



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-02**  
IB-1016/PB/2020

**IN THE MATTER OF:**

Anil Singh & Other

**Vs.**

M/s. Idea Builders Pvt. Ltd.

**....Applicant**

**.....Respondent**

**SECTION**

U/s 7 IBC

**Order delivered on 05.07.2023**

**CORAM:**

**SHRI P.S.N PRASAD,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-1016/PB/2020 stands admitted.

**Sd/-  
(DR. BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-  
(P.S.N PRASAD)  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 1016 of 2020**

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:**

**Anil Singh & Ors.**

...Financial Creditor

*Versus*

**M/s Idea Builders Pvt. Ltd.**

...Corporate Debtor

**Order pronounced on: 05.07.2023**

**Coram:**

**SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**MEMO OF PARTIES**

1. Anil Singh  
S/o Shiv Narayan Singh,  
R/o Flat No.: 155, 2<sup>nd</sup> Floor  
Baghban Apartments, Near Shahbad Dairy  
Sector-28, Rohini, Delhi-110042  
(Flat No.: A-1108, A-1204, A-1205,  
8-1406, B-1407, C- 1003)
2. Akash Bansal  
S/o Ramesh Chand Bansal  
R/o 76, Solanki Road, Near Shiksha Deep School  
Uttam Nagar, D.K. Mohan Garden  
West Delhi, Delhi-110059  
(Flat No.: A-302)



3. Amit Kumar  
S/o Shyam Sundar Bhagat  
R/o 84C, Mahilla Mohalla  
Madanpur Khadar, New Delhi-110076  
(Flat No.: C- 1102)
4. Biswajit Naidu  
S/o Shri Alwendar Naidu  
R/o T3-805, Gulmohar Garden  
Raj Nagar Extension, Ghaziabad  
Uttar Pradesh-201001  
(Flat No.: B-704)
5. Deepak Kumar Singhal  
S/o Ram Niwas  
R/o D-14/I01, 1<sup>st</sup> Floor  
Sector-3, Rohini  
New Delhi-110085  
(Flat No.: A-202)
6. Mitul Mandal  
S/o Shri Gopal Chandra Mandal  
R/o- III-A, 127/13, Nehru Nagar  
Ghaziabad, Uttar Pradesh  
(Flat No.: A-503)
7. Partha Pratim Patra  
S/o Shri Susil Kumar Patra  
R/o D-137, Lajpat Nagar  
Sahibabad, Ghaziabad, UP  
(Flat No.: B-605)
8. Sitesh Kumar Agarwal  
S/o Shri Mohan Chand Agarwal  
R/o 74-A, Sant Nagar, East of Kailash  
New Delhi-110065  
(Flat No.: A-706)
9. Vikas Kamal  
S/o Shri Hari Prasad  
R/o- 5<sup>th</sup> Floor, International Operation Division,  
BHEL, Integrated Office Complex,  
Ispat Bhawan, Lodhi Road, New Delhi-110003  
Flat No.: C-705)
10. Sanjay Sharma  
S/o Shri Bhedi Ram Sharma  
R/o E-103, KrishanVihar



Near Laxmi Dairy & Sweets,  
New Delhi-110086  
(Flat No.: B-304)

11. Vinod Kumar Gupta  
S/o Ram Niwas  
R/o D-14/I01, Ground Floor  
Sector-3, Rohini, Delhi-110085  
(Flat No.: A-101)
12. Devesh Pathak  
S/o Shri Banwarilal Pathak  
R/o S-188/D, S-Block,  
Pandav Nagar, Delhi-110092  
(Flat No.: C-507)
13. Rajpal  
S/o Shri Late Ram Chander  
R/o WZ-1018C/3, Hoshiyar Singh Basti  
Nangal Raya S.O., South West Delhi  
Delhi- 11004  
(Flat No.: B-103)
14. Tushar  
S/o Shri Rampal Singh  
R/o WZ-831, Nangal Raya  
South West Delhi  
New Delhi-110046  
(Flat. No.: B-I02)
15. Amit Kumar  
S/o Shri Raj Pal Singh  
R/o B-306, Narwana Apartments  
Plot No. 89, IP Extension  
Delhi-110092  
(Flat No.: B-507)
16. Praveen Kumar  
S/o Shri Kaman Singh Thapa  
R/o D-I99, New Police Line  
Kingsway Camp, Delhi-110009  
(Flat no.: B-1201)
17. Abhishek Mohan  
S/o Late Shri Ram Mohan Srivastava  
R/o House No.: 1002, Sector-9  
Vasundhara, Ghaziabad  
Uttar Pradesh-201012



