

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**CP- IB-48(PB)/2020**

*Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**In the matter of:**

1. **Ms. Pallavi Gupta & Mr. Padam Thakur**
2. **Mr. Kuldeep Singh**
3. **Mr. Pankaj Kumar**
4. **Mr. Hari Prakash**
5. **Mr. Devki Nandan Bhati**
6. **Mr. Sumit Shukla**
7. **Mrs. Charu Gupta**
8. **Mr. Tushar Bansal**
9. **Mrs. Nigam Verma**
10. **Mr. Sanjay Jindal**
11. **Mr. Arvind Kumar**
12. **Mrs. Anjul Singhal**
13. **Mrs. Shobha Agarwal**
14. **Dr. Parmatma Saran Agarwal**
15. **Dr. V.K Gupta**
16. **Mr. Surojit Roy & Mrs. Seema Roy**
17. **Mrs. Sudha Rani I**
18. **Mr. Rohit Chadha & Smt. Sunita Chadha**
19. **Mr. Sumit Gupta**
20. **Mrs. Usha Gupta & Mr. Girish Chandra Gupta**
21. **Mr. Suresh Chandra Nayak**
22. **Mrs. Neelam Goel**

.... Petitioners/Financial Creditors

**Versus.**

**M/s. Jaipuria Buildcon Private Limited**

Registered address at:

16, Shankar Vihar,  
New Delhi-110092

.... Corporate Debtor

**Order delivered on: 02.06.2022**

**Coram:**

**JUSTICE RAMALINGAM SUDHAKAR,**

**HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA,**

**HON'BLE MEMBER (TECHNICAL)**

**Appearance**

For the FC: Mr. Sanjay Jain, Mr. Akash Srivastava, Advocate  
For the CD: Mr. Manish Raghav, Mr. Rohit Gaur, Advs.

**ORDER**

**PER: AVINASH K. SRIVASTAVA MEMBER (TECHNICAL)**

1. This is a joint application, filed by 22 financial Creditors/ Home buyers in the class of creditors, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), against the Respondent/Corporate Debtor namely, M/s. Jaipuria Buildcon Private Limited.

2. The Corporate Debtor (CD) is a Private Limited Company, incorporated on 22.09.2005, having Company Identification Number (CIN) U45201DL2005PTC141047 and is situated at 16, Shankar Vihar, Delhi, 110092.

3. The petitioners have submitted that, the Corporate Debtor approached the Financial Creditors in the year 2006 and 2013 for

the facility of purchasing the Apartments in the prestigious Project named "Jaipuria Apartments" (the "Project") in the residential complex situated at Plot No. 14, Sector-1, (GH-6) Crossing Republik, Ghaziabad.

4. The Project consist of two towers i.e. Tower A and Tower B, which in total have 195 flats. Tower A have 105 flats and Tower B have 90 flats. However, presently there are 160 allottees and the present Petition has been filed by 22 allottees i.e. more than 10% in the said Project, in terms of proviso to section 7 of IBC, 2016.

5. It is further submitted that, the present Petition was instituted on 01.01.2020 and subsequently an IA-1469/2020 has been filed on 22.02.2020 for impleadment of the other home buyers, in the present Petition, which was allowed by this Bench vide order dated 06.05.2022. In view of the said order, the Amended Memo of Parties filed in the form of other documents on 18.05.2022, is taken on record.

6. Further it is submitted that, the Financial Creditors had made a booking in the Project developed by the Corporate Debtor in the year 2006 and 2013, wherein the possession was proposed to be delivered on various dates between December, 2009 to 31<sup>st</sup> March 2014 and had paid an amount of Rs. 5,46,69,392.00 towards the part purchase consideration, on the regular demands made by the Corporate Debtor in furtherance of construction of the Project.

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7. It is further submitted that, the Corporate Debtor despite the lapse of 13 years have neither been able to complete the construction nor have been offered the possession of the flats to the respective allottees.

8. The petitioners have filed the convenience chart, annexed as Annexure-2, of the additional affidavit dated 18.05.2022, showing the detailed list of the 22 Financial Creditors and the particulars relating to; (i) the date of proposed possession by CD, (ii) Sale consideration amount, (iii) date of default, (iv) amount paid by each Financial Creditor, (v) confirmation regarding the payment made by the each allottee, (vi) amount claimed and computation.

