NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No.858 of 2025

(Arising out of Order dated 13.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench in IA/2471/2024 connected in CP (IBPP) No.01/PB/2023)

IN THE MATTER OF

Mr. Sumit Bansal **...Appellant**
Son of Late K.L. Bansal
R/o 131, Pocket G-4,
Sector-11, Rohini,
Delhi-110085

Versus

Mr. Rajeev Lochan, **...Respondent**
Resolution Professional
M/s RG Residency Pvt. Ltd.
Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885
1st Floor, AGCR Enclave,
Delhi-110092

with

Company Appeal (AT) (Ins) No.873 of 2025

(Arising out of Order dated 13.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench in IA/2432/2024 connected in CP (IBPP) No.01/PB/2023)

IN THE MATTER OF

Ms. Monica Bansal
W/o Mr. Sumit Bansal ...Appellant
R/o 131, Pocket G-4,
Sector-11, Rohini,
Delhi-110085

Versus

Mr. Rajeev Lochan, **...Respondent**
Resolution Professional
M/s RG Residency Pvt. Ltd.
Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885
1st Floor, AGCR Enclave,
Delhi-110092

With

Company Appeal (AT) (Ins) No.874 of 2025

(Arising out of Order dated 13.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench in IA/2465/2024 connected in CP (IBPP) No.01/PB/2023)

IN THE MATTER OF

Ms. Parul Bansal **...Appellant**
W/o Sunit Bansal
R/o 704, Block D-5,
Sandeep Vihar, Sector-20,
Panchkula, Haryana
Through her SPA Holder Mr. Sumit Bansal

Versus

Mr. Rajeev Lochan, **...Respondent**
Resolution Professional
M/s RG Residency Pvt. Ltd.
Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885
1st Floor, AGCR Enclave,
Delhi-110092

with

Company Appeal (AT) (Ins) No.875 of 2025

(Arising out of Order dated 13.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench in IA/2527/2024 connected in CP (IBPP) No.01/PB/2023)

IN THE MATTER OF

Sumit Bansal **...Appellant**
Legal Heir (LR) of late Prem Bansal
S/o late K.L. Bansal
R/o 131, Pocket G-4,
Sector-11, Rohini,
Delhi-110085

Versus

Mr. Rajeev Lochan, **...Respondent**
Resolution Professional
M/s RG Residency Pvt. Ltd.
Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885
1st Floor, AGCR Enclave,
Delhi-110092

with

Company Appeal (AT) (Ins) No.821 of 2025

(Arising out of Order dated 13.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench in IA/2471/2024 connected in CP (IBPP) No.01/PB/2023)

IN THE MATTER OF

Mr. Sumit Bansal **...Appellant**
Son of Late K.L. Bansal
R/o 131, Pocket G-4,
Sector-11, Rohini,
Delhi-110085

Versus

Mr. Rajeev Lochan, **...Respondent**
Resolution Professional
M/s RG Residency Pvt. Ltd.
Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885
1st Floor, AGCR Enclave,
Delhi-110092

Present:

For Appellant : **Mr. Namit Suri and Mr. Ravi, Advocates**

For Respondent : **Mr. Saurabh Jain and Mr. Prayag Jain, Advocates for R-1**
Mr. Kumar Anurag Singh, Mr. Zain A. Khan and Mr. Mohd. Abran Khan, Advocates for RP

JUDGEMENT

Per Justice Sharad Kumar Sharma, Member (Judicial)

1. These are set of five Company Appeals, which involve consideration of common question of fact and law, pertaining to the adjudication of the claim of the appellants for seeking themselves to be declared as to be a “financial creditor”, in the light of the provisions contained under Section 5(8)(f) of the Code. For the purposes of brevity they are being decided together.

2. The appellants have respectively challenged the Impugned Order dated 13.05.2025 that, was passed in I.A. 2471 of 2024, which was preferred in CP (IBPP) No. 01/PB/2023.

3. The case of the appellant had been that the respondent – Corporate Debtor is said to have floated a project under the name and style of "**RG Regency Pvt. Ltd.**", and the appellants of these company appeals claim themselves that, they are the **purchasers of the flats,** as it is under consideration herein in relation to flat No.B-1603, B-2601, B-2602 and H-2406, which was measuring about 6599 sq. ft. claimed to have been conveyed, to them for the total consideration of Rs.1,35,00,000/-. The appellant's contention is that as the consequence of the aforesaid offer for purchase of the aforesaid flats, the appellant allege that, they have paid the full and final payment of the said consideration and in pursuance to which, an agreement for sale, too was said to have been executed on 24th November, 2015 between the appellant and the corporate debtor and in continuation thereof, it is claimed by the appellant i.e. the home buyers, that No Dues Certificate towards the payment and the receipt in lieu thereof was also issued by the corporate debtor in their favour.

