



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV

CP (IB) 69 (ND) 2026

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

RAJEEV SHARMA AND ORS. (146 HOME ALLOTTEES)

...Financial Creditors

Versus

GAYATRI HOSPITALITY AND REALCON LIMITED

...Corporate Debtor

Order Pronounced on: 05.10.2026

CORAM:

SHRI MAHENDRA KHANDELWAL

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Aishvary Vikram, Mr. Lucky Sharma, Navya Bhagat,
Mr. Yash Jain, Advocates.



For the Respondent : Mr. Sunil Fernandes, Sr. Adv, Mr. Ashish Choudhury,
Mr. Anand Kamal, Mr. Abhishek Arora, Advocates.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This Application has been filed by 170 allottees who have booked a total of 146 Units, Applicants/Financial Creditors ("FC") before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against Gayatri Hospitality and Realcon Limited, the Respondent/Corporate Debtor ("CD"). As per Part IV of the Application, total amount in default: Rs. 19,34,94,348/- (Rupees Nineteen Crores Thirty-Four Lakhs Ninety-Four Thousand Three Hundred and Forty-Eight Only) along with interest at 18% per annum.

EARLIER ROUND OF LITIGATION

2. Prior to filing the present Section 7 Petition, an earlier petition, CP (IB) No. 288(PB)/2019, was initially filed by eight allottees, with subsequent impleadment applications increasing the number of petitioners to 107. The



Corporate Debtor was admitted into CIRP by order dated 04.03.2024 passed by the Adjudicating Authority. However, the National Company Law Appellate Tribunal, by order dated 08.07.2025 in CA (AT) (Ins) No. 1053/2024, set aside the admission solely on the ground of non-compliance with the third proviso to Section 7, as the impleadment applications were filed beyond the period prescribed in *Manish Kumar v. Union of India*. The appeal before the Supreme Court of India was subsequently dismissed as not pressed on 08.09.2025.

SUBMISSIONS OF THE APPLICANTS:

3. The present Application is filed by more than 10% of the allottees and 100 allottees with regard to the gross default committed by the Corporate Debtor in relation to its Project namely "Gayatri Aura" developed by the Corporate Debtor situated at Plot No. GH-11, Sector-01, Greater Noida, Gautam Budh Nagar, Uttar Pradesh.
4. The application is being filed by the 170 Financial Creditors who have booked a total of 146 Units in the Project. The Financial Creditors booked Units in the Project between the year 2011-2016. Thereafter, the Corporate Debtor had issued Allotment Letters to the Financial Creditors allotting Units to them and also collected the booking amount from them.
5. Subsequently, the Corporate Debtor executed an Allotment Letter Cum Builder Buyer Agreement ("Agreement") with the Financial Creditors in respect of the



Units that had been booked by them which was primarily executed between 2014-2017.

6. As stipulated in the Agreement, the Corporate Debtor was to complete the Project and deliver possession of the Units to the Financial Creditors within a maximum period of 40+ (6 as grace period) months from the date of signing of the Agreement.
7. Based on the payment plan mentioned in the Agreement, the Financial Creditors diligently made payments towards each demand that was raised by the Corporate Debtor and had also availed financial assistance from various financial institutions/banks. However, the Corporate Debtor failed to offer possession of the Units within the time promised i.e. 40 (+ 6 as grace period) months.
8. The Financial Creditors have paid an amount of Rs. 19,34,94,348/- (Rupees Nineteen Crores Thirty-Four Lakhs Ninety-Four Thousand Three Hundred and Forty-Eight Only) to the Corporate Debtor towards the sale consideration of the Units but have not received possession of their unit.
9. As per the current status of the Project, it is unlikely to be completed in the near future.
10. The Quarterly Progress Reports (Architect Report) uploaded by the Corporate Debtor, shows only 2 of 11 towers have been partially constructed. Further, the



incomplete construction of the Project is confirmed by the Local Commissioner's Report dated 10.04.2023, submitted before this Adjudicating Authority (C.P. No. 288/PB/2019), which indicates that only 2 of 11 towers have been partially completed, making completion of the Project in the near future highly improbable. Since 2012, more than 13 years have elapsed, and the Corporate Debtor has not completed the Project to date.

11. The Corporate Debtor committed default upon expiry of the contractual possession period of 40 months, and upon expiry of the 6-month grace period, under the respective Builder Buyer Agreements (BBAs). The dates of default, range primarily between 2016–2019 and, for some allottees, 2021–2025. As possession of the flats in a habitable condition has not been handed over till date, the default is stated to be a continuing default.
12. The Corporate Debtor cannot rely on the "zero period" granted by GNIDA, as it continued to execute BBAs during the alleged period of non-availability of land while representing that it had complete vacant possession. Such exclusion cannot extend the contractual timeline for delivery or constitute a force majeure event, particularly when the project remains incomplete even after excluding the claimed zero period.
13. The Corporate Debtor has failed to deliver possession or comply with RERA orders/decrees directing possession and/or refund to certain allottees. The



amounts invested constitute a financial debt under Sections 5(7) and 5(8)(f) of the Code. The total amount claimed to be in default is Rs. 19,34,94,348, together with interest at 18% per annum, and the continuing failure to hand over possession constitutes a continuing default.

SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR:

- 14.** The present Section 7 Application is wholly misconceived, not maintainable and liable to be dismissed, as the Applicants neither qualify as Financial Creditors nor does any financial debt or default, as contemplated under the Code exists. The Applicants have approached the Adjudicating Authority with unclean hands by suppressing material facts, manipulating documents and invoking the provisions of the Code merely as a recovery mechanism to arm-twist the Corporate Debtor, which is otherwise a financially solvent and debt-free company.
- 15.** Several Applicants cannot be regarded as genuine homebuyers or subsisting allottees entitled to invoke Section 7 of the Code. According to the Corporate Debtor, many of the Applicants had defaulted in payment of instalments resulting in cancellation of their allotments, while others had already obtained refunds pursuant to orders of the Real Estate Regulatory Authority (RERA), entered into settlements with the Corporate Debtor, taken possession of their allotted units, or refused to accept possession despite completion of the units.



Consequently, such persons had ceased to be allottees and could not be counted towards the statutory threshold prescribed under the proviso to Section 7(1) of the Code. The Applicants deliberately included such ineligible persons only to artificially satisfy the threshold requirement for maintaining the present petition.

- 16.** The delay in completion of the project was entirely attributable to circumstances beyond its control. Although the project land was allotted by GNIDA in 2010, a substantial portion of the land remained under illegal encroachment by farmers, preventing commencement and execution of construction activities. Despite repeatedly requesting GNIDA to hand over vacant and encumbrance-free possession, the Authority failed to do so for several years while simultaneously insisting upon payment of lease instalments, interest, penalties and other charges. The Corporate Debtor continued making payments on the assurances of GNIDA that possession would soon be handed over, but such assurances were not honoured. During this period, the Applicants booked units in the project and Builder Buyer Agreements were executed. The Builder Buyer Agreements expressly contained force majeure clauses covering events such as governmental actions, litigation, non-availability of land, farmer agitation, court orders and other circumstances beyond the control of the Corporate Debtor, and therefore the delay in handing over possession stood contractually excused.



17. The Corporate Debtor further submitted that GNIDA itself subsequently acknowledged that a major portion of the allotted land was under encroachment and initiated eviction proceedings. It was only in September 2017 that substantial encroachment-free possession of the land was handed over, as reflected in the fresh possession letter issued by GNIDA. Owing to the continued encroachment, construction could be undertaken only on a limited portion of the project, making it impossible to develop the remaining towers and common amenities in accordance with the sanctioned plans. To mitigate the hardship, the Corporate Debtor offered the allottees the option of shifting to Towers A, B, E and F, where construction had substantially progressed. The project continued to be affected by pending land disputes, litigation and issues relating to compensation payable to farmers.

18. The Corporate Debtor further relied upon several governmental and statutory orders recognising that the delay in construction was occasioned by factors beyond its control. It was submitted that, following prolonged litigation relating to land acquisition, the Greater Noida Authority granted the benefit of "Zero Period", and thereafter the Competent Authority, by order dated 02.08.2023, specifically held that nearly 45% of the project land had remained under encroachment and that construction could not proceed until complete possession was handed over. Accordingly, the Competent Authority granted



Zero Period from the date of allotment 14.02.2022 until 01.09.2017 and directed recalculation of the dues payable by the Corporate Debtor. The Corporate Debtor also relied upon RERA notifications treating the COVID-19 pandemic as a force majeure event and granting automatic extensions for completion of projects. The delay in completion of the project stood officially recognised and condoned by the competent authorities and could not constitute a default under the Code.

19. The present proceedings constitute the second round of litigation. It was stated that an earlier Section 7 petition had initially been filed by only eight homebuyers. Following the amendment to Section 7 by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, the Applicants were required to satisfy the statutory threshold of not less than one hundred allottees or ten percent of the total allottees. Thereafter, successive impleadment applications were filed seeking addition of further homebuyers. Many of the impleaded applicants were themselves defaulters whose allotments had already been cancelled or who otherwise ceased to be allottees, and therefore they could not be considered while determining compliance with the statutory threshold. The petition remained non-maintainable even after the impleadments.

