



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

(IB)-1320(ND)/2019

IN THE MATTER OF:

1. **Mr. Nitin Mehta**
S/o Mr. Rakesh Mehta
R/o 228.C, Pocket C.
Siddharth Extension,
New Delhi-110014
...Applicant No. 1
2. **Mrs. Madhubala**
S/o Rakesh Mehta
R/o 228.C, Pocket C,
Siddharth Extension,
New Delhi-110014
...Applicant No. 2
3. **Mr. Anil Mehra**
S/o Mr. K.C. Mehra
R/o 5-325, GK-1,
New Delhi - 110048
...Applicant No. 3
4. **Mrs. Aparna Sharma**
W/o Mr. Dinesh Kumar Sharma
R/oC-4/A155, Carlton Estate,
DLF Phase, Gurgaon - 122009
...Applicant No. 4
5. **Mr. Dinesh Kumar Sharma**
S/o Sh. Mukul Raj Sharma
R/o C-4/A155, Carlton Estate,
DLF Phase, Gurgaon - 122009
...Applicant No. 5
6. **Mrs. Indu Arora**
W/o Mr. Deepak Arora
R/oW-1/C092, Wellington Estate
DLF Phase - V, Gurgaon - 122000.
...Applicant No. 6
7. **Ms. Dheerja Arora**
D/o Mr. Deepak Arora
R/oW-1/C092, Wellington Estate
DLF Phase - V, Gurgaon - 122000.
...Applicant No. 7
8. **Mrs. Amarjit Arora**
W/o Late Sh. Ajay Arora
R/o35, Dreaver Drive Waitara
New Plymouth, New Zealand
...Applicant No. 8

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Mr. Nitin Mehta and Ors. Vs Samiah International Builders Ltd.



9. Mr. Siddharth Arora

S/o (Late) Sh. Ajay Arora
R/o35, Dreaver Drive Waitara
New Plymouth, New Zealand

...Applicant No. 9

10. Mr. Gautam Arora

S/o (Late) Sh. Ajay Arora
R/o 39, Tasman Street
Opunake, Taranaki, New Zealand

...Applicant No. 10

Versus

Samiah International Builders Limited

(Formerly known as Samiah International Builders Pvt. Ltd.)

Through its Authorized Signatory

Having its registered office at:
G-74, First Floor, Right Side,
Shaheen Bagh, Abul Fazal Enclave,
Part-II, Jamia Nagar, New Delhi -110025

...Respondent/Corporate Debtor

Order Delivered on : 04.10.2022

SECTION: 7 of IBC 2016

CORAM :

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Applicant : Adv. Piyush Singh, Adv. Adithya Ramani,
Adv. Riddhi Jain

For the Respondent : Adv. Prashant Katara

(IB)-1320/(ND)/2019

Mr. Nitin Mehta and Ors. Vs Samiah International Builders Ltd.



ORDER

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

The present Petition has been filed by Mr. Nitin Mehta and others (for brevity, the '**Applicant/Financial Creditor**') under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Process against M/s. Samiah International Builders Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Samiah International Builders Limited is a Company incorporated on 19.09.2003 under the provisions of erstwhile Companies Act, 1956 with CIN U45201DL2003PLC122337 having its registered office at G-74, First Floor, Right Side, Shaheen Bagh, Abul Fazal Enclave, Part-II, Jamia Nagar, New Delhi -110025, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 25,00,00,000/- and Paid-up Share Capital of the Company is Rs. 20,21,45,570/- as per the Master Data annexed.

