to my mind, Section 391 in Chapter-V of the Companies Act, 1956 clearly envisages the examination of the Schemes representing the interest of one or more class of stakeholders with the salutary object of regulating corporate functioning to the extent desirable or feasible. Under the circumstances and since the court is obliged to apply its mind objectively to all relevant factors in this behalf, it hardly matters whether the proposal has emanated from a class of creditors or from the company itself. What is to be seen is whether the Scheme being propounded subserves the interest of all the stakeholders in the company including that of the flat buyers and does not offend the statute.

13. There is no denying the fact that there has been a colossal failure on the part of the company in completing its projects which are at

different stages of completion, as narrated in the petition. It is also an admitted fact that a large number of the homebuyers who have booked their flats with the company have got decrees from different courts of competent jurisdiction in their favour with the principal amount being required to be refunded by the company with varying rates of interest, which aggregate to a very substantial amount.

14. It has been pointed out in the affidavit filed by the respondent company that they had sold 17,053 units out of which they have delivered only 3,716 units. As per their own admission, 13,337 units still remain to be delivered to the homebuyers who have booked their flats in the various projects. As against this, it is pointed that there are 971 cases filed by the different home buyers in different forums claiming either the flat or refund of the amount with interest. Apart there from, there are some winding up petitions also pending before this Court. It is contended by the learned senior counsel for the applicants as also by the learned senior counsel for the company, that the decrees being passed against the company are creating a huge strain on the resources of the company, and are a major hindrance in the projects being completed. Learned counsel further submits that unless the company is protected against execution of these decrees, the resources of the company would get depleted in satisfying the said decrees and the company would not be in a position to complete any of its projects. It is in this background that the

learned counsel for the parties have urged this Court to examine the Scheme and to give the company an opportunity and a lifeline to not only sustain itself but also to provide for completion of the projects and handing over of possession of the flats to the homebuyers. It is further claimed by the learned counsel for the parties that in addition to the liquid cash available to the company for completion of the projects, there are huge outstanding which the company has still to recover from the prospective buyers; and in case the company is provided a lifeline with the intervention of this Court under Section 391 of the Companies Act, 1956, it will work to the benefit of each and every stakeholder.

15. Section 391 of the Act deals with the powers of this Court to sanction any compromise or arrangement. The said section is a code in itself and it, *inter alia*, envisages consideration of a Scheme of Arrangement or Compromise with a class of creditors which may be the shareholders, the board members, the secured creditors, the unsecured creditors or any sub-category within each class. The applicants are proposing a Compromise and Arrangement between the homebuyers, as a class, with the respondent company. The homebuyers are the unsecured creditors of the company who have invested their money in the projects brought up by the respondent company and have made part deposits towards booking and allotment of a flat in the different projects of the company. The company is supporting the compromise and

arrangement and, as noted earlier, has filed affidavits in this behalf. In its affidavits, the company has undertaken to fulfill its obligations towards the flat buyers within a specified time limit for each project and also to compensate the said flat buyers/unsecured creditors for the delayed handing over of the flats by promising to almost double the compensation provided under the individual buyers agreements.

16. The plight of the homebuyers is certainly very distressing. There is no denying this fact. They are well within their right to approach all legally available forums to secure their investment or to seek enforcement of the agreement with the company. However, in the existing set of facts and circumstances, and in the light of the proposed Scheme of Compromise and Arrangement, if the company is not granted an opportunity to carry forward its proposed Scheme of Compromise and Arrangement, the net effect would be that the company, in the absence of any opportunity to fulfill its projects, might face erosion of its net worth and suffer loss of credibility, putting it at the threshold of liquidation. Admittedly, winding up proceedings against the company are pending in this Court in Company Petition numbers 52/2015, 70/2015, 99/2015, 283/2015, 355/2015, 687/2015, 713/2015, 715/2015, 928/2015, 273/2016, 402/2016 & 412/2016. However, provisional liquidator has not yet been appointed in any of the petitions. An order of liquidation of the company at this stage would not serve the interest of any stakeholder, including those

homebuyers who have got decrees in their favour. Even they would need to stand in the queue of the unsecured creditors for seeking execution of them. Also, their priority and their right to secure execution as unsecured creditors would stand much below the workers, statutory creditors, or the secured creditors, all of whom would be accorded a prioritized claim on the assets of the company. Thus, considering the impact and consequences of liquidation; and the feasibility of the homebuyers getting possession of the flats, as promised by the company within a specified time frame, it would be in the interest of the homebuyers if an opportunity is granted to the applicants and the company to put forward their Scheme to each of the homebuyers by convening their meetings at convenient locations and seeking their approval to the proposed Scheme of Compromise and Arrangement.

