

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-723(ND)/2020

IN THE MATTER OF:

**Barkha Agarwal,
Wife of Mr. Ritesh Agarwal
Flat No 208, 1/73, S R Market,
Peepal Mandi, Agra-282003,
Uttar Pradesh 251003**

...Financial Creditor

VERSUS

**Kunal Structural Developers & Industries Private Limited
Registered Office at:
108-109, 1st Floor, 5 Pusa Road,
Near Karol Bagh Metro Station,
New Delhi-110005**

...Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on : 23.05.2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SHRI L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Mohd. Nazim Khan, PCS

For the Respondent : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Ms. Barkha Agarwal (for brevity, the '**Financial Creditor**') has filed the present Petition under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against Kunal Structural Developers & Industries Private Limited (for brevity, the '**Corporate Debtor**').

2. The Corporate Debtor namely, Kunal Structural Developers & Industries Private Limited is a Company incorporated on 26.06.2007 under the provisions of the erstwhile Companies Act, 1956 with CIN U45400DL2007PTC165199, having its registered office at 108-109, 1st Floor, 5 Pusa Road, Near Karol Bagh Metro Station, New Delhi-110005, which is within the jurisdiction of this Tribunal.

3. The Authorized Share Capital of the Corporate Debtor Company is Rs. 1,00,00,000/- and Paid-up Share Capital of the Company is Rs. 25,00,000/- as per the master data annexed with the Application.

4. It is stated by the Applicant that she has been allotted with 06 flats/units in the 'Nikhil Woodland Apartment' project, Kakretha, Agra, details of which are given overleaf :

- a. Flat No 101 vide allotment letter dated 22.08.2013;
- b. Flat No 301 vide allotment letter dated 09.07.2013;
- c. Flat No 302 vide allotment letter dated 09.07.2013;
- d. Flat No 402 vide allotment letter dated 09.07.2013;
- e. Flat No 408 vide allotment letter dated 27.02.2014;
- f. Flat No 501 vide allotment letter dated 09.07.2013.

5. That the Applicant has added that the details of the payments made towards the aforesaid flats are given below:

S No	Name	Property Details Booked	Amount paid by the Financial Creditors towards sale consideration to the Corporate Debtor
1.	Ms Barkha Agarwal	FLAT NO. 101, FLAT NO. 301, FLAT NO. 302, FLAT NO. 402, FLAT NO. 408, FLAT NO. 501	Rs. 19,451,846 (Rupees One Crore Ninty Four Lakh Fifty One Thousand Eight Hundred and Forty Six only) through Eight cheque: 1. cheque no 293942 dt 25.09.2013 amounting Rs. 32,00,000 2. cheque no 069835 dt 30.08.2013

		in "NIKHIL WOODLAND APARTMENT"	amounting Rs. 9,93,732 3. cheque no 069836 dt 30.08.2013 amounting Rs. 24,94,382 4. cheque no 069837 dt 30.08.2013 amounting Rs. 24,94,382 5. cheque no 069801 dt 29.08.2013 amounting Rs. 9,99,350 6. cheque no 051477 dt 13.09.2013 amounting Rs. 30,60,000 7. cheque no 051476 dt 13.09.2013 amounting Rs. 30,60,000 8. cheque no 005820 dt 10.03.2014 amounting Rs. 31,50,000
TOTAL			19,451,846

6. It is further stated by the Applicant that the time period for possession of flats was not specified in the allotment letters dated 09.07.2013. It has been added that during the year 2017, the Applicant came to know that the Corporate Debtor had given possession to 29 flat owners and executed the Sale Deed in favour of their owners. On coming to know about this, the Applicant immediately wrote a letter dated 28.07.2017 to the Corporate Debtor for handing over possession of the Applicant's 6 flats.

7. That the detailed particulars of the financial debt including the total amount of default and the date of default as averred in the Part IV of the application are reproduced below :

PART- IV		
PARTICULARS OF FINANCIAL DEBT		
1.	PARTICULARS OF FINANCIAL DEBT GRANTED AND DATE OF DISBURSEMENT	
		The total amount of financial debt as regards the Financial Creditors is Rs. 28,496,954 consisting of principal amount of Rs. 19,451,846 (Rupees One Crores Ninty Four Lakh Ninety Four Thousand Eight Hundred Forty Six only) Plus a sum of Rs 9,045,108 (Rupees Ninety Lakh Forty Five Thousand One Hundred Eight only) towards interest at the rate of 18% for the period from 01.08.2017 to 29.02.2020 as acknowledged by Corporate Debtor to the Applicant Financial Creditor. The Financial Creditors herein are the Allotees of the Residential Flat. However, the Corporate Debtor failed in its commitment to deliver the Flat on time. Details of flats booked and amount paid is enclosed and marked as Annexure A-4.