(Flat No.: A-406)

18. Pankaj Kumar  
S/o Shri Bani Singh  
R/o 14/370, DDA Flats  
Madangir, New Delhi-110062  
(Flat No.: A-510, B- 603, C-706)
19. Vishnu Shankar  
S/o Shri Bharat Bhushan  
R/o C-59, 2<sup>nd</sup> Floor, East Delhi  
Pandav Nagar, Opposite Mother Dairy  
Delhi-110092  
(Flat No.: A-702)
20. Anita Mogha  
W/o Shri Sunil Kumar Mogha  
R/o- RZ-52E, 2<sup>nd</sup> Floor  
Mohan Nagar, Pankha Road  
New Delhi-110046  
(Flat No.: A-1003)
21. Darshana  
W/o Shri Bishan Das  
R/o- C-139, Delhi Administration  
Sindhora Kalan, New Delhi-110052  
(Flat No.: A-608)
22. Manish Singh  
S/o Shri Shiv Gulam Singh  
R/o C-232, Sector-A, Mahanagar  
Lucknow, U.P. -226006  
(Flat No.: B-807)
23. Sudesh Pal  
S/o Shri Rajbir Singh  
R/o- JCAC, Air Force Station  
Rajokari, New Delhi-110038  
(Flat No.: A-501)
24. Pradip Kumar Jha  
S/o Shri Shilakant Jha  
R/o- Flat No.1, Ground Floor  
Purva Apartments, CHS Building-2  
Ahinsa Nagar, Aurangabad  
Maharashtra-431001  
(Flat No.: C-107)



25. Purnima Das  
W/o Shri Swapan Kumar Das  
R/o- D-1/8, Rail Vihar, Indirapuram  
Shipra Sun City, Ghaziabad  
Uttar Pradesh-201014  
(Flat No.: B-1208)
26. Rahul Maini  
S/o Shri Avinash Chander Maini  
R/o D-163, Urban Estate, Phase-1  
Jamalpur Colony, Ludhiana  
Punjab-141010  
(Flat No.: B- 1207, C-1203)
27. Shashwat Sahu  
S/o Shri Govinda Sahu  
R/o Q. No. B/19, Kanchan Ganga Estate Phase-2  
Near NIT Raipur, Chattisgarh-492010  
(Flat No.: A- 1107, A-902)
28. Deep Jindal  
S/o Shri PKJindal  
R/o F.No. 701, Skytech Magadh Apartments  
Sector-3, Vaishali, Ghaziabad  
Uttar Pardesh-201010  
(Flat No.: A-312)
29. Prince Piyush  
S/o Dr. R.N.P. Sinha  
R/o Vatika, Ashok Vihar Colony  
Near Bypass Road, Gaya  
Bihar-823001  
(Flat No.:C-106)
30. Deepak Bisht  
S/o Shri Puran Singh  
R/o H. No. 634, Block-C  
Gali No.5, SGM Nagar  
Faridabad, Haryana- 121001  
(Flat No.: A-8, A-308, A-408)
31. Kanti Prasad  
S/o Shri Prabhu Dayal  
R/o H.No. 378, Gali No.3  
New Defense Colony, Muradnagar  
Ghaziabad, UP-201206  
(Flat No.: B-110)