17. So far as the approval of the Scheme of Compromise and Arrangement from the shareholders and other statutory and secured creditors is concerned, the respondent company shall take appropriate steps to get the same approved by all the stakeholders, prior to the filing of the second motion petition.

18. Learned senior counsel for the applicants, as also the respondent company, have referred to sub-section 6 of the Section 391 and have prayed for stay of all proceedings launched against the company.

Learned senior counsel has submitted that even though the company has a positive net-worth, however, if the proceedings launched by the said 971 homebuyers are allowed to continue, not only will the net-worth of the company get eroded, but the collective energies of the company will also get diverted to cater to the interest of a very limited number of homebuyers, as against the interest of the 13,337 homebuyers, who are awaiting the completion of the projects and are looking forward to take the possession of the flats; and which the company is also keen and eager to fulfill. Learned senior counsel submits, that it is, therefore, important that the company be protected from the consequences of the pending litigations and given an opportunity to fulfill its obligations, in terms of the agreements executed with homebuyers; and also to compensate the said homebuyers for the delays in completing the projects.

19. As noted earlier, the company, as well as its directors, are facing prosecution in addition to the financial strain on the company's resources because of the decrees passed against them. If a substantive, effective and meaningful opportunity is to be provided to the company to complete the projects and to handover possession to the homebuyers, it is important that they must be protected against execution of decrees passed against them. In Krishna Texport Industries Limited Vs. DCM Limited [2008] 144 Comp. Cases 113 (Delhi), a Division Bench of this

court has held that if winding up proceedings are pending, civil proceedings can be put in abeyance for the time being to give some time to the company to come up with a scheme or otherwise to clear its liability. The proceedings seeking execution of decrees passed against the company are civil in nature and, thus, it is within the jurisdiction of this Court to keep the same in abeyance so as to provide a fair and reasonable opportunity to the company to fulfill its obligation under the agreement with the individual flat buyers. Accordingly, all execution proceedings pending or which may be filed against the company before different forums, in respect of the projects of the company, details of which are provided in para 10 above, shall be kept in abeyance till further orders. However, cases in which directions have been issued or may be issued in future by the Supreme Court of India to the company in this behalf shall stand exempted from the scope of this order.

20. This protection being granted to the company and its directors is with the sole object of affording them a reasonable opportunity, as requested by them, to fulfill their commitments towards the flat buyers by completing the flats and handing over the possession to the respective buyers.

21. The respondent company in their affidavit dated 1<sup>st</sup> September, 2016 has stated that in order to ensure the smooth completion of each of



the 41 held-up/stopped projects, three different Escrow Accounts, viz. Project Sales Escrow Account, Development Escrow Account and a General Escrow Account will be opened and the monies therein will be used for the sole purpose of completing the projects and meeting the statutory liabilities of the company. The Project Sales Escrow Account would receive the sale proceeds generated from customers and buyers of units/flats in those projects. It is submitted that certain projects which have been funded by the financial institutions/banks etc. will have a charge over the Project Sales Escrow Account of the said financial institution/bank and as and when working capital is required for the development of a particular project and for paying the statutory liabilities in relation to the said project, subject to the lien of the financial institution/bank, equivalent amount would be transferred from the Project Sales Escrow Account into the Development Escrow Account. The Development Escrow Account is proposed to be used exclusively for the completion of the units/flats in each project. The General Escrow Account is proposed to be opened for receiving the proceeds from any sale of land and withdrawals from the said account will be used for the purposes of completing the unfinished projects of the company and meeting the working capital requirements of the company. Learned senior counsel submits that a separate Project Sales Escrow Account and Development Escrow Account would be opened for each of project and in each of

these accounts a representative of the homebuyers would be a necessary signatory.

22. Learned senior counsel for the company prayed that a Court Commissioner may be appointed for the purposes of monitoring the functioning of the aforesaid three Escrow Accounts and that the company will provide all information to the Court Commissioner as and when required to assist and to ensure that the Court Commissioner can monitor the functioning of all the aforesaid Escrow Accounts and ensure that the monies received in the said accounts are used only and exclusively for the purposes of ensuring the completion of each project and for handing over the completed units to the homebuyers within the time as proposed in the Scheme.