		This failure of the Corporate Debtor has created a default on its part, thus leading to the filing of the present application. This is an application under second proviso to Section 7(1) of the Code. A chart showing the eligibility of Financial Creditor to file the Application has been annexed hereto and marked as Annexure A-5.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED. (ATTACHED THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEAFULT IN TABULAR FORM)	The total amount of financial debt as regards the Financial Creditors is Rs. 28,496,954 consisting of principal amount of Rs. 19,451,846 (Rupees One Crores Ninty Four Lakh Ninety Four Thousand Eight Hundred Forty Six only) Plus a sum of Rs 9,045,108 (Rupees Ninety Lakh Forty Five Thousand One Hundred Eight only) towards interest at the rate of 18% for the period from 01.08.2017 to 29.02.2020 as acknowledged by

		Corporate Debtor to the Applicant Financial Creditor. Date of default is 01.08.2017. The amounts payable/ due for Applicant Financial Creditor has been tabulated for ease of convenience of this Hon'ble Tribunal in a tabular chart annexed at Annexure A-6.
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8. From the perusal of the pleadings, it is evident that the total unpaid financial debt claimed by the Applicant amounts to Rs. 28,496,954/- and the date of default relied by the Applicant is 01.08.2017.

9. That in order to establish that the Applicant is an allottee, the Financial Creditor has annexed the letters of allotment of the units with the application. That one such letter of allotment is reproduced overleaf :

Kunal Structural Developers & Industries Pvt. Ltd.

1st Floor, 5 Pusa Road, Near Karol Bagh Metro Station, New Delhi-110005
Site Off.: Nikhil Woodland Apartment, Opp. Kamayani Hospital, NH-2, Agra -07

Allotment Letter

Dear Sir/ Madam,

We are pleased to allot a Flat in our prestigious project named "Nikhil Woodland Apartment", which is situated at Kakretha, Agra. Your Flat no. 501 On Fifth floor, 3BHK (SBUA -1575 Sq. Ft.) Valued of Rs. 56,70,000/- (Rupees Fifty six lac seventy thousand only) allotted in Name of Mrs. Barkha Agarwal W/o Sri Ritesh Agarwal R/o -Rawatpara, Agra.

Barkha Agarwal

Sign. of Allottee

For Kunal Structural
Developers & Industries Pvt. Ltd.



Auth. Signatory

Dated: -09.07.2013

10. That the Applicant has also annexed with its application, the Builder-Buyer Agreement for each of the units allotted.

11. In addition to this, the following Tripartite Agreements have been placed by the Applicant, whereby loans have been taken by the Applicant from M/s. Tata Capital Housing Finance Limited and M/s. Indiabulls Housing Finance Limited by mortgaging the aforesaid units.

Sl. No.	Date of Tripartite Agreement	Details of Parties
1.	02.09.2013	a) M/s. Kunal Structural Developments & Industries Pvt. Ltd. (Corporate Debtor) b) Mrs. Barkha Agarwal c) Tata Capital Housing Finance Limited
2.	28.08.2013	a) Mrs. Barkha Agarwal b) M/s. Kunal Structural Developers & Industries Pvt. Ltd. c) Indiabulls Housing Finance Limited
3.	28.08.2013	a) Mrs. Barkha Agarwal b) M/s. Kunal Structural Developers & Industries Pvt. Ltd. c) Indiabulls Housing Finance Limited

12. That in order to establish default, the Applicant has placed emphasis on the letter dated 01.08.2017 issued by the Corporate Debtor to the Applicant, whereby the Corporate Debtor has sought time to either register the sale deed in favour of the Applicant or to refund the money with 18% interest. The scanned copy of the aforesaid letter is reproduced overleaf :

KUNAL STRUCTURAL DEVELOPERS & INDUSTRIES PVT. LTD.