20. Considering that the project comprised more than 1,100 homebuyers and that admission of CIRP would have a bearing on all stakeholders, the Adjudicating Authority, by order dated 26.07.2023, appointed a Court Commissioner to



inspect the project and submit a report. The Adjudicating Authority also directed the Corporate Debtor to convene a meeting of all 1,124 homebuyers in the presence of the counsels for the parties, under the chairmanship of the Court Commissioner, to explore a viable resolution. The said order was challenged before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 1068 of 2023; however, the appeal was disposed of without interference in the order dated 26.07.2023. Pursuant thereto, meetings were conducted with the allottees, wherein 746 out of 1,124 allottees participated and 604 allottees, constituting about 81% of the participating homebuyers, voted in favour of the resolution proposed by the Corporate Debtor. The Commissioner also submitted a report recording the e-voting results before this Adjudicating Authority.

21. On 09.10.2023, this Adjudicating Authority directed the Court Commissioner to verify the genuineness of the participating allottees. The Court Commissioner submitted its report pursuant thereto; however, according to the Corporate Debtor, the report contained several discrepancies and anomalies, in respect whereof a detailed reply was filed by the Corporate Debtor.

22. The Adjudicating Authority allowed the impleadment application and initiated CIRP against the Corporate Debtor, which was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT vide its order dated 08.07.2025 allowed the said appeal, inter alia, holding that the original application filed by eight homebuyers



did not comply with the mandatory threshold requirement. The Hon'ble NCLAT further observed that although additional applicants were sought to be added later, including by an application filed on 15.07.2021, such steps were taken beyond the prescribed period of 30 days from the amendment dated 18.12.2019, and in any event beyond 30 days from the judgment dated 19.01.2021 in Manish Kumar vs. Union of India and Anr. (2021) 5 SCC 1, whereby the Hon'ble Supreme Court upheld the validity of the amendment. Accordingly, the Hon'ble NCLAT held that, by operation of the deeming provision under the third proviso to Section 7(1), the original Section 7 application stood withdrawn and the Adjudicating Authority could not have proceeded further with the same.

23. On 08.09.2025, the homebuyers approached the Hon'ble Supreme Court by way of Civil Appeal Diary No. 40464 of 2025 against the order dated 08.07.2025 passed by the NCLAT. The Hon'ble Supreme Court dismissed the appeal as not pressed on 08.09.2025.

24. The Corporate Debtor had taken substantial steps towards completion of the project by entering into a Joint Venture with Floral Homes Private Limited, which was subsequently recognised by UPRERA as a co-promoter of the project.

25. SWAMIH Investment Fund had sanctioned financial assistance of Rs. 367 crore for completion of the project as well as refund of those homebuyers who wished to exit. Despite these concrete steps towards completion, certain Applicants



deliberately attempted to obstruct disbursal of the sanctioned funds by sending communications to SWAMIH Fund, SBI officials and other authorities threatening legal and vigilance action if the funds were released. The Applicants were acting with ulterior motives and that the present petition had been instituted not for resolution of insolvency but with the object of frustrating revival of the project and exerting pressure upon the Corporate Debtor.

26. The Corporate Debtor has raised a preliminary objection regarding the maintainability of the present application under Section 7 of the Code contending that the Applicants have failed to satisfy the statutory threshold prescribed under the second proviso to Section 7(1). It is submitted that the Applicant group has artificially inflated the number of allottees by including persons who are no longer genuine or subsisting allottees, despite the fact that the project comprises more than 1,300 allottees while the present application pertains only to 146 units. According to the Corporate Debtor, only persons having a subsisting financial debt and a continuing contractual relationship with the Corporate Debtor can be treated as financial creditors in a class. Persons whose allotments stand cancelled, who have accepted or obtained refunds, who have entered into settlements, or who have refused possession after completion of construction cannot be regarded as genuine homebuyers for the purpose of maintaining the present application. Reliance is placed on the



judgment of the Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. to contend that Section 7 can be invoked only by bona fide financial creditors and not as a mechanism for recovery or forum shopping.

27.39 Applicants whose allotments had been cancelled on account of persistent default in payment of instalments cannot continue to claim the status of allottees. The Corporate Debtor submits that the Builder Buyer Agreement expressly stipulates timely payment as an essential condition of allotment and provides for automatic cancellation in the event of prolonged payment default. Accordingly, once the allotments stood cancelled in accordance with the contractual terms, such persons ceased to possess any subsisting right in the allotted units and cannot seek initiation of CIRP by alleging default on the part of the Corporate Debtor. It is argued that a person who has himself committed contractual default cannot take advantage of such default to invoke the provisions of the Code. Any surviving claim, if at all, would merely constitute a disputed contractual claim to be adjudicated before the appropriate forum and not a financial debt enforceable under Section 7. Consequently, these Applicants are liable to be excluded while determining the statutory threshold.

28. Another category comprising 14 Applicants had already approached the Real Estate Regulatory Authority (RERA), obtained refund orders, initiated execution proceedings and, in several cases, received part payments towards such refund



orders. It is contended that once an allottee elects the remedy of refund and secures monetary relief, the nature of the claim changes from that of a homebuyer seeking possession to that of a decree holder seeking enforcement of a money decree. Such Applicants cannot simultaneously assert the status of subsisting allottees for initiating CIRP while continuing to pursue recovery proceedings. Their inclusion, according to the Corporate Debtor, is contrary to the object of the Code, which is intended for insolvency resolution and not as a substitute for recovery proceedings. Accordingly, these Applicants are also liable to be excluded from the threshold count.

29. A substantial number of Applicants belong to Tower A and Tower B, where construction has been completed in all material respects and possession has already been offered. All requisite statutory approvals and No Objection Certificates, including Fire Safety, Structural Safety and Lift Certificates, have been obtained for the said towers. Tower E has been completed and possession has commenced, while Tower F is at an advanced stage of completion. The only impediment to issuance of the Occupancy Certificate for Tower A and Tower B is the pending dispute relating to payment of GNIDA land dues and not any structural deficiency or incomplete construction. The construction delay occurred due to illegal encroachment and prolonged farmer agitation, for which the Competent Authority granted the benefit of "Zero Period" and directed



recalculation of dues. Since GNIDA allegedly failed to extend such benefit, the matter is presently pending before the Hon'ble High Court of Allahabad, Lucknow Bench. Therefore, the Corporate Debtor submits that the alleged delay cannot be attributed to any default on its part.

30. Several Applicants have deliberately refused to accept possession despite the completion of construction and issuance of possession offers. It is submitted that the Builder Buyer Agreement expressly contemplates tower-wise possession and obligates allottees to take possession as and when the concerned tower is completed. The Local Commissioner's Report also records that Tower A and Tower B are ready for possession and several allottees are already residing in the project. Therefore, the refusal of certain Applicants to accept possession cannot be converted into a default by the Corporate Debtor so as to invoke the insolvency process.

31. Reliance has also been placed upon the judgment of the Hon'ble NCLAT in Navin Raheja v. Shilpa Jain & Ors. to contend that delays attributable to force majeure or circumstances beyond the control of the developer cannot constitute a default under the Code. It is accordingly submitted that 9 Applicants, who have refused possession despite completion of their respective units, are not genuine allottees for the purpose of Section 7 and deserve to be excluded from the threshold count. It is further argued that commencement of CIRP at this stage would



seriously prejudice the interests of the majority of genuine homebuyers awaiting completion and possession of the project.

32. Certain Applicants had entered into settlements with it prior to institution of the present proceedings, pursuant to which their respective claims stood fully and finally resolved. Having voluntarily accepted the benefits of such settlements, those Applicants are estopped from reopening the settled claims by joining the present Section 7 application. Since no subsisting default survives in respect of such settled claims, such Applicants cannot be treated as financial creditors for the purpose of maintaining the present petition.

33. One of the Applicants had initially suffered cancellation of allotment on account of payment default but was subsequently granted a fresh allotment under a new Builder Buyer Agreement. Upon execution of the fresh agreement, the rights and obligations of the parties stood governed exclusively by the new contractual arrangement. Since the contractual period of forty months, along with the permissible extension of six months under the fresh agreement, had not expired, no default in handing over possession had occurred. Consequently, the inclusion of such Applicant in the present proceedings is stated to be premature and legally unsustainable, and such Applicant is also liable to be excluded from the statutory threshold under Section 7.



34. Further, 12 units ought to be excluded from the Section 7 application for being defective due to no/improper authority letters. Reliance is placed on Rupesh Anand v. Anup Tripathi & Ors. 2023 SCC Online NCLAT 772 para 24- 25.

35. A group of 306 homebuyers has filed an intervention application being IVN.P (IBC)/ 39/2026 in the present proceedings, opposing the initiation of CIRP against the Corporate Debtor. The said homebuyers have specifically contended that commencement of CIRP would not be in the larger interest of the allottees, as a substantial number of homebuyers are desirous of obtaining possession of their respective units rather than pushing the Corporate Debtor into insolvency.

FURTHER SUBMISSIONS OF THE APPLICANTS/FINANCIAL CREDITORS:

36. The Corporate Debtor, in its Reply dated 07.05.2026, has unequivocally admitted the existence of the financial debt owed to the Applicants as well as the default in handing over possession of the allotted units. It is contended that despite such admissions, the Corporate Debtor has sought to avoid liability by raising an untenable plea of force majeure. Even if all categories of Applicants sought to be excluded by the Corporate Debtor, namely, those whose allotments were cancelled, those holding RERA recovery certificates, those who allegedly refused possession, those who settled their claims, and the Applicant with a fresh allotment are excluded, the aggregate financial debt of the remaining Applicants still exceeds the minimum threshold of Rs. 1 crore prescribed under



Section 4 of the Code. Accordingly, the statutory requirements under Sections 4 and 7 remain satisfied.