32. Robin Davas  
S/o Shri Jagpal Singh  
R/o Ganpati Villa, Plot No. 81  
Flat-S2, Sector-5, Rajendra Nagar  
Sahibabad, Ghaziabad, UP-201005  
(Flat No.: A-1101)
33. Rohit Tiwari  
S/o Shri Ashok Tiwari  
R/o F-135, Raja jiPuram  
Lucknow, UP-226017  
(Flat No.: A- 1103)
34. Er. Komal Singh Sambhalwal  
S/o Shri H.S. Sambhalwal  
R/o H. No. 202/15, Type-II  
Quarters Residential Complex  
AIIMS Jodhpur, Basni Industrial Area Phase-II  
Jodhpur, Rajasthan-342005  
(Flat No": C-504)
35. Ranjan Kumar Behera  
S/o ShriKanha Charan Behera  
R/o House No. 148, Bajrang Nagar  
3<sup>rd</sup> Lane, Nearest Back side of Jail  
Chattarpur, District Ganjam, Odisha  
(Flat No.: A-805, C-405)
36. Sushil Kumar  
S/o Late ShriShardadin  
R/o -A2/13, Rail Vihar, Indirapuram  
Ghaziabad, UP-201014  
(Flat No.: A-1009)
37. Ravi Ghalaut  
S/o Shri Kanwar Singh  
R/o 547/31, Chuhan Colony  
Gahana Road, Sonipat  
Haryana- 131001  
(Flat No.: C-605)
38. Pawan Kumar  
S/o Ram Niwas  
R/o D-14/115, 3<sup>rd</sup> Floor  
Near Vinod Nursing Home  
Sector-3, Rohini, Avantika  
Delhi-110085  
(Flat No.: A-106).



39. Sandeep Kumar Bhatt  
S/o Shri Uma Shankar Bhatt  
R/o 83B, Pocket-IV, Mayur Vihar-I  
Delhi- 110091  
(Flat No.: A-308)
40. Niraj Kumar Singh  
Through Authorized Representative  
Shri Trilok Chand (Father-in-law)  
R/o- 6/4, Molsiri Road, Shipra Sun City  
Indirapuram, Ghaziabad, UP-201014  
(Flat No.: A-707)
41. Sunil Panwar  
S/o Bijender Kumar  
R/o- House no- 4/2232/A,  
Near Shitla Mata Mandir, Bihari Colony,  
Shahdara, North East Delhi,  
Delhi- 110032  
(Flat no. A-8)
42. Niraj Kumar Jaiswal  
S/o Gulab Chandra Jaiswal  
R/o C-501, Metro Vihar Colony  
Najafgarh, South-West Delhi,  
Najafgarh, Delhi- 110043  
(Flat No. B-209)
43. Gajraj Singh  
S/o Shri Ami Chand  
R/o H. No.-60/334  
Begum Pur, Khatola  
Khandsa, Gurgaon  
Haryana-122004  
(Flat No. A-909)
44. Rohtas Singh  
E-386, E-Block  
Nand Gram, Ghaziabad  
(Flat No. B-307)
45. Anil Kumar Saxena  
S/o Shri Rajbahadur Saxena  
R/o H. No. 101, Deputyganj  
Moradabad, Uttar Pradesh  
(Flat No. B-205)



46. Avnish Kumar  
S/o Shri Vinay Prakash  
R/o H.No.:289, Gandhi Colony  
Muradnagar, Ghaziabad  
Uttar Pradesh-201206  
(Flat No. A-703)

**.... Financial Creditors**

Versus

M/S Idea Builders Pvt. Ltd.  
Registered Office at: C-294, 1<sup>st</sup> Floor,  
Vivek Vihar, New Delhi – 110095  
contact@ideabuilders.in

**.... Corporate Debtor**

**Appearances (through video conferencing):**

For the Financial Creditor: Mr. Sandeep S. Tiwari,  
Ms. Subhra Banik, Advs.

For the Respondent :

**ORDER**

**PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

1. This is a Company Petition 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 Anil Singh & Ors. (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Anil Singh, who is also one of the Financial Creditors, authorized through a letter of authorization dated 13.08.2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Idea Builders Pvt. LTd. [CIN: U70109DL2010PTC211224] (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 09.12.2010, having CIN: U70109DL2010PTC211224, under the Companies Act, 1956. Its registered office is



at C-294, 1<sup>st</sup> Floor, Near Park, Vivek Vihar, New Delhi, East Delhi- 110095. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 08.09.2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 360,707,766.00/- (Rupees Thirty-Six Crores Seven Lacs Seven Thousand Seven Hundred and Sixty-Six only).