Date: 01.08.2017

Mrs. Barkha Agarwal
w/o Ritesh Agarwal
R/o-16/28, Rawat Para, Agra.

Subject:- Allotment of Unit No. 101,301,302,402,408,501 In Project "Nikhli
Woodland Apartment"

Reference:- Your Letter Dated : 28.07.2017

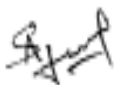
Dear Sir,

This letter is in reference to your letter dated 28.07.2017 in which you express our inability to provide you the possession of your Unit No. 101,301,302,402,408,501 3BHK (SBUA 1575 Sq. Ft.) in our prestigious project named "Nikhli Woodland Apartment" at Mauza, Kakretha, Sikandra, Agra.

Due to some unavoidable reasons till now we are not in position to register sale deed in your favour. I assure you that the said unit either will be registered to you as soon as possible or refund your money with interest @ 18% p.a. I Request you to give some more time to resolve the issue.

For and on behalf of

Kunal Structural Developers & Industries Pvt. Ltd.


Director

13. That as regards to the maintainability of the present application, it is stated by Applicant that she has been allotted with 06 units out of the total 48 units in the project namely 'Nikhil Woodland Apartment', which is more than 10% of the total number of allottees in the aforesaid project. That in order to support its submission regarding 48 units being in the aforesaid project, the Applicant has annexed a copy of RTI reply received from the Agra Development Authority, which has clearly confirmed this fact. The copy of RTI reply annexed with the application is reproduced below :

आगरा विकास प्राधिकरण, आगरा

नं 77/248/RTI/19-20 12-01-2020

जनसूचना अधिकारी (भवन/नियोजन)

कृपया नोटल अधिकारी जनसूचना के कार्यालय पत्र संख्या 77/डी/ज0सू0/19-20 दिनांक 23.01.2020 के अं में वांछित सूचना निम्नवत् है :-

आवेदक का नाम व पता : श्रीमती रुषा अग्रवाल पत्नि श्री महेन्द्र कुमार गर्ग, पता-95, कावेरी कौज फेस, कमला नगर, आगरा। (9837041272)

प्रार्थना-पत्र का दिनांक : 23.01.2020

आप द्वारा मांगी गयी सूचना प्राधिकरण के भवन अनुभाग में उपलब्ध रिकार्ड के अनुसार निम्नवत् है:-

आप द्वारा वांछी गयी सूचना के सम्बन्ध में अवगत कराना है कि खसरा संख्या 212 व 214 मौजा ककरैठा आगरा एड लैण्ड अपार्टमेंट के नाम से मानचित्र आगरा विकास प्राधिकरण आगरा द्वारा स्वीकृत है। बुड लैण्ड अपार्टमेंट का मानचित्र छः तलों का स्वीकृत है। छः तलों में 48 यूनिट स्वीकृत हैं।

लिपिक

सहायक जनसूचना अधिकारी (भवन)

14. After hearing submissions of Applicant and perusing the documents placed on the record, this Bench is of the view that Applicant has been able to establish that the application filed under Section 7 of IBC is by an 'allottee' in terms of the proviso to Section 7(1) of IBC, 2016, as it has been filed by an allottee having allotment of more than 10% of the units in the project.

15. That despite opportunities, the Corporate Debtor failed to appear or file reply and therefore, its right to file reply was closed on 16.12.2021 and the case was posted for the final arguments. During the hearing on 19.04.2022 also, none appeared for the respondent. Hence, the Corporate Debtor/respondent has failed to give any cogent reason that as why the CIR process shall not be initiated against it.

16. In the given facts and circumstances, the present Petition being complete and the Financial Creditor/Applicant having established the default in payment of the Financial Debt for the default amount being above the threshold limit, **the present Petition is admitted in terms of Section 7(5) of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the IBC, 2016.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

“(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.”

17. As proposed by the Financial Creditor, this Bench appoints Mr. Pramod Kumar Sharma as IRP having IBBI/IPA-002/IP-N00110/2017-18/10258 (Email: pksharmafcs@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

This Adjudicating Authority orders that :

“Mr. Pramod Kumar Sharma as IRP having Registration No. IBBI/IPA-002/IP-N00110/2017-18/10258, (Email: pksharmafcs@gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. A copy of this Order shall be communicated to the Applicant/Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Registry/Court Officer of this Tribunal.

20. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)