

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

IA Nos. 684/2022 & 249/2021

In

CP (IB) No.663/Chd/Hry/2019

Under Section 60(5) of the IBC, 2016

In the matter of:

Ravi Luthra

....Petitioner-Financial Creditor

Versus

Vatika Limited

....Respondent-Corporate Debtor

And in the matter of IA No. 684/2022:-

Vatika Limited

having its registered office at
Unit No. A-002, INXT City Centre,
Ground Floor, Block A, Sector 83,
Vatika India, Next Gurugram
Gurgaon-122012

...Applicant

Vs.

Ravi Luthra, Son of Sh. B.R. Luthra,
having its registered address at
C-47, Inderpuri, New Delhi-110012

...Respondent

And in the matter of IA No. 249/2021:-

1. Ravi Luthra, Son of Sh. B.R. Luthra,
having its registered address at
C-47Inderpuri, New Delhi-110012
2. Mr. Anil Aggarwal & Mr. Arun Aggarwal
have its registered address at
H.No. 394, First Floor,
Gurgaon Sector-45,
Haryana-122003
3. Mrs Anita Gahlaut
have its registered address at
J-603, Sispal Vihar, A W H O Sector-49,

South City II, Gurgaon,
Haryana-122018

4. Mr. Sanjeev Khattar & Mrs. Vandana Khattar & Mr. Sanjeev Khattar (HUF)
have its registered address at
37, Second Floor,
Lajpat Nagar-3
New Delhi-110024
5. Dr. Ashwini Kumar Setya & Mrs. Chitra Setya
have its registered address at
C-6, Sector 20,
Noida U.P. -201301
6. Mrs. Apeksha Sachdeva & Mr. Rohit Sachdeva & Mr. Anil Sachdeva
have its registered address at
7/257, Sunder Vihar,
Paschim Vihar, New Delhi-110087
7. Mr. Rajesh Khanna
have its registered address at
D-173, Block-D
1st Floor, Vivek Vihar
New Delhi-110095
8. Mr. Lalit Kumar Vashisht & Mrs. Anita Vashisht (053)
have its registered address at
307, Espace Nirvana Country,
Gurgaon, Haryana-122018
9. Mr. Lalit Kumar Vashisht & Mrs. Anita Vashisht (055)
have its registered address at
307, Espace Nirvana Country,
Gurgaon, Haryana-122018
10. Mr. Lalit Kumar Vashisht & Mrs. Anita Vashisht (145)
have its registered address at
307, Espace Nirvana Country,
Gurgaon, Haryana-122018
11. Mr. Dhruv Kohli & Mr. Samarth Kohli & Mr. Kanav Kohli
have its registered address at
17/51 A, Tilak Nagar
New Delhi-110018
12. Mrs. Arti Bhardwaj (047)
have its registered address at

Flat No. 172, Pocket-4,
Sector 12, Dwarka, NSIT Dwarka,
South West Delhi, Delhi-110078

13. Mrs. Arti Bhardwaj (120)

have its registered address at
Flat No. 172, Pocket-4
Sector 12, Dwarka, NSIT Dwarka,
South West Delhi, Delhi-110078

(Applicants represented through Attorney Ravi Luthra)
...Applicants/Proposed Financial Creditors
Vs.

Vatika Limited
having its registered office at
Unit No. A-002, INXT City Centre,
Ground Floor, Block A, Sector 83,
Vatika India, Next Gurugram
Gurgaon HR 122012

...Corporate debtor

Order delivered on: 18.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present :

For the Applicant in
IA No. 684/2022 &
respondent in IA No. 249/21 : Mr. Anand Chibbar, Senior Advocate
Mr. Vaibhav Sahni, Advocate

For the Applicant in
IA No. 249/2021 &
respondent in IA No. 684/22 : Mr. SP Singh Chawla, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

Both IA No.684/2022 and IA No.249/2021 are taken up together for
discussion being interrelated and interconnected.

IA No.684/2022

The present application has been filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016, on behalf of the corporate debtor, i.e.
Vatika Limited with a prayer to reject the petition bearing CP(IB) No.