- 37.** The Corporate Debtor has made inconsistent statements regarding the total number of allottees by claiming there are more than 1,300 allottees, whereas its own records filed before this Tribunal reflect only 1,124 allotted units. The Applicants contend that no further allotments could have been made after commencement of CIRP on 04.03.2024 and lapse of the RERA registration on 18.07.2024. They further point out that the Joint Development Agreement dated 25.10.2021 records that only 664 units had been sold, thereby rendering the figure of 1,300 unsupported by any documentary evidence.
- 38.** Out of the 1,124 allotted units, 219 units were allotted to two entities, namely Mr. Avadesh Agarwal and Mr. Avi Singh, are in the nature of investment transactions and cannot be treated as genuine homebuyer allotments. Relying upon the decision of the Hon'ble Supreme Court in *Mansi Brar Fernandes v. Shubha Sharma*, it is contended that allotments made for investment, assured returns, buy-back or speculative purposes do not confer the status of genuine allottees and are liable to be excluded while computing the threshold under Section 7.
- 39.** After excluding 219 investor-held units, the total allotments reduce to 905, requiring only 91 allottees to satisfy the statutory threshold. They further



submit that the Corporate Debtor itself accepts 83 Applicants as genuine allottees and disputes only 63 Applicants.

40. The Applicants deny the Corporate Debtor's contention that the 14 Applicants who have obtained refund orders from the U.P. RERA cease to be allottees or financial creditors. At the outset, they dispute the Corporate Debtor's assertion that refunds have been deposited, contending that such claim is based only on self-serving communications addressed to the Tehsildar, the authenticity of which is questioned. The Applicants submit that they have sought information from the concerned Tehsildar regarding the alleged deposits, and the response is awaited.
41. The Applicants submit that holders of RERA refund orders continue to remain allottees and financial creditors until the entire refund is paid. Since the Corporate Debtor admits only partial payments, these Applicants continue to have a subsisting financial debt and must be counted for the purposes of Section 7.
42. The 14 allottees holding RERA Recovery Certificates continue to be financial creditors, as the entire refund amount has not been paid. They allege that the Corporate Debtor has furnished incorrect particulars regarding payments made pursuant to the Recovery Certificates.



- 43.** By virtue of Section 238 of the Code, the remedies under the IBC override and coexist with those under RERA. Reliance is placed upon *Shailendra Agarwal v. Asit Upadhyaya, Vishal Chelani v. Debashis Nanda, Rahul Gyanchandani v. Parsvnath Landmark Developers Pvt. Ltd., and Pioneer Urban Land & Infrastructure Ltd. v. Union of India* to contend that proceedings under RERA do not extinguish the status of an allottee as a financial creditor. It is submitted that if these 14 allottees are included along with the 83 undisputed allottees, the number of eligible allottees becomes 97, thereby satisfying the statutory threshold under Section 7.
- 44.** The Applicants contend that possession without an Occupancy Certificate is legally impermissible; therefore, the nine allottees cannot be excluded and their inclusion further satisfies the statutory threshold.
- 45.** The Applicants contend that the alleged cancellations are contrary to the Builder Buyer Agreement, RERA, and judicial orders, having been effected without valid demand, without notice, before expiry of the contractual grace period, or despite pending proceedings and payments. Consequently, the 39 Applicants continue to remain allottees and financial creditors. Further a fresh allotment does not wipe out the earlier default or alter the original cause of action, as the earlier cancellation itself was illegal and attributable to the Corporate Debtor.



- 46.** The Applicants contend that the Corporate Debtor was aware of the alleged impediments before entering into the Builder Buyer Agreements, falsely represented that possession of the land had already been obtained, and therefore cannot invoke force majeure based on pre-existing and known circumstances.
- 47.** The Corporate Debtor's act of sub-leasing portions of the project land is inconsistent with its plea of force majeure. The Applicants submit that the Zero Period is only a financial concession between GNIDA and the Corporate Debtor and cannot extend the contractual timelines or defeat the rights of the homebuyers.
- 48.** The Applicants submit that the Joint Venture Agreement and the proposed SWAMIH funding do not affect the maintainability of the present petition, and that the Joint Venture is void for non-compliance with Section 15 of the RERA Act.
- 49.** The Hon'ble NCLAT, in its order dated 08.07.2025, did not decide the question of debt or default on merits. The order is confined to the procedural / threshold issue under the third proviso to Section 7(1) of the IBC, 2016 viz., that the impleadment applications in the earlier petition were filed beyond the 30-day period prescribed therein, and, on that ground alone, the application was deemed withdrawn. The merits of the application, whether the home buyers



were owed a debt and whether the Corporate Debtor was in default, were not adjudicated. Consequently, the principle of res judicata does not apply.

ANALYSIS AND FINDINGS:

- 50.** The present Application has been filed by the Applicants under Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor on the ground of alleged default in handing over possession of the units allotted to them within the stipulated period. The Applicants claim to be allottees in the real estate project of the Corporate Debtor. The Application has been filed by 170 persons claiming in respect of 146 Units.
- 51.** The case of the Applicants, in substance, is that the Corporate Debtor committed default by failing to deliver possession within the period stipulated under the respective Builder Buyer Agreements. According to the Applicants, the contractual period of 40 months, together with the permissible grace period, expired without possession being handed over in a habitable and legally compliant condition. The Applicants further contend that the statutory threshold under the second proviso to Section 7(1) stands satisfied and that the persons joining the Application constitute the requisite number of allottees.
- 52.** The Corporate Debtor, on the other hand, has primarily challenged the maintainability of the Application on the following grounds namely-



- (i) The Prior Section 7 Application has attained finality Under the Third Proviso to Section 7(1), the Present Application is an Impermissible Re-Agitation.
- (ii) Present Section 7 application is not maintainable as it fails to meet the criteria provided under second proviso to section 7(1) (issue of threshold)
- (iii) There is no 'default' committed by the corporate debtor.

Issue (i) Whether present Petition is maintainable in the light of judgment of Hon'ble NCLAT dated 08.07.2025

53. During the course of arguments, Ld Sr Advocate Shri Sunil Fernandez referred to the judgment of the Hon'ble NCLAT dated 08.07.2025 passed during the first round of litigation and stated that as per the said judgment directions have been given for implementation of settlement proposal and the Applicants have to fulfil their obligations in terms of the settlement recorded and therefore no fresh Section 7 petition can be filed by the same set of applicants.

54. We have perused the said judgment. Hon'ble NCLAT has set aside the Order dated 04.03.2024 passed by the Adjudicating Authority admitting Section 7 Petition and held that CP(IB)/288(PB)/2019 stood withdrawn under third Proviso to Section 7, sub-section (1) as inserted by IBC (Amendment) Act, 2020. of admission of Section 7 Petition.



55. The Hon'ble NCLAT has noted the fact that the Section 7 Petition was filed initially by 8 home buyers and the same was filed prior to amendment of Section 7 as amended by Act No.01 of 2020 – IBC (Amendment) Act, 2020. Amendments were initially introduced by promulgation of the IBC (Amendment) Ordinance, 2019 with effect from 28.12.2019, which subsequently was replaced by the Act No.01 of 2020. As per the first proviso to amended Section 7(1) of the Code, for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, (like home buyers) an application for initiation corporate insolvency resolution process against the corporate debtor is to be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less. In respect of cases pending at the time of commencement of Amendment Act, the third proviso to Section 7(1) (as amended) provides that where an application for initiating the CIRP filed by financial creditors in class and has not been admitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission. The Hon'ble NCLAT referred to the amended provisions of Section 7(1) and judgment of Hon'ble Supreme Court



in Manish Kumar vs. Union of India and Anr. (2021) 5 SCC 1. Hon'ble NCLAT noted that for the first time, the application for modification in terms of third proviso was filed on 15.07.2021 being IA No.4163 of 2021. Hon'ble NCLAT found that the application having been filed on 15.07.2021, i.e. beyond 30 days period provided in the third Proviso, the application shall be deemed to have been withdrawn and it was not open to the Adjudicating Authority to proceed further with the application. While giving these findings, Hon'ble NCLAT has also referred to the settlement proposal offered by the Corporate Debtor which was circulated in pursuance of the order of the Adjudicating Authority dated 26.07.2023.

56. The Hon'ble NCLAT in concluding para of their judgment has recorded as under:

32. In view of foregoing discussions, both the Appeal(s) are decided in following manner:

(1) The impugned order dated 04.03.2024 admitting Section 7 application is set aside and it is held that CP(IB)/288(PB)/2019 stood withdrawn under third Proviso to Section 7, sub-section (1) as inserted by IBC (Amendment) Act, 2020.

(2) The Appellant is held bound to honour its settlement proposal as noted above, i.e.:



(I) to grant withdrawal to those units holders, who want to withdraw their amounts deposited with SBI FD interest rate within 60 days from the receipt of communication;

(II) the allotments, which were cancelled by the CD, after filing of the application under Section 7, till passing of the impugned order, shall stand revived. However, the unit holders shall be liable to pay the balance due consideration as per Builder Buyers Agreement.”