**Submission of learned Counsel appearing for the Financial Creditor**

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
  - a) The Applicant Financial Creditors are the group of homebuyers who have booked their flats from 2013 to 2016, in a project namely “Red Apple Residency” of the Corporate Debtor, M/s. Idea Builders Pvt. Ltd.
  - b) The Corporate Debtor, “M/s. Idea Builders Pvt. Ltd.”, is a Private Limited company incorporated under the Companies Act, 1956 and registered with the office of RoC, Delhi on 9<sup>th</sup> of December 2010. The Corporate Debtor is having its registered office at C-294, 1<sup>st</sup> Floor, Near Park, Vivek Vihar, Delhi, 110095. The Corporate Debtor has been engaged in Real Estate business involving buying, selling, renting, developing of self-owned or leased properties.
  - c) Mr. Tarun Kumar and Mr. Akshay Kumar are the directors and authorized signatory of the Corporate Debtor at present. Earlier there were 15 directors namely, Mrs. Manju Jain, Mr. Rajkumar Jain, Mr. Gaurav Kumar Gupta, Mr. Sunil Kumar, Mr. Shaleen Kumar Singh, Mr. Ashoo Goel, Mr. Sandeep Goel, Mr. Rajeev Aggarwal, Mr. Pramod Goel, Mr. Krishan Kumar Gupta and Mr. Mukesh Aggarwal and all of them are responsible and involved in all irregularities and cheating, fraud committed by the Corporate Debtor.
  - d) The Corporate Debtor assured the completion of project and delivery of flats within stipulated time as per the agreement. That the Corporate Debtor is a defaulter completely who had no intention to complete the project and make timely delivery



of the flats. That the corporate debtor has been illegally generating revenue for its own use and benefit through misappropriation of fund, in lieu of the said project. It was found that the corporate debtor has been in severe irregularities and willful default has been committed by it in completion of the Project.

- e) The Corporate Debtor has deliberately failed to hand over the possession of the flats to the Applicants/Financial Creditors within stipulated period which has not been handed over till date. It was found that some flats were even illegally and unlawfully running under construction by the Corporate Debtor and were knowingly allotted to the Applicants.
- f) One, Manju J Group, presented, “Red Apple Residency” project with the developer, Corporate Debtor at Khasra no. 998, Raj Nagar Extension, Ghaziabad, Uttar Pradesh. On 01/05/2013, the said “Red Apple Residency” project was launched by the Corporate Debtor. The Corporate Debtor is the sister concern of Manju J Homes India Ltd. which itself is running under CIR process. Manju J Groups along with Corporate Debtor has committed fraud, cheating, misappropriation of funding a pre-planned manner with assistance of current and previous directors. They have launched several housing projects including “Red Apple Residency” with same modus operandi of generating the funds from home buyers and misappropriating the same without delivering the possession of the flats. The corporate debtor was formed with the sole motive and intentions of looting the hard earned money of the homebuyers while committing the fraud upon them.
- g) The Corporate Debtor facilitated the Financial Creditors with three modes of buying flats in various payment option schemes as described hereunder:
- i. Down Payment Plan: Under the "Down Payment Plan" in which only 10% of Basic Sale Price (BSP) to be paid at the time of the booking and 80% of BSP to be paid within 60 days of booking and rest 10% of BSP along with Car Parking, other charges and PLCs to be paid on offer of the Possession.
  - ii. Construction Linked Payment Plan: Under the Construction Linked Payment Plan, the homebuyers were required to pay 10% of BSP at time



of booking, 10% of BSP within 60 days of booking, 10% of BSP on foundation of block, 10% of BSP + 50% PLC on casting of ground floor slab, 10% of BSP + 100% ADC on casting of 2<sup>nd</sup> floor roof slab, 10% of BSP + 50% PLC on casting of 5<sup>th</sup> floor roof slab, 5% of BSP + Car parking on casting of 7<sup>th</sup> Floor roof slab, 5% of BSP + EEC on casting of 9<sup>th</sup> floor roof slab, 5% of BSP + FFC on casting of 11<sup>th</sup> floor roof slab, 10% of BSP + Power Back up on completion of brick work, 5% of BSP + Club membership on completion of internal plaster and 10% of BSP + IFMS