4. The claim of the appellants in the pleading that, was raised before the learned Tribunal, was to the effect that, as a consequence of execution of agreement for sale on 24th November, 2015, the corporate debtor, has also given a symbolic possession of the booked flats, along with some value appreciation cheques to the appellant with an assurance that, the corporate debtor would be completing the project and would be delivering the possession of the property latest by 30th September, 2018. In view of the conditions mentioned for

furnishing of appreciation cheques, the appellants contend that, they have handed over the appreciation cheques to the respondent on 31st March, 2019; but because of the fact, the corporate debtor had informed the appellant vide its e-mail communication of **26th April, 2024** that, because of the information as it was supplied by the corporate debtor, they have never received the status of the claim from the corporate debtor for the respective amount, which they have said to have been deposited.

5. The appellants' case had been that they have filed an objection to the admission of the claim but that, was not aptly responded by the corporate debtor and due to which, the appellants were constraint to invoke an arbitration clause and initiate arbitration proceedings by filing an arbitration case, as per the Common Condiments Clause 10, of the agreement for sale deed dated 24.11.2015.

6. While the proceeding of the company petition were being carried, the appellant on 02.05.2024 are said to have filed an application, bearing I.A. No.2471 of 2024 contending thereof that an appropriate directions may be issued to the respondent to admit the full amount of claim of the appellant to the tune as referred to in the relief clause of the respective I.A. preferred by the appellant. More importantly, a direction was also sought to the respondent to recognise the appellants, as a financial creditor. Primarily the controversy herein in these five company appeals are as to whether at all, under the given set of circumstances, the appellant could have been accorded the status of the financial creditor, as contemplated under Section 5(8)(f) of the I&B Code. The contention of the appellant had been that, the learned Adjudicating Authority by

the impugned Order had upheld the validity of agreement to sale dated 24.11.2015, which was said to have been executed between the appellant and the corporate debtor and had directed the remittance of the amount of Rs.1,35,00,000/- too, but had simultaneously declined to recognize the appellant and accord them the status of, being the financial creditor in terms of the Explanation to Section 5(8)(f) of the Code.

7. The facts, which had been brought on record would involve the interpretation of the contents of the agreement for sale that, was executed inter se between the parties on 24.11.2015. If we go through the contents of the agreement for sale, what could be seen is that the said agreement for sale is an unregistered document, in relation to an immovable property, and it has a reference that, the entire amount has been remitted and no dues were left to be paid, but simultaneously and rather peculiarly in itself, it contained a Clause 7(d) pertaining to the confirmation to give an appreciation to the second party of the said agreement by giving an appreciation cheque relevant Clause 7(d) is extracted hereunder:-

> "7(d) That, The First Party has also Confirmed to give appreciation to Second Party in the said Unit, The First Party is giving appreciation Cheque for the said unit. The details of Cheques are as follows:

Date	Cheque No.	Amount	In favour of
30-09-2018	969845	9,11,250/-	Sumit Bansal

"

Further, the agreement for sale as it was witnessed by the parties also contains Clause 10, which prescribes for that, in case of any dispute inter se between the parties, they would be at liberty to invoke an arbitration proceeding. Clause 10 of the agreement for sale is extracted herein under:

> *"10. (repeated number) That if there shall be any difference or disputes between the parties or any matter arising hereunder, the same shall be referred to only one arbitrator, who shall be appointed by the Second Party Only. The award given by so appointed arbitrator shall be final and binding on all the parties. The arbitration under this clause shall be deemed to be arbitration under the Arbitration and Conciliation Act, 2015 or any other statutory modification thereof. The courts of Delhi / New Delhi shall abide by the award given by the arbitrator. All expenses of arbitration including arbitrator fees etc. shall be borne by the first party only."*

8. It is not in controversy that on account of the alleged breaches, which the appellant contends to level against the respondent, the appellants had already invoked the arbitration proceedings and these proceedings of arbitration are still in progress and are yet to be decided by the Arbitrator. It is further not disputed that, in the arbitration proceeding, which had been thus initiated, the appellants have prayed for the relief to the effect that, whatsoever alleged amount they have already paid as consideration towards the property that, was said to have been covered by the agreement for sale dated 24.11.2015, the amount may be remitted. We will have to consider as to what bearing would the relief clause of the arbitration agreement, would have wherein the appellant had already prayed that a direction may be issued to the corporate debtor to forthwith pay the

amount as claimed to be payable against respective property as invested by the appellants, with a prayer for payment of an additional amount of interest payable @ 12% w.e.f. 1st October, 2018 till the date of its actual recovery. These proceedings are admittedly pending consideration.

