



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 45/ND/2025**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Mrs. Ritu Gakhar & Ors.
Having its Registered Address
at, R/o House No. 2497, 1st
Floor, near Amity International
School, Gurgaon, Haryana-
122001.

...Petitioner

Versus

OM Krishna Developers Pvt. Ltd.
Having its Registered Address at
H-10/103, 1st Floor, Express
Arcade, Netaji Subhash Place,
Pitampura,
New Delhi-110034.

...Respondent/Corporate Debtor

Order Delivered on: 22.04.2026.

CORAM:

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Vinod Kumar Chaurasia, Adv.

For the Respondent:

ORDER



1. This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **Mrs. Ritu Gakhar & Ors.** (hereinafter referred to as ‘Financial Creditor’), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Om Krishna Developers Private Limited** (“Corporate Debtor”).
2. The present application was filed on 26.12.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs. 7,13,11,152/-** (Rupees Seven Crores Thirteen Lakhs Eleven Thousand One Hundred Fifty-Two Only) as along with interest @ 12% pa till date of payment.
3. **Submission made by Financial Creditor:**

- I. The present petition is filed by Ms. Ritu Gakhar being the Authorized Representative (through Power of Attorney) on behalf of all the other petitioners who are the Allottees / Homebuyers of the plots in the residential real estate project titled “County Garden,” which is being developed by the Respondent Company in Kolila-Sanga Village, Tehsil - Neemrana, District- Alwar, Rajasthan.
- II. This petition meets the requirement of not less than 100 allottees or one-tenth of the allottees, whichever is lower, as stipulated by the second proviso to section 7(1) of the IBC, 2016. The petitioners, comprising 88 real estate allottees holding a total of 104 units in the same project by Corporate Debtor, thereby comply with this provision.
- III. That M/ s Om Krishna Developers Private Limited ("herein after referred to as Respondent Company"), a company incorporated in 2006 under the Companies Act, 1956, operates in the real estate development sector with its registered office situated at H-10/ 103, 1st Floor, Express Arcade, Netaji Subhash Place, Pitampura, New Delhi-110034. Om Krishna Developers launched a housing project titled "County Garden" located in



Neemrana, Rajasthan in the year 2011-12. As per Knowledge of allottee, the project was to be developed on land bearing Khasra No. 20, 29, 30, 32, 84, 86, 92, 93, 319, 320 & 435, Village Kolila Sanga, Neemrana, District-Alwar, Rajasthan in which Company was the owner.

- IV. The aggregate outstanding debt associated with 104 real estate units is Rs. 7,13,11,152/- (Rupees Seven Crores Thirteen Lakhs Eleven Thousand One Hundred Fifty-Two Only). According to the Memorandum of Understanding (“MoU”) signed between allottees and the CD (2011–2013), the CD committed to deliver plot possession within 24 months plus a 6-month grace period (a total of 30 months). The Corporate Debtor also agreed to provide basic amenities- electricity, water supply, and pucca roads—upon possession, per Clause 10. After signing the MoU/Plot Buyer’s Agreement, the promoter executed sale deeds with several plot owners, but has yet to hand over the plots. The MoU signed between some of the allottees and the Corporate Debtor is annexed as (Annexure -P-6 (Page -623-678)) of the Petition.
- V. According to the terms of the agreements, the Corporate Debtor was required to complete development and deliver possession of the freehold residential plots within the agreed timeframe, which ended around December 2015, including contractual grace period. Even though the Petitioners had paid most or all of the required amount, the Corporate Debtor did not transfer possession of the plots by the deadline. Therefore, the initial default date was when the delivery deadline passed in December 2015 and the Corporate Debtor failed to fulfill its main contractual obligation.
- VI. The aforementioned default constitutes a continuing default, as the Corporate Debtor has neither handed over possession of the plots to date nor refunded the amounts paid by the Petitioners. Each day on which possession remains undelivered and the refund unpaid represents an ongoing breach and continuing default within the meaning of Section 3(12) of the Insolvency and Bankruptcy Code, 2016.



VII. Several allottees, dissatisfied with the non-delivery of possession of their allotted lands and seeking a refund of amounts paid to the Corporate Debtor, filed Complaint No. CC/843/2020 before the Hon'ble National Consumer Disputes Redressal Commission ("NCDRC"), New Delhi, on 18.07.2020. The complainants sought a full refund of their payments with interest as well as additional compensation for mental anguish and litigation expenses. Vide its order dated 01.07.2024, the Hon'ble NCDRC directed the Corporate Debtor to refund the entire amount paid by the complainant allottees along with interest at 9% per annum from the date of deposit until realisation, payable within three months from the date of the order. Additionally, the Commission awarded each complainant an extra Rs. 10,000/- towards litigation costs and stipulated that failure to pay the required amounts within the specified three-month period would result in liability for interest at 12% per annum thereafter.

VIII. Despite the lapse of the prescribed three-month period, the Corporate Debtor has failed to refund any sums to the allottees. The Petitioners/allottees now have reasonable grounds to believe that the Corporate Debtor is unable to discharge its financial obligations, thereby necessitating the restructuring and resolution of the Respondent Company at this stage. Accordingly, the allottees maintain that initiation of the Corporate Insolvency Resolution Process (CIRP) is warranted. The Corporate Debtor's failure to comply with this direction constitutes a fresh and independent default upon the expiry of the compliance period, resulting in a distinct and crystallized default that persists to date.