The following Applicants/Financial Creditors/Homebuyers have purchased their flats under this payment scheme:

- a. Mr. Anil Singh (A-1108, C-1003)
- b. Amit Kumar (C-1102),
- c. Mr. Deep Jindal (Flat No.: A-312),
- d. Mr. Biswajit Naidu (Flat No.: B-704),
- e. Mrs. Manish Singh (Flat No.: B- 807)
- f. Mrs. Anita Mogha (Flat No.: A-1003)
- g. Mr. Pankaj Kumar (Flat No.: A-510, 8-603, C-706)
- h. Mr. Partha Pratim Patra (Flat No.: B-605)
- i. Mrs. Purnima Das (Flat No.: B-1208)
- j. Mrs. Purnima Das (Flat No.: B-1208)
- k. Mr. Ranjan Kumar Behera (Flat No.: A-805, C-405)
- l. Mr. Ranjan Kumar Behera (Flat No.: A-805, C-405)
- m. Mr. Tushar (Flat No.: B-102),



- n. Mr. Vikas Kamal (Flat No.: C-705)
- o. Mr. Vishnu Shankar (Flat No.: A-702)
- p. Mr. Devesh Pathak (Flat No.: C-507)
- q. Mr. Deepak Bisht (Flat No.: A-8, A-308, A-408)
- r. Mr. Robin Davas (Flat No.: A-1101)
- s. Mr. Abhishek Mohan (4-406),
- t. Sandeep Kumar Bhatt(A-8)
- u. Niraj Kumar Singh(A-707)
- v. Ravi Ghalaut (C-605)
- w. Sunil Panwar (A-8)

iii. No EMI till Possession Payment Plan-

Under the " No EMI till Possession Payment Plan", the Financial Creditors was liable to pay 15% of BSP at the time of booking, 80% of BSP within 60 days of booking and 5% of BSP + Car Parking + Other Charges & PLCs + Mandatory charges to be paid by the Financial Creditors.

The following Financial Creditors have purchased their flats under this payment scheme:

- a. Mr. Akash Bansal (Flat No.: A-302)
- b. Mr. Amit Kumar (Flat No.: A-507),
- c. Mr. Anil Singh (Flat No.: A-1204, A-1205, B-1406, B-1407),
- d. Mr. Deepak Kumar Singhal (Flat No.: A-202),
- e. Mr. Kanti Prasad (Flat No.: B-110),



- f. Mr. Mitul Mandal (Flat No.: A-503),
  - g. Mr. Pawan Kumar (Flat No.: A-106),
  - h. Mr. Pradeep Kumar Jha (Flat No.: C-107),
  - i. Mr. Prince Piyush (Flat no.: C-106),
  - j. Mr. Rahul Maini (Flat No.: B-1207, C-1203),
  - k. Mr. Rohit Tiwari (Flat No.: A-1103),
  - l. Mr. Sanjay Sharma (Flat No.: B-304),
  - m. Mr. Sitesh Kumar Agarwal (Flat No.: A-706),
  - n. Mr. Sushil Kumar (Flat No.: A-1009),
  - o. Mr. Vinod Kumar Gupta (Flat No.: A-101),
  - p. Mrs. Darshana (Flat No.: A-608),
  - q. Komal Singh Sambhalwal (C-504),
  - r. Sudesh Pal (A-501)
- h) It was assured by the Corporate Debtor that it would be liable for the payment of the interest part of total EMI till the possession of the flats. But, just after 6-8 payment of EMIs, the Corporate Debtor deliberately stopped to pay the interest on the EMI to the Banks/NBFCs. The Corporate Debtor stopped the payment of interest of the EMI to the Banks/NBFCs, since then the Banks/NBFCs have been pressurizing the Financial Creditors for recovery of outstanding loan amount along with interests and penalties. The Banks/NBFCs have also filed cases against the Financial Creditors.
- i) The Corporate Debtor has shown a rosy picture and trapped the Financial Creditors under the attractive payment schemes of the project as mentioned above. The Financial Creditors booked their flats in the "Red Apple Residency" project by filling



a booking application form provided by the Corporate Debtor Company and had paid an initial booking amount.