9. Another fact, which is revealed from the record is that, while the recourse to the arbitral proceedings have already been resorted to by the appellants, and the same is pending consideration. Further in lieu of sale consideration, which has been paid by the appellant, the appreciation amount for which a cheque was issued by the respondent (corporate debtor) had bounced. The appellant had also initiated proceeding under Section 138 of the Negotiable Instrument Act and same is pending consideration.

10. It is under these circumstances that the appellant had filed their respective I.A.s, being I.A. Nos. 2527 of 2024, 2531 of 2024, 2432 of 2024, 2465 of 2024 and 2471 of 2024. In all these I.A.s. those were preferred on 25.04.2024, the applicants to it, i.e. the appellants herein, while invoking the provisions contained under Section 60(5) of (I&B) Code, besides raising a claim, contended that, the respondent to admit the full amount as respectively paid by each of them individually, owing to the consideration that has exchanged hands because of the agreement for sale. They have simultaneously prayed that their status may be recognised as to be that of a “financial creditor”, in the class of allottees. It is this limited issue of class of classification of the appellant as claimed to be that of “financial creditor”, is under consideration in the instant company appeals.

11. The question that falls for consideration is that, admittedly,

1. The appellant's agreement for sale is an unregistered document and that too in relation to an immovable property, which may also engage consideration, as to whether at all it could be read in evidence for incidental purposes.
2. When the appellants themselves have filed an application on 25.04.2024 by invoking Section 60(5) of I&B Code, wherein they have prayed for to remit the full amount of claim, whether at all they could under the given set of circumstances be at all treated as to be an allottee, who could in turn be considered as to be a financial creditor.

12. Owing to the fact that, the appellants have already invoked Clause 10 of the Agreement for Sale dated 24.11.2015, when they had filed an arbitration proceeding in which they have claimed for the refund of the amount of sale consideration, then they themselves by their own action have renounced or waived their status, being that of the allottee who could claim to be declared as a financial creditor so as to be brought within the ambit of Section 5(8) of the I&B Code and more so when the cheque of refund of amount that was issued by the Corporate Debtor and the same had been was presented by the appellant for its encashment, which upon its dishonour by the bank, the appellant had filed the proceeding under Section 138 of Negotiable Instruments Act. These two facts, which could be culled out from records are that they admit the refund, they admit that the cheque was dishonoured and they admit that they are already in a proceedings under Section 138 of Negotiable Instruments Act, **we are pursuing** their remedies for the purposes of ensuing the remittance of the amount that, was covered by the cheques which stood bounced by the bank.

13. What is important is that if we consider the language and intent contained under Section 5(8) of I&B Code, there are certain basic elements, which are required to be satisfied before the allottee could bring himself within the ambit of the financial creditor. The financial creditor has been independently defined under Sub-Section 7 of Section 5 of the Code. The same is extracted herein:

> *"5(7) "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"*

14. If the language used in the definition of "Financial Creditor, the legislative has specifically prescribed that, there has to be a "**financial debt i.e. owed**", to whom such debt has been "**legally assigned or transferred**". In the instant case, because of the fact that, the amount remitted under the agreement for sale since there was a breach in the allotments and the appellant had admittedly had already invoked the Arbitration Clause, where they themselves have claimed for remittance of the amount. In that eventuality, they do not continue to enjoy the status of that being of an allottee, may be that, there happens to be an agreed agreement for sale though being unregistered. For the purposes to bring a person within the ambit of a financial creditor as prescribed under Sub-Section 7 of Section 5, it uses the expression "financial debt". Word "financial debt" has been more elaborately dealt with under Sub-Section 8 of Section 5 of the Code and particularly, if we look into sub-clause (f). The definition of financial debt is extracted hereunder:-

*"5(8) "**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 may be 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;

[Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(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;"

15. The connotation given therein would be about the amount that has been raised under any other transaction including any forward sale or purchase agreement, it only classifies as to what the "debt" would be and for the said purpose, we will have to borrow the definition of debt as given under Sub-Section 11 of Section 3 of the Code. It means a liability or an obligation. The "debt" has been defined as under:-

"3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"