57. The aforementioned directions were given to the Appellants (Corporate Debtor) on the basis of settlement proposal offered by them. In fact, Hon’ble NCLAT has directed all allotment cancelled after filing Section 7 application shall stand revived. Rights of allottees including right to move under Section 7 IBC has not been disturbed. We may also refer to the following observations of Hon’ble Supreme Court in *Manish Kumar vs. Union of India and Anr.* (2021) 5 SCC 1, which has also been quoted by the Hon’ble NCLAT:

*“440. As regards the compelled withdrawal under the third proviso of the pending applications is concerned, we hold as follows. Once the legislature intended that the pending applications must be made compliant with the threshold requirement, consequences for not doing so had to be provided. Otherwise, it would have created complete uncertainty and the applicant would have been dealt with in a manifestly arbitrary manner. **Providing for the consequence of withdrawal before admission, which we have explained, does not have the consequence of preventing the fresh***



filing, even in regard to the same default, after complying, no doubt, with the requirement of the first or the second proviso, cannot be dubbed as arbitrary. No doubt, there is lack of clarity in this regard in the provision but on an understanding of the law, as we have expounded, the provision was capable of being understood in the manner done.”

58. Thus, the Hon’ble Supreme Court has clarified that consequence of withdrawal before admission in terms of third proviso to Section 7(1) does not prevent fresh filing even in respect of same default. **Therefore, in our view, directions of Hon’ble NCLAT dated 08.07.2025 does not preclude the Applicants to file present Section 7 Petition.**

Issue (ii) Whether present Section 7 application is not maintainable as it fails to meet the criteria provided under second proviso to section 7(1) (issue of threshold)

59. It is the case of the Corporate Debtor that there are more than 1300 units allotted at the time when the present Section 7 was filed. Some of the applicants cannot be considered applicant for the purpose of threshold. Such as:

- (i) No direct authority granted by the purported homebuyer of 12 units in favour of the authorised representative.
- (ii) 2 Petitioners had already entered into settlement with the Corporate Debtor prior to filing of the present Petition, pursuant to



which their respective claims stood resolved and no subsisting default remained payable.

(iii) 39 Petitioners forming part of the present Petition are not subsisting allottees, as their units stood cancelled for non-payment of outstanding dues despite repeated demands by the Corporate Debtor.

(iv) 14 Petitioners have already approached UP RERA, obtained refund orders and are pursuing execution/recovery proceedings against the Corporate Debtor.

(v) 9 petitioners having units in tower A and tower B cannot allege default as construction is complete and possession has been offered.

(vi) 01 petitioner who received fresh allotments after cancellation cannot allege default as the possession timeline has not yet expired.

60. The Corporate Debtor has rightly stated that as per the second proviso to Section 7, an application for initiating corporate insolvency resolution process is to be filed jointly by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project whichever is less. According to the Corporate Debtor, only 73 Unit holders are qualified to be treated as Applicant which is



less than 100 and therefore Petition is not maintainable. The computation as submitted by the Corporate Debtor is as under:

S. No.	Particulars	Number of Units	Remaini ng Allottees
1.	Total number of units in the project allotted	1300	

S. No.	Particulars	Number of Units	Remaini ng Allottees
2.	10% of total unit holders / statutory threshold	--130 or 100 whichever is lower	
3.	Number of Petitioners relied upon in the present Section 7 Petition	146 alleged allottees	146
4.	Less: Petitioners in respect of whom Section 7 application is defective	12	134
5.	Less: Petitioners who have already settled their claims with the Corporate Debtor prior to filing of the present Petition	2	132
6.	Less: Petitioners whose allotments are cancelled due to non-payment of outstanding dues. (Although there are 39, however, Divya Khaturia's Unit No. A 1503 has already been included in S.No 4 above so it is excluded from here to avoid double counting)	38	94
7.	Less: Petitioners who have obtained refund orders / Recovery Certificates from RERA and are pursuing execution proceedings and have accepted part refund. (Although there are 14, however, Ruchi Sharmas' Unit No. G 1606 has already been included in S.No 4 above so it is excluded from here to avoid double counting)	13	81
8.	Less: Petitioners having units in Tower A and Tower B where possession has been offered but possession has been refused. (Although there are 9, however, Kanishko's Unit No. b 604 and Anukool Purwars's Unit No. B-1202 has already been included in S.No 4 above so it is excluded from here to avoid double counting)	7	74
9.	Less: Petitioner whose possession timeline had not expired as on the date of filing of the Section 7 Petition	1	73
	Final qualifying figure after exclusions		73



- 61.** The second proviso to Section 7(1) of the Code prescribes a special threshold in cases where the Financial Creditors are allottees under a real estate project. The Application is required to be filed jointly by not less than one hundred 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. The requirement is mandatory in nature and is required to be satisfied at the stage of institution of the proceedings.
- 62.** At the outset, it is necessary to determine the appropriate figure of total allottees for computing the statutory threshold under the second proviso to Section 7(1) of the Code. The record before us, including the last available record of UPRERA, and Corporate Debtor's own documents filed in reply reflect the total number of allottees/units as 1,124. Although the Corporate Debtor has sought to rely upon a figure of 1,300, no material has been placed on record by the Corporate Debtor to substantiate or establish the basis for adopting the said figure. In the absence of any supporting material demonstrating that the figure of 1,300 represents the relevant total number of allottees for the purposes of the present proceedings, we find no justification to depart from the figure of 1,124 reflected in the latest RERA record. Accordingly, for the purpose of examining the statutory threshold, the total number of allottees is taken as 1,124.



63. The next question is as to the number of Applicants who can be counted for determining compliance with the aforesaid threshold. Although 170 persons have been arrayed as Applicants, the Application itself represents 146 Units. In this regard, the judgment of the Hon'ble Supreme Court in ***Manish Kumar v. Union of India, (2021) ibclaw.in 16 SC*** is relevant. The Hon'ble Supreme Court, while interpreting the second proviso to Section 7(1), held that in the case of a joint allotment of an apartment, plot or building to more than one person, the allotment is to be treated as a single allotment for the purpose of the statutory threshold. The Court explained that the object of the provision is to ensure a genuine critical mass of allottees invoking the insolvency process and that permitting multiple persons in respect of a single allotment to be counted separately could defeat that object. Relevant excerpt of the judgement is reproduced hereinbelow:

“147. As far as the situation projected about, there being no clarity regarding whether, if there is a joint allotment of an apartment to more than one person, is it to be taken as only one allottee or as many allottees as there are joint allottees, it would appear to us, on a proper understanding of the definition of the word ‘allottee’ in Section 2(d) and the object, for which the requirement of hundred allottees or one-tenth has been put, and also, not being oblivious to Section 399(2) of the Companies Act, 1956, as also



the Explanation in Section 244(1) of the Companies Act, 2013, in the case of a joint allotment of an apartment, plot or a building to more than one person, the allotment can only be treated as a single allotment. This for the reason that the object of the Statute, admittedly, is to ensure that there is a critical mass of persons (allottees), who agree that the time is ripe to invoke the Code and to submit to the inexorable processes under the Code, with all its attendant perils. The object of maintaining speed in the CIRP and also the balancing of interest of all the stakeholders, would be promoted by the view that as in the case of the Companies Acts, 1956 and 2013, that for the purpose of complying with the impugned provisos in Section 7(1), while the allottee can be of any of the categories, fulfilling the description of an allottee in Section 2(d) of RERA, as interpreted earlier by us joint allottees of a single apartment, will be treated as only one allottee. Any other view can lead to clear abuse and defeating of the object of the Code. If, for instance, a single apartment is taken in the name of hundred persons, a single allottee, who in turn comprise of relatives or family members or friends, can move an application, even though the position ante would be restored, which means that only the allottee qua one apartment, plot or building, is before the Authority and it would not really represent a critical mass of the allottees in the real estate project concerned. Therefore, we



have no hesitation in rejecting the contentions of the petitioner on having made the said interpretation.”

- 64.** Applying the aforesaid principle, the mere fact that 170 individuals have been named as Applicants cannot result in their being counted as 170 separate allottees where those persons represent only 146 Units. For the purpose of the present threshold determination, therefore, we take 146 as the starting figure, representing the distinct allotments/Units in respect of which the Applicants claim to have instituted the present proceedings.
- 65.** Accordingly, the statutory threshold is to be examined on the basis of 1,124 total allottees in the project and 146 allotments represented by the Applicants, with the latter figure thereafter being subjected to category-wise examination to determine which of those allotments can legitimately be counted for the purpose of Section 7(1). In terms of the second proviso to Section 7(1), the Application is required to be filed by not less than 100 allottees or 10% of the total number of such allottees, whichever is less. In the present case, the lesser of the two prescribed figures is 100 allottees.
- Thus, the Applicants are required to establish the presence of at least 100 eligible allottees for the Application to satisfy the statutory threshold.**



66. The Corporate Debtor has not disputed eligibility to file present Petition by 73 applicants. We may now examine certain objections raised by the Corporate Debtor regarding eligibility to file application by some of the Applicants.