- j) Thereafter, a welcome letter was issued to the Financial Creditors and thereafter the flat allotment letter/Builder Buyer Agreements along with Payment Schedule were executed and handed over to the Financial Creditors. A letter of "No EMI till Possession Payment Plan" was handed over to the Financial Creditors on the letter head of Manju J Group signed by M/s Idea Builders Pvt. Ltd. (Corporate Debtor).
- k) A Tripartite agreement had been inked between the Financial Creditors, Corporate Debtors and the Bank to facilitate Home Loans arrangement. The Corporate Debtor misappropriated and diverted the funds received from the Financial Creditors for their personal expenses or other purposes, instead of the development of the project. The Corporate Debtor had nexus with the Bankers/NBFCS to facilitate the Home Loans and Bank/NBFCS were regularly making disbursement of loans without physical verification and completion of due diligence process as well as other banking compliances. The Corporate Debtor in order to raise the funds misled the Financial Creditors and Banks/ NBFCS.
- l) Even the banks have not been recovering the part payment of interest of EMIs from the Corporate Debtor in violation of the terms and conditions stipulated under the Tripartite Agreement. The Corporate Debtor had also manipulated information regarding numbers of approved flats by the Ghaziabad Development Authority and others competent authorities. It is submitted that in view of the above-mentioned facts of the case the Corporate Debtor does not have any intention to hand over the possession of the flats and not willing to complete the project even after four years have been lapsed from the stipulated date of delivery of possession.
- m) That it is an admitted position of the Corporate Debtor that it has caused delay in completing the housing project and handing over the Apartments to the Financial Creditors. However, it is incorrect to say that the delay is unintentional and not attributable to the Corporate Debtor. As per the Allotment Letters executed between the Petitioners and the Corporate Debtor, details of which are contained in the Annexure P-7 annexed with the aforesaid Company Petition, the possession was to



be granted from July 2015 onwards. However, there has been an unwarranted delay for more than 5 years. Further, as per the Registration Certificate granted by UP RERA, the completion date of the Project was 27.12.2018. The Corporate Debtor has blatantly dishonored the completion date and has deliberately failed to deliver the possession of project to the Homebuyers and is seeking to cause further damage to the Petitioners. It is also pertinent to mention that the construction at the Housing Project has not been carried out since the year 2017.

- n) As a matter of record, as per the RTI reply dated 20.01.2020, in the site plan approved by the Ghaziabad Development Authority, a total of only 295 flats had been sanctioned under the Housing Project. However, the Corporate Debtor has illegally accepted booking for flats bearing numbers, A-1204, A-1205, B-1406, B-1407, C-1103, C-1102, C-705, B- 1201, C-706, B- 1208, B- 1207, C-1203 flats, which are not sanctioned in the site plan. It is incorrect to state that the Corporate Debtor is suffering a financial crunch. As a matter of fact, all the sanctioned flats of the Housing Project have been sold off by the Corporate Debtor, therefore, the requisite funding for completing the project is already available with the Corporate Debtor. Moreover, the Corporate Debtor has concealed the fact that the project is nowhere nearing completion stage and no construction activity has been carried out since 2017.
- o) The Corporate Debtor and its promoters have resorted to several malpractices with the intention to misappropriate the funds generated for the housing project. It is pertinent to mention that the sums due to the Corporate Debtor from the Homebuyers is directly disbursed into the account of the Corporate Debtor by the respective Banks/NBFCs based on the stage of construction. Therefore, there is no valid and reasonable explanation to ascertain as to why the Corporate Debtor is suffering shortage of funds.
- p) Thus, in view of the above said facts and circumstances narrated above, the Financial Creditors submit that the Corporate Debtor company has completely failed to hand over the possession of the flats and to make the part payment of interest of EMIs to the Banks/NBFCs. Therefore, in such circumstances, it is just and equitable, that the Corporate Debtor may be declared insolvent by the orders and directions of this



Hon'ble Tribunal. It is further prayed that the prayer sought in the instant petition ought to be allowed by this Hon'ble Tribunal in the interest of law, equity and justice.