16. The liability or an obligation, it prescribes a continuation feature to sustain a claim that obligation is continuous and not a ceased obligation, which is due to be paid by the CD, to a person as it is the case at hand. And that has made it inclusive of the financial debt. In the instant case, filing of an I.A. in which the impugned order has been passed where the appellant has sought determination of its status to be declared as to be a financial creditor, may not be possible for the reason being that according to the debt as defined under Sub-Section 11 of

Section 3, it has to be “liability or an obligation”. The aspect of liability and obligation, so far as the appellants are concerned that, stood ceased as soon as they have accepted the cheque of refund of amount issued by the respondent and which by their voluntary action had presented before the bank for its encashment in their accounts. The very conduct of the appellant do not bring themselves that, the corporate debtor owes a debt in the shape of a liability which is continue in nature so as to enable him to claim for a declaration as a financial creditor. Essence that and has already marginally referred, Sub-Section 7 of Section 5 cannot be excluded to be considered, before we embark upon Sub-Section 8 of Section 5, which has been consistently harped upon by the learned Counsel for the appellant and by way of repetition we would say that in order to acquire status of financial creditor, the feature of being a financial creditor, there has had to be a financial debt as covered under Sub-Section 8 of Section 5 and it is owed by the corporate debtor which prescribes for with continuity of existing liability of remittance and will not include within itself the already remitted amount to be called as debt to the classified as financial creditor. In the present set of circumstances of the instant case, there is no owing of debt, by the corporate debtor because it already stood remitted at the time and stage when the appellant had filed I.A. seeking the refund of its claim and if that be the situation where it does not fall to be a debt as it was already a discharged liability of debt, the appellant cannot be declared as to be a financial creditor until and unless they themselves sustain to prevail upon the fact that the debt is continuing to enable them to entitle seek a declaration.

17. The learned Counsel for the respondent had argued that, the relief sought by the appellant and particularly as it has been has involved consideration in the instant Company Appeals qua their claim of declaration as to be that of a 'financial creditor', cannot be sustained for the reason being that, according to their own admitted conduct of the appellant and if we look it from the perspective of the pleading raised by them in the arbitration proceedings particularly the reference was made to para – 4 and 5 which is extracted hereunder:-

> " 4. That as per the Agreement to Sell/Arbitral agreement dated 22nd October, 2015, the respondents had agreed to complete the construction and deliver the fully constructed, vacant and peaceful actual possession and absolute ownership of the flats to the Claimant in 2018 but they could not complete the same in the agreed period.
>
> 5. That at the time of execution of the documents, the respondents also gave symbolic possession of the booked flats on papers. The appreciation cheques alongwith the cheque of principal amount invested with the respondents and cheques of personal guarantee and personal guarantee appreciation cheques were also handed over to the claimant in June, 2018 at the time of handing over the Agreement to Sell dated 24 /11/2015."

18. It is submitted by the Counsel for the respondent that if those were the conditions of para 4 and 5 of pleadings, for invocation of the arbitration clause, the agreement for sale itself cannot be treated to be the a complete transfer or a delivery of the property in question because its own case of the appellant in the

pleading raised before Arbitration Tribunal that it was only a symbolic possession was given and was dependent upon satisfaction of certain connections which were to be satisfied, and besides there was an admitted expression given that, it was agreed by the respondent to complete the construction and to deliver the fully constructed vacant and peaceful possession. What is being argued by the Counsel for the respondent is that if that is the pleading raised by the appellant in the arbitration proceedings, the features as pleaded in para – 4 and 5 of the arbitration proceeding (extracted above), that itself does not brings the appellant within the ambit of being an allottee, as alleged to entitle them for a declaration to be a financial creditor under Sub-Section 7 of Section 5 of I&B Code.

19. The learned Counsel for the appellant in response to it, had heavily relied upon a judgement as rendered by the Hon'ble Apex Court in the matters of Civil Appeal No.3806 of 2023 **Vishal Chelani & Ors. Vs. Debashis Nanda.** What is being tried to be argued by the learned Counsel for the appellant is that, there cannot be a classification or a sub-classification, as amongst the class of allottees and hence, it has submitted that under the strength of the Judgement of **Vishal Chelani** (supra), it has laid down that when as per law of the country there cannot be a classification between the class of allottees. They have to be treated commonly for the purposes of allotment, but there are various factual distinction in the applicability of this Judgement in the present Company Appeal for the reason being that, the parity of equivalence that is being sought by the appellant in the matter of **Vishal Chelani** was at a stage where the judgement of the NCLAT was put to challenge, where it was ruled that the beneficiary of a

decree of Utter Pradesh Real Asset Regulatory Authority, and the order of the resolution professional by proposing that they are to be treated differently with other home buyers and allottees was held otherwise than what was laid down by the NCLAT. It had ruled in these circumstances that even if the allottee is a holder of a decree that, he cannot be meted out with a distinct treatment with other allottees may be even because he is a holder of a decree and that is what is being laid down by the Hon'ble Apex Court in para – 8 of the said Judgement, which is extracted here under:-