23. Learned senior counsel for the company has submitted that as of now the company owns certain lands/properties which are unencumbered and available to the company for sale. It is further submitted that as of now there is no stay on the sale of these properties. Learned senior counsel submits that in order to meet the working capital requirements and to increase the cash flow, the company might be required to sell such land/parcels which would enable it meet its obligations under the Scheme and effect timely handing over of possession of flats to the homebuyers as proposed in the Scheme. Since

it is claimed by the learned senior counsel that the company owns these non utilized lands and properties and there is no stay on the sale of such non utilized land and properties, the company would be at liberty to sell such lands and properties and use the funds generated for expeditious completion of the projects. The company would ensure that such sale of lands and properties is at the market rate and in any case not lower than the prevailing circle rates. The sales of lands/properties conducted would be in the knowledge of the Court Commissioner to ensure that the funds generated from the sales are transferred to the General Escrow Account and used only for the purposes of the completion of the projects.

24. Mr. Lorren Bamniyal, Registrar of this Court is appointed as the Court Commissioner, who shall monitor the functioning of the Escrow Accounts and also keep a watch on the use of the funds by the company from the three Escrow Accounts solely for the purposes of completion of the held-up/stopped projects of the company and also ensure that the flats/units are handed over to the homebuyers within the period specified in the Scheme of Compromise and Arrangement.

25. In the light of the aforesaid discussion, and with a view to ascertain the approval or disapproval of the Scheme by each of the homebuyers, it is felt that considering the locations of the projects of the respondent

company, as stated in the petition, meetings of the homebuyers be convened as under:

S. No.	Date & Time of meeting	Venue	Names of projects, whose homebuyers, are eligible to attend the meeting
1	20 <sup>th</sup> November, 2016 at 11:30 a.m.	Uniworld City, Sector-97, 106, Landran Banur Road, Mohali, Punjab	Uniworld City Plots, Executive Floors, Gardens Villa <b>(all the aforesaid projects are in Mohali, Punjab)</b>  Unihomes, Ananda <b>(both the aforesaid projects are in Ambala, Haryana)</b>
2	27 <sup>th</sup> November, 2016 at 11:30 a.m.	Uniworld City, Nallambakkam, Off Vandalur Kellabakkam Road, Opp. IITDM, Chennai-600127	Unihomes 1, Unihomes 2, Gardens, Birch Court, Aspen Greens, Palm Villas, The Terraces, Palm Premiere <b>(all the aforesaid projects are in Chennai, Tamil Nadu)</b>  Uniworld Resorts <b>(the aforesaid project is in Bengaluru, Karnataka)</b>
3	4 <sup>th</sup> December, 2016 at 11:30 a.m.	Uniworld Resorts, Sector-33 and 48, Near Subhash Chowk, Gurgaon, Haryana	Alder Grover, Anthea Floor, Crest View, Espace Premier, Exquisite, Nirvana Plots, Residences, Uniworld Resorts Plot, Uniworld Resorts Villas, Sunbreeze, The Willows Plots, South Park, Vistas, The Spruce <b>(all the aforesaid projects are in Gurgaon, Haryana)</b>  Ananda, Unihomes <b>(both the aforesaid projects are in Rewari, Haryana)</b>
4	11 <sup>th</sup> December, 2016 at 11:30 a.m.	Unitech Gold and Country Club (UGCC), Sector-96, Near Mahamaya Balika Inter College, Noida-	Exquisite, Gardens, Residences, Unihomes 1, Unihomes 2, Unihomes 3 <b>(all the aforesaid projects are in Noida, U.P.)</b>

		201305, Pradesh	Uttar	Habitat, Heights, Horizon, Cascades, Unihomes Plot <b>(all the aforesaid projects are in Greater Noida, U.P.)</b>
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26. The following directions are issued for convening the aforesaid meetings:

(i) Mr. Ashok Gurnani, Advocate, (Mobile No. 9810109039) is appointed as the Chairperson and Mr. Sunil Sharma, Advocate, (Mobile No. 9811383958) is appointed as the Alternate Chairperson to conduct the meeting at Mohali, Punjab. The Quorum of the meeting of the homebuyers of the respondent company shall be 50% of the total homebuyers, who are entitled to attend and vote at the meeting at Mohali, Punjab.