RERA REFUND CASES:

67. The Corporate Debtor has submitted that 14 Petitioners have already approached UP RERA, obtained refund orders and are pursuing execution/recovery proceedings against the Corporate Debtor. Further, the Corporate Debtor has been diligently depositing amounts before the Tehsildar towards the said Recovery Certificates, and part payments have also been accepted by such Petitioners. The Corporate Debtor has placed on record copy of communications addressed to Tehsildar enclosing therewith cheque/DD/RTGS for the payment on account of certain complaints filed with the RERA. However, no bank statement or other proof to substantiate that cheques were deposited and cleared by the Bank have been placed on record. Further these payments stated to have been made in the UP RERA account and not in the account of the complainant home buyer. Further, the Corporate Debtor has annexed an excel sheet (R-33) indicating the details of payment made in terms of RERA order. Even the Excel sheet indicates that out of total decretal amount of Rs 133916748.1, an amount of Rs 100272217 has been stated to



have been made. Thus, entire amount as directed by the RERA has not been paid by the Corporate Debtor. The Excel sheet as filed by the Corporate Debtor is extracted below:

ANNEAURE R- 33

788

S.No	Complaint No.	Complainant Name	R C Amount	Date of R C Issued	Payment Date	Amount paid to Teshil	Balance
1	220186681	Anil Singh	2645953.95	01/07/19	13/03/19	1032000	
2	220187511	KUNJ BIHARI JOSHI	874122.16	09/08/19	19/04/19	495000	
3	220186657	Sunita	1204684.53	04/10/19	18/04/19	608356	
4	320187796	Akhil kumar vyas	2117413.24	07/02/19	18/04/19	500000	
5	420189319	PRANJAL OMAR	2778657.31	25/03/21	13/02/20	613000	
6	420189498	ROHIT KUMAR	2446750.26	28/11/19	02/03/20	769907	
7	420189644	Dhirendra Sharma	3857779.09	12/11/21	16/06/20	50000	
8	420189727	Deepak Bhandari	2246639.48	13/09/19	23/09/20	200000	
9	420189887	Priyanka & Umesh Chandra Sharma	2017120.33	13/09/19	08/10/20	500000	
10	5201810461	RAM SAGAR PANDEY AND RANJANA PANDEY	2509006.58	17/10/19	13/10/20	50000	
11	5201810646	Dharmendra Singh Tomar	1798795.88	21/08/19	22/10/20	720000	
12	5201810717	HARIOM SHARMA	1372139.69	24/02/20	09/11/20	4606316	
13	5201811018	SACHIN	2229084.47	25/07/19	11/11/20	500000	
14	6201812029	RANJANA PANDEY AND RAM SAGAR PANDEY	2509666.34	15/11/19	11/11/20	500000	
15	7201813264	NAROTTAM SINGH CHAUHAN	983273.43	10/10/19	11/11/20	500000	
16	7201814293	SANJEEV SRIVASTAVA	1148270.46	10/11/23	11/11/20	500000	
17	7201814339	virender sharma	2232077.35	25/07/19	09/12/20	1000000	
18	8201815686	Vaibhav Sharma	2454980.08	05/12/19	17/12/20	1000000	
19	8201816194	Akhilesh Kumar	1546520.97	14/06/19	24/12/20	1000000	
20	8201816715	Amit Kumar Shukla	2048291.55	31/12/20	31/12/20	1000000	
21	8201816846	Amarjeet B. Deshmukh	2043950.26	15/02/21	16/01/21	1000000	
22	8201816855	GAGAN SINGH	2071752.36	31/12/20	05/03/21	1000000	
23	9201817488	RAJAT RASTOGI & DEEPTI RASTOGI	2673806.09	25/07/19	02/04/21	1000000	
24	9201818864	VIRMANY PRASAD	2702480.73	29/01/21	14/09/21	500000	
25	12201827631	P L Gupta	4587646.05	08/07/20	07/03/22	2500000	
26	12201827636	PL Gupta	3472140.9	28/10/20	14/03/22	2500000	
27	1201928022	Sangeeta Gupta	3273903.2	24/02/20	02/04/22	2500000	
28	1201928026	Sangeeta Gupta	4402483.5	28/07/22	07/04/22	3000000	

TRUE COPY



790

					29/10/25	2500000	
					31/10/25	2500000	
					28/11/25	2500000	
					05/12/25	2500000	
					02/01/26	2500000	
					19/01/26	2500000	
					24/02/26	2500000	
					27/02/26	2000000	
					30/03/26	200000	
					30/03/26	1800000	
					30/04/26	3000000	
				133916748.1			100272217 33644531



68. The issue needs to be considered whether an allottee ceases to be an allottee upon obtaining an order or recovery certificate from RERA.

69. A 3 Member Bench of Hon'ble NCLAT in their judgment dated 23.04.2025 passed in ***Shailendra Agarwal (Suspended Director of M/s NHA Infrabuild Pvt. Ltd.) Vs Asit Upadhyaya and Others Company Appeal (AT) (Insolvency) No. 327 of 2025***, reported in 2025 SCC OnLine NCLAT 785 considered a similar issue of threshold in the Petition filed under Section 7 of the IBC by the home buyers. In that case also the Corporate Debtor had taken a stand that those home buyers who have obtained Recovery Certificates ("RC") or decrees under the RERA Act are no longer allottees and, therefore, cannot be considered as Financial Creditors for the purpose of filing an application under Section 7 of the Code. Hon'ble NCLAT after referring Supreme Court judgment in Vishal Chelani v. Debashis Nanda, (2023) 10 SCC 395, and NCLAT judgment in the case of Rahul Gyanchandani v. Parsvnath Landmark Developers Pvt. Ltd., 2024 SCC OnLine NCLAT 469, has stated as under:

We note that whether they have obtained recovery certificates or not, the Respondents - Allottees remain Financial Creditors under Section 5(8)(f) of the Code, as they have not received possession of the allotted flats, and their deposited amounts have not been refunded in full.

70. In the present case, admittedly, all the 14 applicants who have got RERA decree have neither received possession of allotted units and decretal



amount have not been refunded in full. Therefore, as held by the Hon'ble NCLAT in the case of *Shailendra Agarwal* (Supra), all these 14 applicants shall continue to be financial creditor, and therefore are to be considered applicants for the purpose of threshold. Contention of the Corporate Debtor has no merit.

APPLICANTS WHO REFUSED POSSESSION:

71. The Corporate Debtor in their reply has submitted that nine (9) Applicants in respect of Tower A and Tower B have refused to take possession and should therefore be excluded from the threshold count. The Applicants in their rejoinder have pointed out that Occupancy Certificate in respect of Tower A and B has not been given by the GNIDA. The Corporate Debtor has submitted that they applied for Occupancy Certificate on 01.04.2021 and has obtained requisite NOCs, including Fire Certificate Structural Safety/Natural Hazard Certificate and Lift Certificate. The formal Occupancy Certificate could not be issued only due to pending land dues/dispute with GNIDA.

72. We have considered the submissions of both the sides. Applicants in their rejoinder have placed on record GNIDA communication dated 11.08.2021 pointing out certain objections in granting Occupancy Certificate. Further, vide communication dated 05.09.2023, GNIDA has rejected the application



for grant of Occupancy Certificate on the ground that objections were not cured within stipulated period.

73. The issue needs to be considered whether these 9 Applicants justified refusal to take possession in absence of Occupancy Certificate by the GNIDA.

74. As provided in Section 19 (10) of the RERA Act 2016, every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the **occupancy certificate** issued for the said apartment, plot or building, as the case may be.

75. The Hon'ble Supreme Court in ***Parsvnath Developers Ltd. Versus Mohit Khirbat, 2026 SCC OnLine SC 281*** considered the issue of need of occupancy certificate before taking possession. Hon'ble Supreme Court held as under:

25. The issue of offering possession without an Occupancy Certificate is no longer res integra. In Samruddhi Cooperative Housing Society Ltd v. Mumbai Mahalaxmi Construction (P) Ltd (2022) 4 SCC 103, this Court held that failure to obtain the requisite Occupancy Certificate constitutes deficiency in service, entitling consumers to seek compensation.

25.1. Similarly, in Dharmendra Sharma v. Agra Development Authority¹⁸, it was categorically held that a purchaser cannot be compelled to accept possession without completion and statutory certificates, and such an offer is legally untenable.

26. In view of these authoritative pronouncements, possession without an Occupancy Certificate cannot be forced upon the respondents.



Obtaining such certificate is a statutory pre-condition integral to lawful delivery of possession.

- 76.** Admittedly, Occupancy Certificate has not been given by the GNIDA. Even after rejection by GNIDA on 05.09.2023, no fresh application for Occupancy Certificate has been submitted by the Corporate Debtor despite liberty granted by the GNIDA in their communication dated 05.09.2023.
- 77. In view of the provisions contained in Section 19(10) of the RERA Act, 2016 and law laid down by the Hon'ble Supreme Court, an allottee cannot be compelled to take possession without having a valid occupancy certificate issued by the concerned authority. Therefore, we are not inclined to accept the contention of the Corporate Debtor that 9 applicants of Tower A and B to be excluded for the threshold purpose.**

**APPLICANTS WHOSE UNITS ARE STATED TO HAVE BEEN CANCELLED
DUE TO NON-PAYMENT**

- 78.** The Corporate Debtor has submitted that 39 Petitioners forming part of the present Petition are not subsisting allottees, as their units stood cancelled for non-payment of outstanding dues despite repeated demands by the Corporate Debtor. According to the Corporate Debtor, as per the Builder Buyer Agreement, allotment was subject to realisation of remaining price of the flat as prescribed in the mode of payment in terms of the allotment letter within



the time and manner specified therein or in the communication to be sent by the CD raising demands of payment of dues as per the payment plan. Reference to Clause H, Clause 5 and Clause 7, Clause 11 of BBA has been made. (copy of BBA is annexed with the reply at page 60-78 of the reply.) Reference to Hon'ble NCLAT Order dated 08.07.2025 has also been made. Copies of cancellation letter stated to be sent to the Unit holders and Speed post receipt have also been placed on record.