3. It is stated by the Applicants that they had booked units in the "Green View Apartment" Project ("**the Project**") located at Chorasia Estate, Plot No.4, Sector-Pi, Greater Noida, Uttar Pradesh being developed by the Respondent along with its business partner namely



Arcmate Housing Solutions Pvt. Ltd. under the name Arcmate Samiah Consortium. It is stated by the Applicants/Financial Creditors that they are the "Allottees" in the Green View Apartment. The Allottee-wise details of the date of agreement, units' details and amount of default, as stated by the Applicants, are summarized below:

Sl. No.	Name of Allottee	Date of Allotment/ Agreement	Unit Details	Amount of Default (Rs)
1.	Mr. Nitin Mehta and Ms. Madhubala	16.05.2013	Flat No. 3D-131 13 th Floor, Type-D in Tower No. 3, admeasuring approx.1120 sq. ft	45,45,334
2.	Mr. Anil Mehra	11.02.2014	Flat No. 4C-081 on 8 th Floor, Type- D in Tower No. 4, admeasuring approx.1860 sq. ft	47,61,712
3.	Ms. Aparna Sharma and Mr. Dinesh Kumar Sharma	16.05.2013	Flat No. 2B-115 on 11 th Floor, Type-B in Tower No. 2, admeasuring approx.1860 sq. ft	28,76,394
4.	Mrs. Indu Arora and Ms. Dheerja Arora	31.05.2013	Flat No. 4C-101 on 10 th Floor, Type-C in Tower No. 3, admeasuring approx.1450 sq. ft.	34,27,544
5.	Mrs. Amarjit Arora	08.08.2016	Flat No. 4C-078 on 7 th Floor, Type-C in Tower No. 3, admeasuring approx. 1450 sq. ft	56,91,063
6.	Mrs. Amarjit Arora and Mr. Sidharth Arora	19.05.2015	Flat No. 2B-126 on 12 th Floor, Type-B in Tower No. 2, admeasuring approx.1860 sq. ft.	29,63,484
7.	Mr. Siddharth Arora and Mr. Gautam Arora	18.05.2013	Flat No. 2B-114 on 11 th Floor in Tower No. 2, admeasuring approx. 1860 sq. ft.	22,53,234



4. It is further stated by the Applicants that the Respondent neither handed over the possession nor refunded the payment made by the Applicants. The Applicants have contended that since the Respondent has committed default, CIR Process be initiated against it.

5. On issuance of notice, the Respondent has filed its reply and submitted the following :

5.1 M/s Arcmate Housing Solutions Pvt. Ltd. (**"Arcmate"**) and Respondent herein had entered into a registered partnership through a firm named as "ARCMATE SAMIAH CONSORTIUM" vide partnership deed dated 18.06.2013 to engage in the business of constructing group housing projects as a contractor. As per the said Partnership deed, the profits and losses were to be shared between Arcmate Housing and Respondent in the ratio of 75%:25%. It is submitted by the Respondent that the said registered partnership firm was granted the work of construction and development of the said Project "Green View Apartment" at Chorasia estate, Plot No. 4, Sector Pi, Greater Noida by the Green View II Sahkari Awas Samiti Ltd as a contractor. Respondent has placed the Partnership Deed on record.

5.2 The Applicants had booked their apartments in the said "Green View Apartment" project by submitting their application forms to the aforesaid Registered Partnership firm. The Terms and Conditions appended to the Application form in paragraph 1 states that :



“1. For allotment of a residential unit, the applicant has to submit his/ her application on the prescribed form indicating the location, size and type of unit required. The Application is to be accompanied with the booking amount, as per the payment plan, by an account payee cheque or draft favouring Arcmate Housing Solutions Pvt. Ltd. payable at Noida.”

5.3 The said Application form submitted by the Applicants for booking their units noted as below :

“Cheque or **DD** in favour of ARCMATE SAMIAH CONSORTIUM payable at Noida”.

Later, Agreement/Memorandum of Understanding was executed by and between the Applicants and M/s Arcmate Samiah Consortium, the registered partnership firm, developing the Green View Apartment project as a contractor. It is pertinent to mention that the said Memorandum of Understanding does not refer to the Respondent herein even once nor does it bear the signatures of the representatives/officers of the Respondent herein. Thus, it is evident that there is no privity of contract between the Financial Creditors and the Respondent herein and no payment whatsoever has been made to the Respondent herein.