(ii) Mr. Rajat Wadhwa, Advocate, (Mobile No. 9810726995) is appointed as the Chairperson and Mr. Akhil Mittal, Advocate, (Mobile No. 9891180590) is appointed as the Alternate Chairperson to conduct the meeting at Chennai, Tamil Nadu. The Quorum of the meeting of the homebuyers of the respondent company shall be 50% of the total homebuyers, who are entitled to attend and vote at the meeting at Chennai, Tamil Nadu.

(iii) Mr. Rajeev K. Goel, Advocate, (Mobile No. 9312409354) is appointed as the Chairperson and Mr. Subhiksh Vasudev, Advocate,

(Mobile No. 9810710871) is appointed as the Alternate Chairperson to conduct the meeting at Gurgaon, Haryana. The Quorum of the meeting of the homebuyers of the respondent company shall be 50% of the total homebuyers, who are entitled to attend and vote at the meeting at Gurgaon, Haryana.

(iv) Mr. Yogesh Jagia, Advocate, (Mobile No. 9810043405) is appointed as the Chairperson and Mr. Rajeev Kumar, Advocate, (Mobile No. 9810466870) is appointed as the Alternate Chairperson to conduct the meeting at Noida, Uttar Pradesh. The Quorum of the meeting of the homebuyers of the respondent company shall be 50% of the total homebuyers, who are entitled to attend and vote at the meeting at Noida, Uttar Pradesh.

(v) Where the number of homebuyers expected to attend the meeting is large, the Chairpersons may, in consultation with the company, engage the services of additional manpower for smooth conduct of the meetings.

(vi) The homebuyers/unsecured creditors, who have booked/purchased their plots from the respondent company; but their projects are not shown in the aforesaid list are also entitled to attend and vote in the meetings, at the places where their projects are located, according to the aforesaid schedule. However, these homebuyers/unsecured creditors shall give a notice, in writing, to the concerned Chairperson, of their

intention to attend the meeting at least 07 days in advance of the date of the meetings.

(vii) It is made clear that only the homebuyers/unsecured creditors, who have booked/purchased the flats/units with the respondent company and have still not received the possession of the said flats/units, are entitled to attend the vote in the aforesaid meetings. The flat owners/buyers, who have received the possession of the flats/units shall not be entitled to participate in the said meetings.

(viii) The representatives of the respondent company shall provide a complete list of their projects and the homebuyers, to whom possession of flats/units is not provided and who are entitled to attend the meetings, as aforesaid, to the Chairpersons of the respective meetings within 7 days of passing of this order.

(ix). The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meeting of the homebuyers/unsecured creditors of the respondent company, along with copies of the Scheme of Compromise and Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the homebuyers/unsecured creditors of the respondent company, who are yet to receive the possession of their flats/units, by speed post at their registered or last known addresses at least 21 days before the date

appointed for the meetings, in their presence or in the presence of their authorized representatives. Notice of the meetings shall also be published in the prominent newspapers in English and Hindi having circulation in Delhi, Haryana, Punjab, Uttar Pradesh, Chennai and Bangalore, as also in one Vernacular newspaper of the respective States, where the projects of the respondent company are located, in terms of the Companies (Court) Rules, 1959 at least 21 days before the date appointed for the meetings.

(x). In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. It is however made clear that the quorum of meetings, in any event, shall not be less than 25% of the total homebuyers/unsecured creditors, entitled to vote and attend the respective meetings. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the persons entitled to attend and vote at the meetings is filed with the registered office of the respondent company at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

27. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the respondent company



so that the aforesaid meetings of the homebuyers/unsecured creditors of the respondent company are conducted in a just, free and fair manner. The applicants and the respondent company shall extend all possible assistance to the Chairpersons/Alternate Chairpersons in conducting the schedule meetings smoothly.

28. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.1,00,000/- each in addition to meeting their incidental expenses. The cost of travel, boarding and lodging of the Chairpersons and Alternate Chairpersons in respect of the meetings that are being held at Mohali and Chennai shall also be borne by the respondent company/applicants. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

29. The company shall remain bound by the statements made in their affidavit dated 1<sup>st</sup> September, 2016.

30. The application stands allowed in the aforesaid terms.

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**SUDERSHAN KUMAR MISRA, J.**

**September 02, 2016**



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