- 79.** Detailed chart indicating those unit holders and dates of cancellation etc. is placed on record an Annexure R 30, which is extracted below.

ANNEXURE R- 30												529
S. no.	Allottee No	Unit No.	Name	Date of Allotment	Unit Cost	% of payment made	Received Amount with GST	Current Outstanding	Date of Demand	Date of Reminder	Date of Cancellation	Date of Approaching NCLT
1	5	L-503	Sudhir Sumra	21.06.2014	31,35,600	20%	6,40,065	3,27,736	18.05.2015	03.06.2015	19.06.2015	26.12.2025 (CPIB)/69/ND/2026
2	11	L202	Vandana Pursnani	NA	30,73,200	24%	8,00,000	1,40,799	18.05.2015	03.06.2015	19.06.2015	26.12.2025 (CPIB)/69/ND/2026
3	16	J-108	Sudhir Tyagi	20.06.2014	26,14,500	20%	5,34,157	5,47,945	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
4	19	J-1005	Pankaj Maheshwari	26.06.2014	25,28,800	20%	7,19,984	7,40,401	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
5	20	I-201	Dinesh Joshi	26.06.2014	26,02,880	20%	5,31,761	2,72,043	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
6	25	I-606	Lata Smriti Verma	10.03.2014	24,86,145	20%	5,07,803	2,59,561	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
7	27	I-1403	Praveen Khurana	02.04.2014	25,85,450	20%	5,28,167	2,70,198	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
8	31	I-1606	Md. Tariq	01.01.2014	30,09,580	20%	6,15,614	3,16,443	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026
9	37	I503	Divya Khaturia	21.09.2016	28,51,548	72%	20,74,034	8,61,274	NA	NA	23.12.2019	26.12.2025 (CPIB)/69/ND/2026
10	43	C-904	Shobit Gupta	NA	31,49,578	20%	6,43,758/-	3,39,026	28.06.2021	13.07.2021	29.07.2021	26.12.2025 (CPIB)/69/ND/2026
11	46	I506	Sanjeev Puri	19.06.2014	33,66,600	28.75%	9,68,020	4,22,298	03.10.2023	19.10.2023	06.11.2023	26.12.2025 (CPIB)/69/ND/2026
12	56	I604	Dr.Dilip Jarwal	NA	39,45,894	39%	15,56,082	5,33,511	NA	NA	29.07.2021	26.12.2025 (CPIB)/69/ND/2026
13	60	F-908	Stuti Garg	22.06.2014	30,67,289	65.28%	20,02,593	8,53,996	11.03.2019	28.03.2019	15.04.2019	26.12.2025 (CPIB)/69/ND/2026
14	63	F-601	Gulam Mohi Din	10.06.2015	24,86,145	87%	21,74,000	2,55,940	16.11.2025	01.12.2025	20.12.2025	26.12.2025 (CPIB)/69/ND/2026
15	65	F-707	Preeti Gupta	28.06.2018	21,23,820	72%	17,93,068	2,75,259	16.11.2025	01.12.2025	20.12.2025	26.12.2025 (CPIB)/69/ND/2026
16	66	A-904	Manoj Gupta	28.06.2018	29,92,030	85%	25,47,269	5,93,238	24.11.2021	NA	24.11.2021	26.12.2025 (CPIB)/69/ND/2026
17	68	I1004	Bhupinder Singh Grewal	23.11.2014	26,40,864	83.59%	22,07,409	3,41,876	16.11.2025	01.12.2025	20.12.2025	26.12.2025 (CPIB)/69/ND/2026
18	69	I202	Amrita Yadav	17.05.2016	48,67,200	70.13%	34,13,376	13,51,510	NA	NA	19.12.2025	26.12.2025 (CPIB)/69/ND/2026
19	86	I507	Sanjay Kumar	17.04.2014	22,18,104	69.32	15,88,576	5,84,101	16.11.2025	30.11.2025	17.12.2025	08.01.2019 - CP(PB)/288/2019 26.12.2025 (CPIB)/69/ND/2026
20	88	I705	Vikas Jha	28.01.2017	29,66,496	24.17%	7,17,150	1,23,955	10.10.2025	29.10.2025	20.11.2025	26.12.2025 (CPIB)/69/ND/2026

TRUE COPY



21	90	C-505	Santosh Kumar Pandey	22.01.2014	28,89,200	27.92%	8,29,985	3,60,435	NA	NA	13.06.2022	07.07.2022 (IA/3422/2022)
22	91	C-703	Pulkit Gupta	NA	31,77,218	19.88%	6,49,547	3,09,028	NA	NA	29.07.2021	03.01.2023 (IA 499/2023)
23	93	D-1002	Ravi Rastogi	20.01.2014	28,85,246	45%	13,56,625	1,69,629	NA	NA	29.07.2021	07.07.2022 (IA/3422/2022)
24	103	A-805	Amit Kumar	NA	33,49,001	59%	19,85,146	2,05,389	01.03.2016	16.03.2016	02.04.2016	26.12.2025 (CPIB)/69/ND/2026
25	105	A-1402	Rekha Sharma	30.06.2016	41,83,200	15%	6,50,000	33,35,012		NA	22.08.2018	15.07.2021 IA 4162 of 2021
26	106	A-1708	Mukesh Kumar	NA	34,27,900	63%	21,86,061	NA	NA	NA	11.07.2022	26.12.2025 (CPIB)/69/ND/2026
27	109	B-603	Anit K. Srivastava	12.01.2014	25,27,350	89.91%	22,72,298	3,61,557	20.12.2021	27.12.2021	22.01.2022	26.12.2025 (CPIB)/69/ND/2026
28	112	E-601	Sushila Rani	27.05.2014	25,50,590	42%	11,20,874	7,63,118	NA	NA	24.04.2017	08.01.2019 - CPI(PB)/288/2019
29	120	F-1104	Sandeep Kumar	15.05.2014	33,74,844	53%	17,93,862	6,32,921	20.04.2017	05.05.2017	16.05.2017	26.12.2025 (CPIB)/69/ND/2026
30	128	K-507	Inderjit Kumar Gain	05.01.2014	22,02,455	33.06%	7,49,311	1,82,567	NA	NA	07.04.2014	07.07.2022 (IA/3422/2022)
31	131	C-1001	Prashant Sharma	19.07.2014	28,27,200	27.92%	8,12,016	3,52,618	NA	NA	13.06.2022	07.07.2022 (IA/3422/2022)
32	132	C-1104	Navin Kainth	07.06.2014	31,97,948	29.70%	9,78,361	3,35,833	NA	NA	14.06.2022	07.07.2022 (IA/3422/2022)
33	144	F-1508	Pankhuri Bhardwaj Kothari	14.09.2016	41,90,805	65.29%	28,63,055	12,00,838	06.10.2025	27.10.2025	14.11.2025	15.07.2021 IA 4162 of 2021
34	154	B-801	Tushar Rastogi	26.04.2014	22,52,583	69.28%	16,09,044	2,63,338	NA	NA	07.06.2019	15.07.2021 (IA 4162 of 2021)
35	158	C-405	Vikas Singh	20.01.2014	29,01,600	28.73%	8,33,579	3,61,993	NA	NA	13.06.2022	07.07.2022 (IA/3422/2022)
36	160	F-1105	Poonam Kappor	07.04.2014	26,65,878	80%	21,55,991	4,51,249	16.11.2025	25.11.2025	15.12.2025	26.12.2025 (CPIB)/69/ND/2026
37	161	H-105	Bhupendra Singh	NA	21,64,644	10%	2,00,000	4,75,494	26.02.2015	13.03.2025	31.03.2015	26.12.2025 (CPIB)/69/ND/2026
38	110	B-1005	Vinnet Kumar Jain	18.11.2018	26,31,304	43%	11,42,223	16,30,955	NA	NA	23.03.2022	26.12.2025 (CPIB)/69/ND/2026
39	116	F-705	Maresh Kumar	21.05.2022	47,22,920	38%	18,00,000	17,04,406	08.07.2022	06.08.2022; 22.08.2022	30.11.2022	26.12.2025 (CPIB)/69/ND/2026

80. The Applicants have refuted this contention in their rejoinder. They have also raised an issue that no amount could have been demanded by the Corporate Debtor after the cancellation of RERA on 18.07.2024. On the other hand, the Corporate Debtor has referred to the Hon'ble NCLAT order dated 08.07.2025 (i.e. after the alleged cancellation) which specifically directed that the unit holders shall be liable to pay the balance due consideration as per the Builder Buyers Agreement.