> "**8.** The Resolution Professional's view appears to be that once an allottee seeks remedies under RERA, and opts for return of money in terms of the order made in her favour, it is not open for her to be treated in the class of home buyer. This Court is unpersuaded by the submission. It is only home buyers that can approach and seek remedies under RERA – no others. In such circumstances, to treat a particular segment of that class differently for the purposes of another enactment, on the ground that one or some of them had elected to take back the deposits together with such interest as ordered by the competent authority, would be highly inequitable. As held in *Natwar Agarwal (HUF) (Supra)* by the Mumbai Bench of National Company Law Tribunal the underlying claim of an aggrieved party is crystallized in the form of a Court order or decree. That does not alter or disturb the status of the concerned party – in the present case of allottees as financial creditors. Furthermore, Section 238 of the IBC contains a *non*

> *obstante* clause which gives overriding effect to its provisions. Consequently its provisions acquire primacy, and cannot be read as subordinate to the RERA Act. In any case, the distinction made by the R.P. is artificial; it amounts to "hyper-classification" and falls afoul of Article 14. Such an interpretation cannot therefore, be countenanced."

20. This case was factually based upon altogether a different circumstance where a classification was being made as amongst the allottees based upon a class of allottees being a decree holder by Judgement rendered by RERA, and it was a classification that was made since the allottees were under a decree of RERA, and was advocated that, they have to be distinctly treated as compared to other allottees. It is under these circumstances, the Apex Court has considered the implication of Explanation to Sub-Clause (f) of Sub-Section (8) of Section 5 of I&B Code. That cannot be a similar factual situation here, because here it is not a claim of a allottee claiming their status to be determined as a financial creditor, based under the strength of a decree, as held amongst a class of allottees. This is a case where the appellant had referred to the Judgement of **Vishal Chelani** (supra), without even being termed to be classified as to be an 'allottee', owing to their own case as it could be determined from the terms of the agreement for sale dated 24th November, 2015 and that of the Judgement of **Vishal Chelani** (supra) which had treated the classification based upon the Judgement of RERA, and more importantly when it is their own case of the appellant that they have invoked arbitration proceedings for refund of money. In that eventuality, they cannot sail on two boats simultaneously by resorting to

the recourse of arbitration proceedings under Section 138 of Negotiable Instrument Act. On one hand, raising a claim excepting the money to be refunded to them through cheque and it is still being argued that they continue to enjoy the status of being an 'allottee', so to be classified as to be a "financial creditor". As soon as the appellant have filed a claim by invoking Clause 10 of the agreement for sale raising a claim for the refund of the amount to be remitted to them, the appellant by their own conduct, cannot be brought within an ambit of financial creditor under Sub-Section 7 of Section 5 of the Code even on reading of the Explanation of Sub-Clause (f) of Sub-Section 8 of Section 5 of the Code.

21. Besides that, also because of covenants of the agreement itself is quite explicit enough and more particularly, when according to their own admission of the appellant since, we are of a considered view that they do not fall within the scope of the "allottee" to bring them within an ambit of financial creditor and since their claim of the amount was not continuous because it has been sapped by the receipt of money that has already been refunded to them, by the corporate debtor they cannot claim for the relief No.2 as it was claimed by them in the respective I.A. filed in the Company Petition, which has been rejected by the Impugned Order.

22. Hence we could safely conclude mainly while recording our finding based on the facts of acceptance of an execution of the agreement for sale that in itself may not amount to providing a legal sanctity to the agreement for sale and the conditions of the agreement as contained there, and there is no perversity in the finding recorded by the Tribunal while interpreting the implications of **Vishal Chelani** (supra) by holding that the jurisdiction of the claimants in the case of

Vishal Chelani (supra) since being that of a **continuous allottee**, the appellant cannot be placed on same pedestal owing to the grounds which we have already considered and because of the aforesaid fact, we find that the reasoning, which has been assigned by the learned Tribunal for declining to accord the appellant the status being that of a financial creditor do not call for another interference by us hence company appeals are dismissed.

All pending Interlocutory Applications stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

19.08.2026

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