663/Chd/Hry/2019 along with all interim applications filed by the petitioner as the same does not meet the threshold of either 100 Real Estate allotted or in the alternative 10 % of of the total allottees of a particular project undertaken by the Resal Estate developer.

2) It is stated in the application that the total number of allotted units as on date is 218 and not 87 as relied upon by the petitioners and co-applicants in the main petitioner bearing CP(IB) No. 663/Chd/Hry/2019 and interim applications. It is further submitted that the petitioners must satisfy the threshold requirements as prescribed under the code, failing which the petitioner cannot be allowed to continue with the petition.

IA No. 249/2021

3) This application has been filed by the applicant-allottees with a prayer to implead the applicants as financial creditors in the petition bearing CP(IB) No. 663/Chd/Hry/2019.

4) In its application, it is stated that the applicants are allottees of the project "High Street (Phase I)", being developed by the corporate debtor situated in Sector 83, Gurugram, Haryana. It is further stated that the corporate debtor has failed to deliver the possession of the commercial units allotted to the applicants within the timeline agreed. The list of allottees, along with a copy of identification cards with the numbers of each applicant, is attached as Annexure-1 with the application.

5) It is also stated that Mr. Ravi Luthra, the original applicant-financial creditor himself in the pending matter bearing CP(IB) No. 663/Chd/Hry/2019, has been duly authorized by the present applicants to submit the present application jointly on their behalf and Special Power of Attorney executed by

the applicant in favour of Mr. Ravi Luthra is attached to the applicant as Annexure 2.

6) The evidence of payments made along with payment receipts/statement of account etc., the allotment Letter, the true copies of the statement of accounts maintained by the respective applicants, and the email communication requesting the corporate debtor to complete the project and handover the possession are attached to the application as Annexure A- 3, 4, 5 and 6 respectively.

7) A copy of Form REP-1 of the corporate debtor, as retrieved from the Haryana RERA website, is also attached as Annexure-7. It is further stated that there are 12 applicants who are seeking impleadment in the present matter, and a copy of the amended memo of parties along with the amended Form 1 is attached with the application as Annexure 8.

8) The written submissions have been filed by the applicant by Diary No. 00483/01 dated 04.05.2022 wherein it is stated that the applicant has filed the present application in terms of the amended Section 7 provisions of the Insolvency and Bankruptcy Code, 2016 and as per the judgement given by Hon'ble Supreme Court in the matter of ***Manish Kumar versus Union of India*** (*Writ Petition(c) No. 26 of 2020*).

9) We have heard the learned counsels for the applicant and respondent.

10) In the present case, it is noted that the applicant has filed an application for the amendment of the CP (IB) No.663/Chd/Hry/2019, in which 12 more Home Buyers are impleaded as applicants. The applicants have also attached Form REP-1 as retrieved from the Haryana RERA website as Annexure A7 of the application. we have pursued the said form, and it is found at Page No. 12

that the total number of Plots/Apartments in the project is stated to be 101. The total number of Allottees, including the main petitioner and the applicants in IA No. 249 of 2021, comes out to be 13, which is more than 10% of the total number of allottees which meet the required threshold as prescribed under Section 7 of Insolvency and Bankruptcy Code, 2016. Moreover, the respondents have been given various opportunities to file a reply to the said amendment application. However, as recorded in our order dated 4 July 2022, the respondent did not want to file any reply. Instead, an application bearing IA No. 684 of 2022 has been filed with regard to the maintainability of the Amendment application. Several opportunities were granted to the respondents to file the evidence with regard to the total number of allottees, which, according to the respondent, is 218 as on date. However, no evidence in this regard has been placed before us. In these circumstances, we allow the prayers made by the applicant in IA No. 249 of 2021, and the applicants are impleaded as a party in CP (IB) No.663/Chd/Hry/2019 as they are having more than 10% of the total no. of allottees, and the amended Memo of parties along with amended Form-1 is taken on record.

11) In view of the aforesaid discussion, IA No. 249 of 2021 is allowed, and IA No. 684 of 2022 is dismissed with no cost.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

May 18, 2023
PB