81. We have considered these submissions and perused the documents made available on record. The Corporate Debtor is primarily relying on clause 11 of the BBA for cancellation of the allotment. Clause 11 reads as under:



11. That the separate demand letter for payment of installments along with due dates will be issued by the company, timely payment of installments as indicated in the schedule of payment is the essence of the Allotment, in case any cheque(s)/pay order(s)/draft(s) issued by the allottee(s) gets dishonored, the allotment shall be stand cancelled. The payments shall be first adjusted towards the due interest thereafter the remaining amount shall be adjusted against the due principal amount. If any installment(s) is not paid by the due date, the Company will charge 24% interest per annum on the delayed payment for the period of delay, **However, if the payment remains in arrears for more than 45 days from the due date or two consecutive demands whichever is earlier, the Allotment will stand automatically cancelled without any further intimation to the Allottee and the Allottee will cease to have any lien on the Apartment/Flat. In such a case, 10% of the Unit sale price of the Apartment/Flat along with local/state/central taxes as applicable from time to time shall be forfeited and the balance amount, if any, remains after adjustment of charges as discussed in this para, will be refunded without any interest.** However, in exceptional and genuine circumstances the Company may at its sole discretion, condone the delay in payment by charging a minimum interest of 24% per annum of the amount outstanding, but shall not be bound to do so.

In case, the Allottee, at any time, desires to surrender registration cum booking /provisional allotment, it may be agreed to, subject to sole discretion of the Company. In such a case 10% of the Apartment/Flat Sale Price of the Apartment/Flat along with local/state/central taxes as may be applicable from time to time, shall be deducted towards the processing and administrative charges and the balance, if any, shall be refunded without any interest.



82. The aforementioned Clause 11 of the BBA while provides for cancellation of allotment in the event of non-payment of instalment by the allottee, also provides that in case of such cancellation, the Corporate debtor is obliged to refund the amount received after deducting 10%. It is clearly mentioned in this clause that, “ ***In such a case, 10% of the Unit sale price of the Apartment/Flat along with local/state/central taxes as applicable from time to time shall be forfeited and the balance amount, if any, remains after adjustment of charges as discussed in this para, will be refunded without any interest.***” Neither any averment has been made nor and document has been placed on record to substantiate that while cancelling the allotment, balance amount in terms of clause 11 has been paid. The alleged cancellations have stated to be taken place from 31.03.2015 to 20.12.2025. A substantial time has elapsed since then, but the corporate debtor has not fulfilled its obligation to refund the balance amount as calculated. Instead of refunding the amount, the Corporate Debtor vide their stated communication has asked the allottee to visit site office for reconciliation of their account and for receipt of the refundable amount. The BBA does not stipulate such a condition.

83. We may also refer to the Order dated 08.07.2025 passed by the Hon’ble NCLAT (which has also been relied upon by the CD) wherein in para 29 of the said



Order, Hon'ble NCLAT has recorded the offer made by the Corporate Debtor (in respect of cancellation of units) in pursuance of the order of the Adjudicating Authority dated 26.07.2023. In the said offer, following is mentioned:

The allotment of 50 allottees has been cancelled. For allottees who have not secured a refund order from any other judicial/quasi-judicial body, the corporate debtor is willing to restore their allotment if they wish to continue in the project provided the project comes out of NCLT proceedings. Those who wish to get an exit from the project corporate debtor is ready to refund their entire money along with interest at the rate of SBI Bank FD Rate within 60 days of the order.

Taking into account the aforesaid offer of the CD, Hon'ble NCLAT has directed as under:

(2) The Appellant is held bound to honour its settlement proposal as noted above, i.e.:

(II) the allotments, which were cancelled by the CD, after filing of the application under Section 7, till passing of the impugned order, shall stand revived. However, the unit holders shall be liable to pay the balance due consideration as per Builder Buyers Agreement.

Thus, the cancellation of units done by the CD during the above period i.e. after filing earlier Section 7 Petition CP IB 288/2019 (i.e. 11.01.2019) till the Order of admission i.e. 04.03.2024 have already been directed to be revived by the



Hon'ble NCLAT. Again, in these cases also, the CD has not refunded the balance amount.

84. Further, as per Explanation to Section 5(1)(f), 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. Admittedly all these 39 Applicants/allottees have made payment to the Corporate Debtor for real estate project.

85. We may also refer following paras of Supreme Court judgment in ***Manish Kumar v. Union of India, (2021) 5 SCC 1:***

163. *Section 7 continues to declare that a financial creditor either by itself or jointly by other creditors or any other Central Government notified person, file an application before the adjudicating authority, when a default has occurred. It is thereafter that the following Explanation is present, no doubt, after the impugned provisions, after the amendment:*

“7.(1)***

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

164. *The Explanation makes it clear that a financial debt, which is owed to any other financial creditor of the corporate debtor would suffice to make an application on the basis that the default has occurred. Default has been defined in Section 3(12) of the Code as follows:*

“3. (12) “default” means non-payment of debt when whole or any part or instalment 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;”



86. Taking into account the (a) contents of Clause 11 of the BBA, (as quoted in para 81 above), (b) fact that the amount received by the Corporate Debtor has not been refunded in terms of clause 11 of the BBA), (c) Order passed by the Hon'ble NCLAT dated 08.07.2025 (as referred in para 83 above), (d) provisions contained in Explanation to Section 5(1)(f), and Section 3(12) of the Code as interpreted by the Supreme Court in *Manish Kumar* (supra) we are not inclined to accept the contention of the Corporate Debtor these 39 applicants (whose allotments were allegedly cancelled) be not considered for the purpose of threshold under Section 7(second proviso). We may however make it clear that we have not commented on the correctness/legality of the cancellation letters.

87. As stated in preceding paras, in the present case threshold for filing Section 7 Petition is 100 allottees in terms of second proviso to Section 7(1) of the Code. There is no objection by the Corporate Debtor in respect of 73 applicants. As discussed above, 14 applicants who have got RERA decree plus 9 applicants of Tower A and B who have not accepted possession are also eligible, plus 39 applicants whose units have stated to be cancelled are also eligible. We have not examined the cases of other applicants. Thus, total 135



applicants are eligible to file present petition which is more than 100, and therefore threshold in terms of Section 7(1) second proviso is met.

Issue (iii) whether there is no 'default' committed by the corporate debtor.

- 88.** The Corporate Debtor has not disputed the fundamental nature of the transactions, namely, that the Applicants had booked Units in its project and had made payments pursuant to the respective allotments and Builder Buyer Agreements. Its principal defence is not that no amounts were received from the Applicants, but that the delay in completion was attributable to circumstances beyond its control.
- 89.** The principal defence taken by the Corporate Debtor in their reply and in arguments is that the delay in delivery of possession is attributable to: (a) non-handing over of physical possession of the plot by GNIDA; (b) encroachment of the project land by farmers; (c) the litigation that culminated in Savitri Devi v. State of Uttar Pradesh decided on 14.05.2015; (d) the "Zero Period" of 14.02.2011 to 01.09.2017 granted by GNIDA / by the order dated 18.05.2018 of GNIDA and the judgment dated 02.08.2023 of the Principal Secretary, Government of Uttar Pradesh; and (e) the COVID-19 pandemic. In fact, the Corporate Debtor has taken a defence on the basis of '*force measure*'.



Law on 'force measure

90. The Hon'ble Supreme Court in various judgments has considered the aspect of 'force measure'. In ***Energy Watchdog v. CERC, (2017) 14 SCC 80***, Hon'ble Supreme Court stated as under:

34. "Force majeure" is governed by the Contract Act, 1872. Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. Insofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract Act. Sections 32 and 56 are set out herein:

"32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."



39. *It has also been held that applying the doctrine of frustration must always be within narrow limits. In an instructive English judgment, namely, Tsakiroglou & Co. Ltd. v. Noble Thorl GmbH [Tsakiroglou & Co. Ltd. v. Noble Thorl GmbH, 1962 AC 93 : (1961) 2 WLR 633 : (1961) 2 All ER 179 (HL)] , despite the closure of the Suez Canal, and despite the fact that the customary route for shipping the goods was only through the Suez Canal, it was held that the contract of sale of groundnuts in that case was not frustrated, even though it would have to be performed by an alternative mode of performance which was much more expensive, namely, that the ship would now have to go around the Cape of Good Hope, which is three times the distance from Hamburg to Port Sudan. The freight for such journey was also double. Despite this, the House of Lords held that even though the contract had become more onerous to perform, it was not fundamentally altered. Where performance is otherwise possible, it is clear that a mere rise in freight price would not allow one of the parties to say that the contract was discharged by impossibility of performance.”*

91. As per Section 56 of the Contract Act, 1872, a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Thus, for taking plea of *force measure* for not performing contract in time, it must be shown that after entering into contract, there were some unforeseen circumstances occurred which could not be prevented by the party who claim force measure. Further, event of ‘force measure’ contained in the agreement should also be considered.