9. That the Financial Creditor No. 2 i.e. Kuldeep Singh had issued a demand notice dated 06.05.2019, to the Corporate Debtor, demanding the payment with respect to the allotment of the unit i.e. A-202, 2<sup>nd</sup> Floor, through speed post, but the same was returned, with the remark "NOT DELIVERED UNCLAIMED".

10. It is further stated, that the several representations were made by the allottees to the Corporate Debtor, but all the efforts of the allottees to reach out the CD and seeking an explanation for not providing possession, have gone futile. The Corporate Debtor have not paid any heed, even after the persistent representations made by the allottees.

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11. In addition to this, it is further submitted that, there are some financial Creditors who have been paying the bank instalments, from their own resources. However, the Corporate Debtor has not delivered the possession of the said flat till date.

12. The Petitioner further submitted that, the possession of the respective allotted flats in the project has not been given to the financial creditors, on the proposed date of possession, which creates a continuing/ recurring cause of action in the present matter. This settled proposition of law has been recently reiterated by the Hon'ble Supreme Court in the matter of **Samruddhi Co-operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd, decided on 11.01.2022**; wherein the similar issue of possession of Apartments, was decided by the Hon'ble Apex Court. The relevant para of the judgement is reproduced hereunder:

*“Section 22 of the Limitation Act 1963 provides for the computation of Limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues.” (Para 12 on page no. 25)*

13. The Petitioners further relied on the Judgement of **Navin Sharma & Ors vs. Unitech Reliable Projects Limited & Anr. [2016(2) CLT457]**; wherein it was held that, unless and until the

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complainant get the possession of the flats, they have got continued cause of action. The copy of this judgement is annexed as Annexure-3 of the additional affidavit.

14. The Financial Creditor has submitted that, he has served the Petition, all the applications, additional documents along with the notice of motion which are filed before this Tribunal to the CD through email, speed post and through WhatsApp, and the proof of service along with the affidavit has also been filed. However, despite several notices to the Corporate Debtor, the CD have not filed its reply and defaulted in providing the possession to the allottees/financial creditors till today.

15. The matter was heard on 06.05.2022 and we find that the Corporate Debtor failed to file any reply, despite proper notice. Therefore, we closed his right to file reply and proceeded to hear his Oral Arguments. The Ld. Counsels for the Petitioners and the Respondent/CD presented their arguments. The Counsel for the Respondent submitted that the Petition is barred by limitation.

16. In the light of Judgements cited by the Petitioner, this Adjudicating Authority, is convinced that, since the possession of the Units in the said Project are not handed over till date, which amounts to continuing default committed by the Corporate Debtor which starts from the date when the constructed unit was promised to be delivered to the allottees by the Corporate Debtor and therefore, this petition is not barred by limitation.

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17. The second proviso to section 7(1) states that “for the financial creditors who are the allottees under the real estate project, an application for initiating CIRP against the CD shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less.” In view of the said proviso, in this Petition as there are 160 allottees and the Petition has been filed by 22 allottees i.e. more than 10% in the said Project which satisfies the criteria as provided in the second proviso to the Section 7(1) of the Code.

18. Further, this Petition is filed in the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code and is complete. We are satisfied that there is a debt and default. Accordingly, the application is **admitted** and CIRP is ordered to be initiated against the CD.

19. The Applicant has proposed the name of Interim Resolution Professional (IRP), Mr. Vikas Kumar Garg, having registration No. IBBI/IPA-002/IP-N00738/2018-19/12291, and email id vikasgarg\_k@rediffmail.com. A written consent sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India (IBBI) or ICSI. In addition, further necessary disclosures have been made by Mr. Vikas Kumar Garg



as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Vikas Kumar Garg as the IRP of the Corporate Debtor.

20. In pursuance of Section 13 (2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

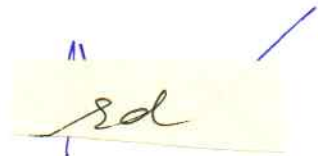
21. As a consequence of the application being admitted, moratorium as envisaged under the provisions of Section 14(1) shall follow. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

22. We direct the Petitioner/ Financial Creditor to deposit a sum of Rs. 2 lacs with the IRP Mr. Vikas Kumar Garg to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the applicants. The amount however be subject to adjustment by the Committee of Creditors as accounted for by IRP and shall be paid back to the applicant.

23. The registry is directed to communicate a copy of the order to the Applicants, the CD, the IRP and the Registrar of Companies,

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NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



**RAMALINGAM SUDHAKAR  
(PRESIDENT)**



**AVINASH K. SRIVASTAVA  
MEMBER (TECHNICAL)**