4. Analysis and Findings -:

5. Heard the Learned Counsel for the petitioner and perused the material on record.
6. Vide order dated 12.03.2025 notice was issued on the Corporate Debtor. However, the same was returned with the comment "Item Returned Addressee Left without instructions." Hence, on the request of the Financial Creditor, substituted service was ordered. Despite Service of notice none appeared for the Corporate Debtor on 13.05.2025 nor any reply was filed. On 11.06.2025, the



Corporate Debtor was set exparte. Subsequently the case was heard on 28.07.2025, 10.09.2025, 17.10.2025 and 16.02.2026. There has been no appearance of the Corporate Debtor on any of the dates.

7. At the outset, it is necessary to examine whether the present application satisfies the statutory requirement under the second proviso to Section 7(1) of the Code which stipulates as under-:

(1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less.”

8. In the present case the Financial Creditors have filed the present application through an authorized representative on behalf of 88 allottees holding 104 units in the same real estate project. The Hon’ble Supreme Court of India, in the matter of Manish Kumar v. Union of India (vide WP (C) No. 26 / 2020), has held -:

“Para 146 Therefore, it does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees and they would count both in the calculation of the total allotments, as also in reckoning the figure of hundred allottees or one-tenth of the allottees, whichever is less.”



In view of the above, the instant petition satisfies the provision of Section 7 of the IBC as it has been filed by the 88 allottees holding 104 units in the same project of the Corporate Debtor.

9. As per the agreement, possession of plots was to be delivered within 30 months from the date of execution of the agreements, which period expired in December 2015. The material on record demonstrates that the Corporate Debtor failed to deliver possession within the stipulated time; the project remains incomplete & the default continues. It is noted that because of continuous default by the Corporate Debtor to hand over the plots, some of the allottees approached NCDRC for refund of their amounts paid to the Corporate Debtor and the NCDRC vide order dated 01.07.2024 ordered refund of the said amount within three months. However, the Corporate Debtor failed to comply with the NCDRC Order.
10. That the Hon'ble NCLAT vide its judgement dated 9th April, 2024 in the matter of Shri Rahul Gyanchandani & Ors. Vs. Parsvnath Landmark Developers Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 309 of 2024 held that:

9. According to own case of the Appellants, the order passed by RERA asking the Corporate Debtor to refund the amount along with interest has not been complied with and the default has been committed by the Corporate Debtor, due to which default, the Appellants filed Section 7 Application. The mere facts that order has been passed by RERA on the complaints by the Appellants, Appellants do not cease to be allottee within the meaning of RERA Act, 2016. If it is accepted that merely by-passing order by the RERA, they cease to be allottee, their right to recover the aforesaid amount cannot be prosecuted any further as allottee. Admittedly, the orders for refund has not been complied with, hence the Appellants continued to be allottee within the meaning of the Code and the RERA Act, 2016.

... ..



20. *We, thus, are of the considered opinion that Appellants are ‘allottees’ within the meaning of the Code and as a Financial Creditor, when they Company Appeal (AT) (Insolvency) No.309 of 2024 21 have filed the Application under Section 7, they were required to comply with Section 7, sub-section (1), 2nd Proviso and*”

In view of the above judgement by the Hon’ble NCLAT, we hold that irrespective of the fact that some allottees approached NCDRC for refund, their status as allottees does not change and they remain as Financial Creditor as per the provision of Section-7 of the IBC.

11. In the instant case the twin condition of Debt and Default prescribed in Section 7 stands satisfied. The Petition has been filed by 88 allottees holding 104 units on account of default of **Rs. 7,13,11,152/-** (Rupees Seven Crores Thirteen Lakhs Eleven Thousand One Hundred Fifty-Two Only). The default of the Corporate Debtor is clearly established and further strengthened by the orders of NCDRC granting refund to the allottees. The Petitioner has established that the Corporate Debtor is in default of debt due and payable and that the default of **Rs. 7,13,11,152/-** is more than the minimum amount stipulated under Section 4(1) of the Code. We are therefore of the view that the present petition moved by the Financial Creditor is complete in all respects as required by law.
12. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition COMPANY PETITION IB (IBC)/45 (ND) 2025 filed by **Mrs. Ritu Gakhar & Ors.**, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Om Krishna Developers Private Limited**, the Corporate Debtor, stands admitted and CIRP of **M/s. Om Krishna Developers Private Limited** is initiated.
13. That the petitioner in part-III of the petition has proposed the name of **Mr. Vijender Sharma**, as Interim Resolution Professional, having Registration Number **IBBI/IPA-003/IP-N00003/2016-2017/10022** and E-mail Id vijender@vsa.net.in , is hereby appointed as an Interim Resolution Professional



(IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.

14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code



(Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
17. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely **Mr. Vijender Sharma**, to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
18. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
19. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
20. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation



imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 21.** A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- 22.** Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing C.P. I.B /45 (ND)/2025 stands admitted.
- 23.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD/-

**(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)**

-SD/-

**(JYOTSNA SHARMA)
MEMBER (JUDICIAL)**