92. In the present case in hand, the respective Builder Buyer Agreements provides for completion and delivery of possession within a period of 40 months, together with a further grace period of 6 months. The Applicants contend that the contractual period expired in respect of the majority of the Units between 2016 and 2019 and, in certain cases, thereafter. It is their case that notwithstanding the expiry of the agreed timelines, possession of the respective Units has not been handed over in a legally and contractually compliant manner. Relevant clause of the BBA is reproduced herein below:

16. That the possession of the said Apartment/Flat is likely to be delivered by the Company to the Allottee within 40 months from the date of signing the Allotment Letter with a grace period of $\pm$ 6 months thereof. In case of delay in construction of the said Apartment/Flat beyond this date plus grace period and which is not due to reason explained in clause no. 15 above, the company agrees to pay a delay penalty @ 5/- per sq. ft. of the super area of the said Apartment/Flat per month for the period of delay to the allottee. The said delay penalty is subject that the allottee has made payments/all installments towards the sale consideration amount of the said Apartment/Flat in time and without making any delay to the company.

93. The Corporate Debtor has relied upon following clauses of BBA to substantiate their defence on 'force measure' :

*1. Force Majeure Clause: means any event or combination of events or circumstances beyond the control of the Company which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precaution and/or alternative measures. be prevented, or caused to be prevented, and which adversely affects the Company's ability to perform obligations under this Allotment, which shall include but not be limited to:
Acts of God i.e. fire, drought, flood, earthquake, epidemics, natural disasters etc.*



Explosions or accidents, air crashes and shipwrecks, act of terrorism.

Strikes or lock outs, industrial dispute.

Non-availability of cement, steel or other construction material due to strikes of manufacturers, suppliers, transporters or other intermediaries or due to any reason whatsoever.

War and hostilities of war, riots, bandh, act of terrorism or civil commotion.

The promulgation of or amendment in any law, rules or regulation or the issue of any injunction, court order or direction from any government authority and/or any other authority or any competent authority(ies) that prevents or restricts the party/company from complying, refuses, delays, withholds, denies the grant of necessary approvals for the said Complex/ said Building or if any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority(ies) become subject matter of any suit/writ before a competent court or any other Quasi-Judicial Body or for any other reason whatsoever.

15. That the construction of "GAYATRI AURA" Complex is likely to be completed as early as possible but subject to force majeure circumstances including strike of workforce, non-availability of any building materials, war or enemy action or natural calamities of any act of God, acts of terrorism, floods, earthquakes, political and civil unrest of such a nature etc. and farmers interruption or local residents of the area, and any notice, order, rule, notification of Government, Public or other Competent Authority, no claim by way of damage, compensation shall lie against the company in case of delay in handing over the possession on account of the aforesaid reasons or any other reasons which is beyond the control of company.



94. We may also refer recital 'c' of the BBA according to which GNIDA had handed over physical possession of the land to the Corporate Debtor on 14.02.2011.

Recital 'c' read as under:-

C. AND WHEREAS Greater Noida Industrial Development Authority handed over the physical possession of said vacant plot to M/s GAYATRI HOSPITALITY AND REALCON LIMITED, vide its letter. No. PROP/BRS/2011/353 dated 14-02-2011.

95. It is submitted by the Corporate Debtor that on 14.02.2011, a possession certificate vide letter no. Prop/BRS/2011/353 was issued by GNIDA in the Corporate Debtor's favour. On the same date, i.e. 14.02.2011, the Corporate Debtor inspected the site and found that a major part of the said plot is under encroachment of the farmers. The Corporate Debtor immediately submitted their objection before the GNIDA in this regard on the same date vide letter dated 14.02.2011 and prayed for vacant physical possession of the said plot. Therefore, the competent authority under Section 12 of the U.P. Industrial Development Act, 1976 vide order dated 02.08.2023 given the Corporate Debtor the benefit of the Zero Period from the date of Allotment i.e. 14.02.2011 till 01.09.2017.

96. We may point out that if the vacant possession was not given to the Corporate Debtor on 14.02.2011 and there was encroachment, why the Corporate Debtor had not disclosed this fact to the applicant allottees while allotting the Units



and even in the BBA, the fact that possession has not been given to the Corporate Debtor has not been mentioned. Rather on the contrary, in recital (c) of the BBA it is specifically mentioned that “*Greater Noida Industrial Development Authority handed over the physical possession of said vacant plot to M/s GAYATRI HOSPITALITY AND REALCON LIMITED, vide its letter. No. PROP/BRS/2011/353 dated 14-02-2011.*”. Most of these BBAs have been executed between 2012 to 2017. **Having failed to disclose the fact that physical possession of land has not been handed over to the Corporate Debtor and making commitment of delivery of possession within a period of 40 months, together with a further grace period of 6 months, now the corporate debtor is not entitled to take a defence of ‘force measure’ on account of not getting physical possession from the GNIDA.** It is not the case where after signing of BBA, the Corporate Debtor forced to vacate the land. Further, the Corporate Debtor has not placed before us any material demonstrating that the Applicants agreed to a corresponding amendment of their contractual possession dates on account of the Zero Period or the land-related disputes. The grant of a Zero Period or any recalculation of lease dues between GNIDA and the Corporate Debtor does not, by itself, amend the contractual obligations undertaken by the Corporate Debtor towards the individual allottees. The relationship between GNIDA and the Corporate Debtor, and any financial concession or relief granted in that relationship, cannot automatically result in an extension of the possession



period under the respective Builder Buyer Agreements. **Even otherwise, if we exclude the zero period granted by the Authority, the Corporate Debtor has failed to deliver units within 40 +6 months from the 1.09.2017 and the maximum period of 46 months would have expired by around July 2021.**

EFFECT OF PROPOSED JOINT VENTURE AND SWAMIH FUNDING

- 97.** The Corporate Debtor has also relied upon the Joint Venture entered into with Floral Homes Private Limited and the proposed financial assistance sanctioned by the SWAMIH Investment Fund. According to the Corporate Debtor, these steps demonstrate that a viable mechanism exists for completion of the project and refund of those homebuyers who may wish to exit.
- 98.** These developments, even if accepted at face value, do not extinguish an existing financial debt or cure a default that has already occurred. The existence of a proposed mechanism for future completion cannot be equated with actual completion of the project or discharge of the amounts due to the Applicants. A Section 7 application is to be examined on the basis of whether a financial debt exists and whether default has occurred. Subsequent proposals for resolution or funding may be relevant to the future prospects of the Corporate Debtor, but they do not erase an already accrued default.
- 99.** It is also significant that the proposed financial assistance and the Joint Venture themselves indicate that substantial external intervention and funding are



considered necessary for completion of the project. Rather than demonstrating that the Corporate Debtor has already discharged its obligations, these developments reinforce the position that the project requires further financial and structural intervention for its completion.

OBJECTION BASED ON THE WISHES OF OTHER HOMEBUYERS

- 100.** The Corporate Debtor has placed reliance upon the intervention application filed by 306 homebuyers who oppose commencement of CIRP and contend that admission would not be in the larger interest of those allottees who desire completion and possession of their Units.
- 101.** The jurisdiction of this Adjudicating Authority under Section 7 is not dependent upon a comparative assessment of whether a greater or lesser number of homebuyers presently favour CIRP. The Code itself provides the mechanism for collective consideration of the interests of all stakeholders after admission. The statutory threshold under the second proviso to Section 7(1) represents the legislative safeguard applicable specifically to allottees as a class. Once that threshold is satisfied and the existence of financial debt and default is established, the mere opposition of another group of stakeholders cannot, by itself, defeat admission.
- 102.** In view of above discussion, we are, therefore, satisfied that the Applicants have established the existence of a financial debt and the occurrence of default



within the meaning of Sections 5(7), 5(8) and 3(12) of the Code. The statutory threshold applicable to the Applicants as a class has already been held to be satisfied. The requirements for admission of the Application under Section 7 consequently stand fulfilled. The Application is complete in all material particulars and there is no legal impediment to its admission. The present Application, therefore, deserves to be admitted.

ORDER:

103. In view of the foregoing, the Application bearing **CP (IB) No. 69/ND/2026** filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 against **M/s. Gayatri Hospitality and Realcon Limited** is **admitted**. It is hereby ordered as follows:

- i.** The application bearing **CP (IB) No. 69/ND/2026** filed by Rajeev Sharma and Ors, the 146 home allottees, under Section 7 of the Code for initiating CIRP against **M/s. Gayatri Hospitality and Realcon Limited**, the Corporate Debtor, is hereby admitted.
- ii.** The Applicant has proposed the name of **Mr. Anurag Nirbhaya**, having Registration Number IBBI/IPA-001/IP-P00870/2017-2018/11468. Therefore, this Adjudicating Authority appoints **Mr. Anurag Nirbhaya** as the Interim Resolution Professional of the Corporate Debtor.



The details of the IRP are as follows:

Name: Mr. Anurag Nirbhaya

Registration No. : IBBI/IPA-001/IP-P00870/2017-2018/11468

Email – anurag@canirbhaya.com

- iii. The IRP so appointed shall file consent in Form-2, a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three working days (3) of pronouncement of this order.
- iv. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, shall 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.
- v. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow



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.

- f.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.



- vi.** The Interim Resolution Professional shall perform all functions 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. 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'.
- vii.** 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 its 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.
- viii.** A copy of the order shall be communicated to the Applicant/Financial Creditor, Corporate Debtor and IRP above named, by the Registry.



- ix.** In addition, a copy of the order shall also be forwarded to IBBI for its records.
- x.** Applicant is also directed to provide a copy of the complete paper book to the IRP.
- xi.** A copy of this order shall also be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

104. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP (IB) No. 69/ND/2026** stands **admitted**.

-SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

-SD/-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**