5.4 It is stated that pursuant to the aforesaid Memorandum of Understanding, the Financial Creditors claimed to have made payments towards their Units and the said payment was admittedly made to M/s Arcmate Samiah Consortium, the registered partnership firm only and to no other entity, much less to the Respondent. It is further stated that in view of the above, it is evident that there is no



payment was ever made to M/s Samiah International Builders Ltd and there is no privity of contract between the parties.

6. After perusing the documents placed on record and hearing submissions of the parties, we find that vide order dated 07.01.2020, this Bench had directed the Respondent to file details regarding the total number of units in the project. Accordingly, the Respondent has filed the Affidavit dated 13.01.2020 stating that there are total 406 Units in the "Green view Apartments" Project, out of which 344 Apartments only are sold till that date. The copy of the relevant portion of the affidavit is reproduced below –

1. That I am the Director of the Corporate Debtor in the above Petition and I am fully conversant with the fact and circumstances of the case. I have been duly authorized by the Corporate Debtor and thus competent to swear to this Affidavit.

2. This Hon'ble Adjudicating Authority/ Tribunal in view of the Ordinance dated 28.12.2019 amending the provisions of the Insolvency And Bankruptcy Code, 2016, vide its order dated 07.01.2019 had directed the Corporate Debtor herein to file the instant Affidavit placing on record the total number of allottees in the Real estate project " Green View Apartments.



In this regard, I say that the total number of units/ apartments in the project " Green View Apartments" being constructed at Greater Noida is 406 units and out of these 406 units, total 344 units/ apartments are sold till date.

4. I also state that as per the information available with the corporate debtor, 4 petitions filed under Section 7 of the Code against the

Corporate Debtor are pending adjudication before this Hon'ble
Adjudicating authority/ tribunal.


DEPONENT.

VERIFICATION :

I, the abovenamed deponent, do hereby verify that the contents of the above
affidavit are true and correct to my knowledge and belief and no part of thereof is
false and nothing has been concealed therefrom.

Verified at New Delhi on this 13 day of January, 2020


DEPONENT

7. Hence, in the light of the aforesaid facts, we would first like to
test the maintainability of the present application by examining
whether it is filed by the requisite numbers of allottees in line with
the provisions of Section 7 of IBC, 2016. It is a matter of fact that the
present Application has been filed by less than 100 allottees. Hence,
the limited issue, which is left to be examined is whether the
Application has been filed by at least 10% of the allottees of the same
project i.e., Green View Apartments.

8. From the memo of parties, it is seen that the present
Application is filed by 10 Applicants. However, when we glance
through the details provided regarding agreements executed between
the parties, we find that except Mr. Anil Mehra (the Applicant No.3)
and Mrs. Amarjit Arora (the Applicant No.8), all other Applicants
have jointly purchased their respective units. Hence, the Applicant
No.1-2, Applicant No.4-5, Applicant no. 6-7 and Applicant No.9-10,
being the joint allottees against the same unit, shall be counted as



one allottee each for the purpose of counting the number of Allottees filing the Application. Accordingly, when we count the number of allottees basing on units, we find that the present application has been filed by 6 allottees only [i.e., 02 individual allottees (2units) and 08 co-allottees (04 units)].

9. As noted above, vide Affidavit dated 13.01.2020, the Respondent has submitted that out of total 406 units, only 344 units are sold in the 'Green View Apartments' Project. Hence, the minimum threshold for filing the application under Section 7 in terms of 10% allottees in the "Project" comes to 35. Whereas, the present application has been filed by 06 allottees only, which is less than the minimum threshold prescribed under Proviso to Section 7(1) of IBC, 2016.

10. In sequel to the discussion above, we conclude that the present Application is neither filed by 100 allottees nor by 10% of the allottees of the "Green View Apartments" Project. Hence, we have no other option but to reject the Application for want of meeting the minimum threshold prescribed under Section 7(1) of IBC, 2016.

11. Accordingly, the Application is Dismissed being non-maintainable.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)



Pronounced today by Hon'ble Member (T) under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (J), Shri Dharminder Singh is on leave today.

A handwritten signature in black ink, consisting of stylized letters and a long horizontal stroke.

COURT OFFICER