5. The Financial Creditor have placed the following documents on record:
  - a) Copy of the Brochure of the “Red Apple Residency” project of the Respondent/Corporate Debtor”.
  - b) A copy of the Detailed Calculation Excel Sheet of the Amount to be claimed.
  - c) A copy of the Detailed Calculation Word Sheet of the Default Period (Date of Allotment to Date of Possession i.e. 31/08/2020).
  - d) The Copy of the Booking Application Form, Allotment Letter cum Buyer Builder Agreement and Letter of “No EMI Till Possession”.
  - e) The Copies of Tripartite Agreements, Sanction Letter and Letter of Disbursements.
6. The Financial Creditors have proposed the name of Mr. Rakesh Bhatia, having registration number IBBI/IPA-001/IP-P00978/2017-18/11608, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

### **Submission of learned Counsel appearing for the Corporate Debtor**

7. The Corporate Debtor has filed a reply dated 16.01.2022. However, despite several notices to the Corporate Debtor by the Financial Creditor and e-notice by the Court Officer, the Corporate Debtor chose not to appear to advance their arguments. Therefore, vide order dated 12.08.2022 the Corporate Debtor was proceeded ex-parte. Although the Corporate Debtor has been set ex-parte, the reply filed on record by the Corporate Debtor is taken into consideration for the adjudication of the present case.
  - a) The Corporate Debtor in its reply has stated, that the application under Section 7 of the IB Code, 2016 is highly misplaced, the contents whereof are not admitted by



the corporate debtor and all the averments are made in application are categorically denied, save and except, the contents which are specifically admitted in the present reply.

- b) That the corporate debtor vide its resolution dated 11.01.2021 has authorized Shri Akshay Kumar, Director of the company to sign verify the present reply. That it is true there has been some delays on the part of the Corporate Debtor in handing over the Apartments to the Financial Creditors/Home Buyers but the same is unintentional and the delays, if any, is not attributable to the Corporate Debtor.
- c) That the payment of EMI of the Financial Creditors were stopped due to the financial crunch faced by the entire Real Estate Industry across the country and now the projects is in an advanced stage and each Financial Creditor will be allotted their flats within a short span of time.
- d) That the project is in an advanced stage and the Corporate Debtor will start delivering the finished project within a short span of time as the Structure of the Towers is complete by 90% and only finishing work is yet to be undertaken. That the Corporate Debtor is registered with UP RERA.
- e) That the Corporate Debtor is always ready and willing to execute his part of the arrangement but due to some consideration beyond the scope of the Corporate Debtor the project could not be completed in time due to shortage of funds. However, it is relevant to mention here that the construction has not been progressing on the site from the past one year due to various reasons.
- f) That the receivables from the Homebuyers in the project is approximately Rs. 23 Crores and the approximate cost of completing the project is Rs. 15 Crores and the shortage of funds with the Corporate Debtor will be made good by the receivables from the homebuyers and hence, the net worth of the Corporate Debtor is in the positive.
- g) That the applicants do not fall within the definition of Section 5(8) of the IB Code, 2016 and since the application involves a mixed question of fact and law and



therefore, it cannot be adjudicated by this Hon'ble Tribunal. Therefore, the application being a sheer abuse of process of law is liable to be dismissed with costs.

### **Analysis and Findings**

8. We have heard the Learned Counsel for the Financial Creditor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
9. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt. Additionally, we also need to see whether the Financial Creditors being the allottees under a real estate project in the present case, fulfill the threshold limit provided under Section 7 of the IB Code, for maintaining this application.
10. In the present case, the applicant are the group of homebuyers who have booked their flats from 2013 to 2016, in a project namely "Red Apple Residency" of the Corporate Debtor, M/s. Idea Builders Pvt. Ltd and the Corporate Debtor has been engaged in Real Estate business involving buying, selling, renting, developing of self-owned or leased properties. The Corporate Debtor assured the completion of project and delivery of flats within stipulated time as per the agreement but has failed to do so. This fact is not denied by the Corporate Debtor in its reply, but it has been contended that the delay is neither intentional nor attributable to the Corporate Debtor.
11. Proviso to Section 7 which lays down the minimum threshold limit for the Financial Creditors who are allottees under a real estate project states that:



*“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.”.*

12. In the present case, there are 41 homebuyers who has appeared before this Adjudicating Authority as Financial Creditors. As the RTI reply dated of UP RERA dated 20.01.2020 is on record, in the site plan approved by the Ghaziabad Development Authority, a total of 295 flats had been sanctioned under the Housing Project. It is pertinent to mention that, an I.A had been filed before this Adjudicating Authority bearing I.A No. 3669 of 2021, by which 5 Applicants/Homebuyers have been impleaded in the present case. Thus, the total number of homebuyers being 46, the instant application fulfills the threshold limit of ten percent as provided under Section 7 of the IB Code, 2016. It is no more res integra that the Applicants/Homebuyers in the Real Estate Project, as in the present case are Financial Creditors in a class as defined under Section 7 of the IB Code, 2016. Therefore, the contention of the Corporate Debtor that they are not Financial Creditors under Section 5 (8) is not sustainable.
13. In the present case, M/s Idea Builders Pvt. Ltd. launched the “Red Apple Residency” project at Khasra No. 998, NH-58, Raj Nagar Extension, Ghaziabad. The details on record such as Booking Application Form, Buyer Builder Agreement, Allotment letters, And the Tripartite Agreement between the Corporate Debtor, Financial Creditors and the Banks clearly states that there has been debt provided by the Financial Creditors to the Corporate Debtor. Further, it is pertinent to note that the amount provided by the Financial Creditors to the Corporate Debtor has not been denied by the Corporate Debtor in their reply in the present case. Additionally, the home loans were sanctioned by various Banks/NBFCs according to the Tripartite Agreement inked between the Financial Creditors, Corporate Debtor, and Banks/NBFCs. The copy of detailed calculation sheet of the amount to be claimed along with 18% Simple Interest p.a. and 18% Penal Interest p.a. is on record.



Therefore, first major essential ingredient of application under Section 7 of the IB Code, 2016 i.e. there is a debt stands substantiated.

14. Further, in the present case, it is an undisputed fact that the Corporate Debtor has failed to hand over the possession of the flats to the Applicants/Financial Creditors within stipulated period or till date. The contention of the Corporate Debtor that this project is in an advanced stage and the Corporate Debtor will start delivering the finished project within a short span of time does not hold ground, as no construction activity has been carried out since 2017. Also, as per the Allotment Letters executed between the applicant and the Corporate Debtor, the possession was to be granted from July 2015 onwards, and it has been extremely delayed by the Corporate Debtor to hand over the possession to the Financial Creditors. Therefore, the second major essential ingredient of an application under Section 7 of the IB Code, 2016 i.e. there is a default with respect to the debt, stands substantiated.
15. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. “*Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.*”

Section 5(7) of IBC defines Financial Creditor: “*Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*”

Section 5(8) of IBC defines Financial Debt. “*Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

*(a) Money borrowed against the payment of interest;*



- (b) *Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

16. It is clear after examining the records, that there is a debt, and there has been a default by the Corporate Debtor for an amount of Rs. 360,707,766.00/- (Rupees Thirty-Six Crores Seven Lacs Seven Thousand Seven Hundred and Sixty-Six only). The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is for an amount which is more than the minimum amount of pecuniary threshold stipulated under section 4 (1) of the Code.

17. 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)/1016(PB) 2020** filed by Anil Singh & Ors. the Financial Creditors, 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 Idea Builders Pvt. Ltd., the Corporate Debtor, stands **admitted** and CIRP of M/s Idea Builders Pvt. Ltd. is initiated.

18. The petitioner in part-III of the petition has proposed the name of Rakesh Bhatia as Interim Resolution Professional. Therefore, Mr. Rakesh Bhatia, having registration number IBBI/IPA-001/IP-P00978/2017-2018/11608 and email – id iprakeshbhatia@gmail.com 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.
19. 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.*

20. 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.
21. 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.
22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Rakesh Bhatia 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.
23. 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.

24. 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 be 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.
25. 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.
26. 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.
27. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./1016 (PB)/2020 stands admitted.**
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**DR. BINOD KUMAR SINHA**  
**Member (Technical)**

**Sd/-**  
**SHRI P.S. N. PRASAD**  
**Member (Judicial)**